

TOPIC:

Critical evaluation of the realization of the right to basic education in light of the 2012 Limpopo textbook saga.

Submitted in partial fulfilment of the requirements of the LLM (Constitutional and Human Rights Law Litigation) University of KwaZulu-Natal Howard Campus.

By

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DECLARATION

I, Siphelo Dlamini Mbeki, declare that this dissertation contains and represents my own original work unless otherwise indicated in the text. Furthermore, this dissertation has not previously been submitted towards any other academic qualification at any other university.

Signed: _____

8 March 2015

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CHAPTER 1

INTRODUCTION

1. BACKGROUND

South Africa adopted the final Constitution¹ in 1996 when its democratic foundations were laid. In that same year the South African Schools Act² (SASA) was enacted to provide for a uniform system for the organisation, governance, funding of schools and matters connected therewith. The purpose of this study is to critically assess the progress the government has made towards the attainment of the constitutionally enshrined right to basic education³ in South Africa. Specifically, the paper will focus on the challenges that have characterised basic education in the country since 1994 and which were brought to light by the Limpopo scandal by looking at their causes and the appropriateness of the remedial measures devised by the Department of Education as a response. All of this inevitably affects the quality of the scholars the Department is producing for enrolment at university and the workplace.

Post-1994, the South African government has had its fair share of failures in the various departments it runs. Arguably, the health and education departments have fared the worst in the past number of years. Some provincial departments of education have been taken over by the national department as a result⁴. Amid all this, there are unacceptably large numbers of children in the Eastern Cape, Limpopo and Kwa-Zulu Natal, amongst other provinces, who attend classes under trees, in mud schools or have classrooms with no teachers. The gravity of these problems was accentuated by the non-delivery of textbooks in Limpopo and the Eastern Cape in 2012, which meant that learners could not learn or be taught effectively from January to June of that year. Failure to deliver textbooks represents a failure on the part of the government to comply with its obligation to provide free basic education. It is in light of these issues and more that this paper will also be looking at the action of the state from budgeting, procurement and delivery of stationery as a way of ascertaining the state's fulfilment of its duty under the Constitution⁵ and international instruments. Most importantly, the government's remedial measures and their effectiveness in response to the Limpopo saga will be scrutinized.

¹ The Constitution of the Republic of South Africa 1996

² No. 84 of 1996

³ Section 29(1)(a)

⁴ Eastern Cape and the Limpopo Departments of Education were taken over by national government in 2011.

⁵ Section 7(2) of the Constitution

1.2 RESEARCH PROBLEM

Given the fact that effective education of African learners was neglected before 1994, the inclusion of socio-economic rights in the 1996 Constitution is aimed at advancing the socio-economic needs of the poor in order to uplift their human dignity and realise their potential.⁶ It has now been 20 years since the advent of democracy but the state is still unable to deliver learning material such as textbooks on time. This means that the state is failing to fulfil its obligations as conferred on it by the Constitution⁷ and SASA.⁸

According to the South African Schools Act this country needs a national system for schools which will redress past injustices in the provision of education and also one that will provide for education of progressively high quality for all learners and uphold the rights of all learners.⁹ In light of the aforementioned constitutional and legislative obligations imposed on the state, using the Limpopo textbook non-delivery saga, the research problem is critically to evaluate the extent to which the state's inability to deliver text books fell short of the duties and obligations conferred on it to realise the right to basic education in the country.

1.3 PURPOSE OF THIS RESEARCH

The realisation of the right to basic education in South Africa has been plagued by a number of difficulties in past years. Some of these problems have been teacher strikes, lack of adequate teachers and teaching skills, high failure and drop-out rates, late delivery of stationery, inter alia. These problems contribute to the poor realisation of the right to basic education in a number of schools around the country.

The purpose of this study is to assess the realisation of the right to basic education in South Africa in light of the Limpopo scandal of non-delivery of textbooks. Through the Limpopo saga, the long existing problems of the National Department of Education which appears to be mismanaged, and some allege is fraudulently¹⁰ run, were brought to the attention of the country. Eventually, remedial measures instigated by NGO's and insisted upon by the courts were taken. The objective of this research is to adopt a top to bottom approach in looking at the role of the government, courts, teacher trade unions, non-governmental organisations, the general public and any other role player in ridding our education system of the ills that prevent it from being as productive and functional as it should be. The end result of all these problems is that the country appears to be producing

⁶ Mbazira, C *Litigating Socio-economic Rights in South Africa: A choice between Corrective and Distributive Justice*. (2009) pg1 available at http://www.pulp.up.ac.za/cat_2009_07.html accessed 25 August 2014

⁷ Section 8(1) of the Constitution

⁸ See note 2 above

⁹ South African Schools Act preamble

¹⁰ Chisholm, L 'Corruption in Education: The Textbook Saga' (2012) Southern African Review of Education

poorly skilled, inept school-leavers who struggle to find work and therefore increase the poverty levels of the country.

1.4 RESEARCH METHODOLOGY

This research will be desk-top based and the methodology used will be based on a review of credible sources. These sources will range from primary to secondary. Primary sources will include the South African Constitution together with legislation, international and regional instruments, local and foreign case law. International law is important in this regard as South Africa has duties imposed on it by certain instruments in relation to education.¹¹ In terms of secondary sources, articles relevant to the Limpopo crisis written by authors whose views are contrary to one another about what should be done about the ‘education crisis’ in South Africa, will be reviewed. Textbooks will also be consulted as they provide valuable insight on issues discussed in this research paper. Statistical data, on the other hand, will provide pass rates for past years which will then enable the paper to evaluate the efficacy and productivity levels of current education policies. Comparative law will also be used with the intention of ascertaining ways to improve the realisation of the right to basic education in South Africa.

1.5 LITERATURE REVIEW

Most of the literature reviewed appears to concede unequivocally that South African basic education is not what it should be in terms of quality and delivery. Sibonile Khoza blames the state of our basic education system both on apartheid and its legacy, and also on the poor implementation of legislation and programmes that are aimed at making better our education system.¹² On the other hand, Sandra Liebenberg is of the view that even though apartheid has ended, its after-effects are still playing a huge role in terms of the different standards of basic education received by learners of different races.¹³ Such sentiments are similar to those expressed by the Constitutional Court in *MEC for Education: Kwazulu-Natal v Pillay*¹⁴ when O’Regan J noted that although things have improved somewhat for black learners after 1994 still the pattern of disadvantage engraved on our education system by apartheid has not been erased.¹⁵

¹¹ Convention on the Rights of the Child of 1990 is one of them

¹² Khoza, *S Socio-Economic Rights in South Africa* 2ed Community Law Centre Western Cape (2007) pg. 425

¹³ Liebenberg, *S Socio-Economic Rights: adjudication under a transformative constitution* Juta (2010)

¹⁴ 2008 (2) BCLR 99 CC

¹⁵ Ibid para. 23

Christopher Mbazira argues that South Africa has a long history of grassroots struggles led by trade unions, social movements, religious organisations and NGO's. While these organisations have relied on litigation to challenge certain socio-economic policies by reminding the government of its socio-economic rights obligations, some have appreciated the limitations of litigation and combined it with social mobilisation, protests, demonstrations and public campaigns.¹⁶ Overall, little is said about the general society playing a role in delivering effective basic education. Finally, these schools, even though they might be built by government, have to be managed with the collaboration of the community, hence public engagement is crucial in this matter. The community needs to be more involved in trying to rid our education system of these ills. Moreover, this paper also attempts to show that there is a limit to what the government can do on its own but it can achieve so much more with the aid of the communities in which these schools are situated.

It is common cause that the state of basic education in South Africa is not what it should be. As has been mentioned above, the deep existing problems facing basic education in the country were brought to the attention of many by the Limpopo non-delivery of textbooks in 201

¹⁶ Mbazira, C "Non-implementation of Court Orders in Socio-economic Rights Litigation in South Africa" ESR Review Vol.9 No.4 pg.6

CHAPTER 2

Critical Review of the Current State of Basic Education in South Africa

2.1 Introduction

The preamble of the Constitution contains an undertaking to “improve the quality of life of all citizens and free the potential of each person.” One of the best ways to do this is for the government to improve on the delivery and quality of the right to basic education. This chapter seeks to review the state of basic education by looking at the factual causes of the Limpopo debacle, how the court dealt with the matter and the action the government took as a response. A look at the judgement is particularly important as it demonstrates how the judiciary plays a crucial role in giving effect to the right to basic education through the kind of remedies it gives. As a conclusion to this chapter, this paper will assess government’s response to the debacle to ascertain whether it was enough to prevent a recurrence of a similar incident.

2.2 Limpopo scandal factual background

In or about 11 January 2012 the *City Press* published an article raising concerns that textbooks in some Limpopo schools had not been delivered, one week before schools were due to commence with their school calendar year. A week thereafter on the 20th of January 2012 the *Mail&Guardian* released an article intimating similar concerns.¹⁷ Acting upon the media reports, the staff of *Section 27*, a public interest law centre, visited a number of schools in the province on two different occasions and discovered first hand that text books were undelivered at a number of schools. As a result of its findings, *Section 27* consulted the Department of Basic Education (hereafter ‘DBE’) and two meetings ensued between these bodies. During the first meeting *Section 27* was informed by the DBE that as a result of an “unscrupulous tender award” delivery of text books would be delayed until, at the latest, the middle of April 2012.¹⁸ By the middle of April it turned out that text books were still undelivered. This necessitated a second meeting between *Section 27* and the DBE which took place on 2 May 2012 during which the latter assured the former that text books would be delivered throughout May to be completed by 15 June 2012. *Section 27* found this unacceptable and took to court.¹⁹ The facts of the case as it elaborates on the meaning and content of the right to basic education are now discussed.

¹⁷ SECTION 27 and others v Minister of Education and Another ZAGPPHC (2012) 114 Para. 16

¹⁸ Ibid Para. 17

¹⁹ Ibid Para. 18

2.3 SECTION 27 & OTHERS v MINISTER OF EDUCATION²⁰

With the court having been made aware of the prior engagements to have taken place between the litigants, *Section 27*(applicant) sought relief on 3 grounds:

- That the court declares and deals with the case as an urgent one as a result of the continued failure by the DBE (respondent) to remedy the situation.
- That the DBE has a constitutional obligation to fulfil the right to basic education and that such an obligation includes, inter alia, the provision of text books and the failure by the respondent to provide text books at the beginning of the year or within a reasonable period thereafter, constitutes a violation of the right to basic education, equality, dignity, the South African Schools Act and s 195 of the Constitution.
- That the court orders, first, the respondents to effect delivery of the text books as well as, second, an order that will ensure that the prejudice suffered by the learners as a result of the respondent's failure to deliver text books timeously is ameliorated by implementing a "catch-up" plan.²¹

On the first issue, that of the urgency of the matter, the court was of the view that given the centrality of education in the constitutional framework and the fact that schools in Limpopo did not have text books halfway into the year was enough to render the matter an urgent one. A day or week passing by was perceived as material under these circumstances by the court.²²

In relation to the respondent's second prayer about the violation of the right to basic education of the children concerned the court relied heavily on the reasoning of the Constitutional Court in the *Juma Masjid*²³ case (which will be dealt with later). In line with this reasoning, the court further held, the right to basic education has a number of components to it and one of them is the provision of text books. Also, that for the right to be meaningful it had to include issues such as infrastructure, learner transport, security at schools, nutrition and related matters. Further, the court found support for its reasoning in the policy statements of the State through the 2011 State of the Nation Address where the President said "the administration must ensure that every child has a text book on time".²⁴ Clearly, the court went further to say, this was an unambiguous statement by the government that text books are an essential and vital component in delivering quality learning and teaching.

²⁰ See note 17 above

²¹ Ibid Para. 19

²² Ibid Para. 20

²³ *Governing Body of the Juma Masjid Primary School v Essay and Others* 2011 (8) BCLR 761 (CC). The case dealt with the nature of the right to basic education and the duty it imposes on the state and private bodies.

²⁴ See note 17 above Para. 23

Therefore, the court concluded, the failure to provide text books midway through the academic year constitutes a violation of the right to basic education.

With regard to prayer three which related to delivery of the text books there was little dispute. Litigants agreed that delivery will start on 31 May 2012 and be completed by 15 June 2012. The court made this agreement an order of court. In relation to the ‘catch-up’ plan the court relied on the dicta of *Fose v Minister of Safety and Security*²⁵ in that where a violation of rights has taken place the remedy offered must be effective and meaningful. To this end, the court held an order only for delivery of text books will not address the consequences of the failure of delivery for the first half of the year. This is to ensure that the prejudice learners have experienced as a result of not having text books is ameliorated. Therefore, the court ordered, the DBE should have a “catch-up” plan with the additional requirement that monthly reports on the implementation of the plan be submitted to court and applicants. The nature of the order put the DBE and national government as a whole under pressure to act.

This was followed by *Basic Education for All v Minister of Basic Education* 2014 (4) SA 274 (GP). This case also dealt with the DBE’s failure to provide textbooks in time for some Limpopo public schools. The court was faced with the task of determining whether the provision of textbooks was a component of the right to a basic education. The court agreed with the finding in the *SECTION27* case that provision of textbooks is indeed a component of basic education. The court went further to hold that because textbooks were not provided to all learners in the province before the commencement of the curricular for which they were required, the rights of the learners were violated. The fact that the overwhelming majority of schools received the textbooks did not mean that the right to education had not been violated in respect of the schools that had not received the textbooks. Following that finding the court had to make a just and equitable order as is required by the Constitution. The court found that the non-delivery of textbooks on time was a violation of the learners’ right to basic education, equality and dignity and that the right to basic education in the Constitution includes the right of every learner at a public school to be provided with a textbook prescribed for that learner’s grade before teaching of that particular subject commences.

²⁵ 1997 (3) SA 786 (CC). The Court in this case recognised that ‘appropriate relief’ may entail any relief that is required to protect and enforce the Constitution.

2.4 GOVERNMENT’S RESPONCE

2.4.1 National Intervention in terms section 100(1) (b) of the Constitution

According to the Constitution when a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking appropriate steps to ensure fulfilment of that obligation. Such an intervention may be to issue a directive to the provincial executive describing the extent of the failure to fulfil its obligation²⁶ or assuming responsibility for the relevant obligation in that province to the extent necessary²⁷. National government chose the latter way to intervene in Limpopo.

In September 2013 the DBE gave a report²⁸ to Parliament on its intervention in Limpopo. According to the report it appears that on 5 December 2011 the Limpopo Department of Education (hereafter ‘LED’), amongst others, was placed under administration in terms of the aforementioned constitutional provision. The DBE assumed full responsibility for the obligations of the LED in order to ensure that the minimum standards for the Department’s obligations are met. The intervention team found a number of problems in Limpopo that led to the non-delivery of text books but the major one being financial and cash flow management challenges. The team also found a bloated structure on compensation of employees. The team also engaged on a deliberate clean-up of the PERSAL system to ensure that “ghost educators” would no longer be included. This had also revealed more than 8 000 unfunded posts which the DBE abolished immediately. Another problem cited according to the report was the 2 500 temporary educators occupying substantive posts which was costing the province R750 million as well 5 500 ad hoc educators who were essentially temporary as well and costing the province about R250 million. The DBE revised the whole system and managed to save about R327 million by entering into an agreement with the Education Labour Relations Council to have all temporary educators absorbed into permanent posts.

Of importance in the report is what the DBE did to have the text books ultimately delivered. As part of its intervention, the DBE put together procurement and delivery strategy of the text books which was cost effective. The DBE, according to the report, negotiated prices much less than their normal price. The publishers were willing to negotiate and this enabled the DBE to procure sufficient text books for the schools within the stipulated budget.

²⁶ Section 100 (1)(a)

²⁷ Section 100 (1)(b)

²⁸ Section 100 (1)(b) interventions in Limpopo and Eastern Cape: Minister and Department of Basic Education Progress Report (2013)

2.4.2 Human Rights Commission Investigation

The non-delivery of text books in Limpopo in 2012 provoked nationwide criticism of the administration of the education system and the state of basic education in the country. As another response, the Human Rights Commission (hereafter HRC) decided to investigate the matter acting as per its constitutional mandate.²⁹ The HRC revealed its findings in a report³⁰ in May 2014. The Commission identified a number of problems that led to the problem of non-delivery. The problems ranged from poor budget management, inadequate procurement management services, poor projection of demand at schools and delayed and erroneous orders for learner materials by schools among others. The Commission found in rural schools that the lack of modern modes of communication such as telephones, facsimile machines and internet access affected the ability of schools to communicate their orders, confirm deliveries or report shortages to the LED.

A number of recommendations were made as a result of the findings by the Commission. The Commission urged the government to take charge on the delivery of schools materials because heavy reliance on private service providers has left the government in a vulnerable position. Also, the government should set up regulatory mechanisms to monitor service delivery levels of private service providers and a comprehensive data management system to track records and update the number of schools and learners. Most importantly the Commission undertook to monitor the government's compliance with its recommendations over time in consultation with key stakeholders.

2.5 CONCLUSION

On the 28th of July 2014 five Limpopo departments were returned, including the provincial department of education, to provincial administration. This follows a 3 year period during which these departments were run by intervention teams. This came as a result of the province asking for R1.77bn overdraft from National Treasury in 2011.³¹ "This means MEC's of the departments will assume full executive powers to run the departments and the accounting officer role will revert back to the HOD's of the departments", according to the Finance Minister Nhlanhla Nene. The intervention is said to have achieved its objectives which was, amongst others, a successful turnaround of financial management and governance in the province.³²

Though a few may possibly dispute the clean-up done by the intervention team which included criminally charging between 300-500 people for corruption and stabilising the financial position of the province, however

²⁹ Section 184 of the Constitution

³⁰ South African Human Rights Commission: Report: Delivery of Primary Learning Materials To Schools (2014)

³¹ News24 June 20 2014

³² 'Five Limpopo departments returned' The new age July 28 2014

though one cannot help but wonder if enough has been done to prevent a recurrence of a similar event. Sustainability of the measures put in place by the intervention team now calls for close scrutiny. According to some of the problems identified by the intervention team in Limpopo was the laxity and incompetence of leadership. If then the only people held to account for the debacle are the low ranking personnel within the provincial education department with senior managers still in place then the inadequate oversight and lack of internal control over record keeping and procurement processes is likely to persist. It is for this reason, inter alia, that some, including the South African Democratic Teachers Union, had called for the resignation of the National Minister of Education and her Director General when the text book scandal surfaced. Nonetheless, 20 years into the country's democracy the state of basic education in Limpopo and the Eastern Cape, which had also been taken over by national government for similar reasons, speaks little to the hopes many had about a democratic South Africa particularly when it comes to how socio-economic rights are realised.

CHAPTER 3

JUDICIAL PRECEDENT

3.1 Introduction

In South Africa socio-economic rights can be judicially enforced, this means that anyone listed in section 38 of the Constitution has the right to approach a competent court alleging that a right in the Bill of Rights has been infringed or threatened, the court may thereafter grant appropriate relief.³³ The Constitution allows a competent court to exercise its discretion by granting appropriate relief when a complainant's right in the Bill of Rights has been infringed.³⁴ The judiciary is playing an ever increasing role in forcing the government to perform its constitutionally enshrined duty of delivering basic services to the people. With the help of public interest law centres such as *Equal Education, Section 27, Legal Resources Centre*, amongst others, the courts have been able to hear and decide on matters that have seen a large number of learners from impoverished areas of the country benefit as a result of the remedies the courts have given out. These decided cases are important as they provide insight into some of the systemic failures contributing to the education crises in the country, but also because they add value to the developing jurisprudence on the right to basic education. A look at this growing jurisprudence is now necessary to see how the courts have defined the right to basic education and what remedies have been given by the courts in an attempt to give effect to this right. A detailed analysis of the Constitutional Court jurisprudence such as the *Juma Masjid* case and the High Court cases of *Madzodzo v Minister of DBE* and the *infrastructural norms and standards* case, which will now be discussed, shows the crucial role played by the judiciary in giving effect to the right to basic education.

³³ The persons who may approach a court mentioned by the section are '(a) anyone acting in their own interest; (b) anyone acting on behalf of another person who cannot act in their own name; (c) anyone acting as a member of, or in the interest of, a group or class of persons; (d) anyone acting in the public interest; and (e) an association acting in the interest of its members'.

³⁴ Section 38 of the Constitution

3.2 Governing Body of the Juma Masjid Primary School and Others v Essay and Others³⁵

3.2.1 Factual Background

The school was officially established as a government aided Islamic school for children in Grades 1-9. The Juma Masjid Trust permitted the Department of Education to enlist the school as a public school on its property in terms of SASA.³⁶ The trust paid for certain expenses associated with the running of the school, these payments were made allegedly on the understanding that the Department would later reimburse the Trust.³⁷ In 2002 the Trust sent a letter to the Department indicating that it had decided to establish an independent school on the property and that it would, in due course, afford the Department notice to close the existing school, a copy was also sent to the School Governing Body (hereafter “SGB”). After the SGB consulted the Department about the letter received from the Trust, the Department responded stating that if the school were to be evicted from the premises it would either relocate the school to other premises or close it.³⁸ In July 2003 the Trust sent a notice terminating the Department’s right of occupation with effect from 31 December 2004. The Department undertook to vacate the premises by this date but did not, also the Department had failed to pay rentals backdating to 1998 as it had said it would. The Trustees asked the Department to indicate when it would vacate the premises, instead of doing so the Department asked for a meeting. The Trustees then launched an application in High Court for the eviction of the school from its property.

The Trust based its application on the common law remedy of *rei vindicatio*,³⁹ alternatively, that the MEC failed to fulfil the various undertakings she had made and to comply with her tenancy obligations. The SGB opposed the application arguing that the school was entitled to remain on the property because by providing the premises to a public school, the Trust was performing a public function within the definition of administrative action in terms of the Promotion of Administrative Justice Act⁴⁰ (hereafter “PAJA”). Therefore, the SGB further

³⁵ 2010 3 BCLR 177 (CC)

³⁶ Section 14(1) provides “subject to the Constitution and an expropriation in terms of section 58 of land or a real right to use the property on which the public school is situated, a public school may be provided on private property only in terms of an agreement between the Member of the Executive Council and the owner of the private property.”

³⁷ See note 35 above, para 11

³⁸ *Ibid* para 12

³⁹ *Rei vindicatio* is a remedy available to an owner to claim back property in possession of another.

⁴⁰ 3 of 2000

contended, the Trustees should have afforded it a hearing prior to a decision to evict the school. The MEC did not oppose the application, but only stated that in terms of her departmental policy she was not obliged to pay for the particular expenses incurred by the Trust but insisted on paying a nominal rental amount of R3 000 per annum to the Trust. The MEC also undertook to pay arrear rentals and contribute to payments of rates. She added further, that an investigation into possible alternative premises had been conducted, and that no alternative vacant school building within the area had been found to accommodate all learners.⁴¹ As a result, she asked the court to qualify the eviction order sought by suspending its execution to enable the Department to finalise a process of closing the school.

In rejecting the SGB's argument of the Trust performing a public function, the High Court held that the obligation to provide basic education is the responsibility of the Department not of the Trust. Moreover, the court held, the Trust owes no constitutional obligation to the Department or to the learners of the school. It has its own constitutional right to property recognised by the Constitution.⁴² The Trust has the power and is at liberty to make its property available for such a purpose but it is not obliged or compelled to do so. The eviction order sought by the Trustees was granted. The SGB unsuccessfully appealed to the Supreme Court of Appeal and the matter ended up at the Constitutional Court.

3.2.2 Proceedings in the Constitutional Court

The applicants contended that the High Court failed to give appropriate consideration to the impact of its decision upon the rights of the learners. They submitted further, that the Trust, the MEC and the High Court failed to appreciate their constitutional duties and that the negative duty not to impair existing access to basic education binds the Trust. The Trustees argued, on the other hand, that the Trust as the sole and exclusive owner of the property was entitled to deal with the property as it saw fit. The Court looked at the nature of the right to basic education, whether the MEC fulfilled her constitutional obligation and the Trust's duty in relation to the learners' right to basic education.

⁴¹ See note 35 above, para 18

⁴² See section 25 of the Constitution.

3.2.3 Nature of the Right to Basic Education

The Court closely considered the nature of the right to basic education and held that unlike some of the other socio-economic rights in the Constitution this right is immediately realisable. Section 29(1) (a) has no internal limitation requiring that the right to basic education be progressively realised within available resources subject to reasonable legislative measures. This right, the Court held further, may be limited only in terms of a law of general application which is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.⁴³ Seloane argues that resources as a limitation on the state's ability to deliver on this right would not be applicable in determining the content and nature of the right to basic education. Therefore, the right must be interpreted as expressed by the Constitution and not with reference to any physical state of affairs that may or may not exist.⁴⁴

It is submitted that the deliberate move on the part of the constitutional drafters not to subject the right to basic education to progressive realisation, as is the case with some other socio-economic rights, speaks to the importance of this right. The importance of the right to basic education lies in the fact that it is a right on which the enjoyment of other rights by a human being relies. Speaking on the importance of this right, the Court held that the right to basic education is aimed at "promoting and developing a child's personality, talents and mental and physical abilities to his or her fullest. To this end, access to school, an important component of the right to a basic education guaranteed to everyone by section 29(1) (a) of the Constitution, is a necessary condition for the achievement of this right".⁴⁵

The right to basic education as guaranteed by section 29(1)(a) is said to be direct and places a positive duty on the state. The right does not merely grant access to basic education as is the case with section 26⁴⁶ and 27⁴⁷ rights, but the right to the relevant education as such.⁴⁸ With

⁴³ See note 35 above, para. 37

⁴⁴ Mandla Seloane 'The right to education: Lessons from Grootboom' (2003) pg.140 available at www.saflii.org/za/journals/LDD/2003/7 accessed 5 April 2014. Section 35(2)(e) of the Constitution provides for the right of detainees and prisoners to medical treatment at the expense of the state in unconditional terms similar to s29(1)(a). In the case of *B and others v Minister of Correctional Services 1997 (6) BCLR 789 (C)* in dealing with the former section the court held that once it was established that any other medicine beside AZT would be inadequate for the purposes of treating an HIV positive prisoner it would be no defence for the state to argue that it has no money to provide AZT. Although the case related to prisoners' rights it can be used as authority to interpret rights phrased in unconditional terms in the Constitution.

⁴⁵ Note 35 above, para. 43

⁴⁶ Section 26(1) of the Constitution states that everyone has the right to have access to adequate housing

the positive duty placed on the state by section 29(1)(a) having been established, the Court turned its attention to the duty the Constitution places on juristic persons which in this case was the Trust. In order to determine whether the right to basic education binds the Trust the Court relied on section 8(2)⁴⁹ of the Constitution which requires that the nature of the right to basic education and the duty imposed by that right be taken into account.⁵⁰ The Court was of the view that socio-economic rights, like the right to basic education, may be negatively protected from improper invasion. This meant that the Trust had a negative duty to respect the existing protection of the right by not taking measures that diminish that protection. From the Constitutional Court's reasoning, through Nkabinde J, one can safely submit that the right to basic education has a dual nature to it. Firstly, section 29(1)(a) places a positive duty on the state to provide basic education, this would require the state to build schools, provide text books and suitable furniture and employ adequately skilled teachers. Secondly, section 29(1)(a) read with section 8(2) of the Constitution, places a negative duty on natural and juristic persons not to act in a way that prevents or hinders children from enjoying the basic education they are presently receiving. As a result, the Constitutional Court overruled the High Court, rightfully so, and held that the High Court misdirected itself in finding that the Trust had no obligation in relation to the learner's right to basic education.

Such line of reasoning is supported by SASA. The Act requires every parent to cause every learner for whom they are responsible to attend school from the first school day of the year in which such learner reaches the age of seven years until the last school day of the year in which such learner reaches the age of fifteen years or the ninth grade, whichever comes first.⁵¹ If such a parent fails to cause a learner of compulsory age and grade to attend school then such a parent will be guilty of an offence and shall, on conviction, be liable to a fine or imprisonment not exceeding a period of six months.⁵²

⁴⁷ Section 27(1) of the Constitution requires that everyone should have access to health care, food, water and social security.

⁴⁸ See note 18 above, pg. 141

⁴⁹ Section 8(2) of the Constitution provides that a provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

⁵⁰ See note 35 above, para. 57

⁵¹ South African Schools Act No. 84 of 1996 section 3

⁵² Ibid section 3(6)(a)

3.2.4 Did the MEC Fulfil Her Constitutional Obligation?

The Court immediately found that the MEC had failed to fulfil her constitutional duties and held that the MEC has a positive obligation in terms of the Constitution to respect, protect, promote and fulfil the rights in the Bill of Rights,⁵³ in this particular case that right to be respected, protected, promoted and fulfilled is the learner's right to basic education. The MEC also has a duty in terms of SASA⁵⁴ to provide public schools for the education of learners. In addition, the Court stated, the MEC's mere acknowledgement of the state's constitutional obligation did not suffice, she ought to have taken adequate steps to make alternative arrangements for the learners and she failed to do so. Had she done so, the need for the eviction application might not have arose. The Court concluded this part of the enquiry by holding that by not providing a public school and failing to ensure that there are enough school places available in the affected area as required by SASA⁵⁵, and simply saying there are no other schools in which to absorb all learners, the MEC failed to discharge her constitutional obligation under section 8(1) of the Constitution.⁵⁶ The conduct of the MEC on the facts of this case fell below the standard required by the Constitution and the relevant statutory provisions. With that decided, the Court looked at the next important issue.

3.2.5 The Trustees' Constitutional Duty in Relation to the Learners' Right to a Basic Education.

It was clear that there was no primary positive obligation on the Trust to provide basic education to the learners, according to the Court, that duty resided on the MEC.⁵⁷ However, in order to determine whether the right to a basic education in terms of section 29(1) (a) of the Constitution binds the Trust, section 8(2) requires that the nature of the right of the learners to a basic education and the duty imposed by that right be taken into account. The Court relied on the *Certification*⁵⁸ case holding that socio-economic rights may be negatively protected from improper invasion. Breach of this obligation occurs directly when there is a

⁵³ Section 8(1) of the Constitution

⁵⁴ Section 12 provides that the Member of Executive Council must provide public schools for the education of learners out of funds appropriated for this purpose by the provincial legislatures.

⁵⁵ Ibid section 3(3)

⁵⁶ See note 35 above para 51

⁵⁷ See note 35 above, para 57

⁵⁸ Ex Parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa.

failure to respect the right, or indirectly, when there is a failure to prevent the direct infringement of the right by another or a failure to respect the existing protection of the right by taking measures that diminish that protection.⁵⁹ The Court concluded that the High Court misdirected itself in finding that the Trustees had no obligation in relation to the learners' right to a basic education. Accordingly, the Trust does have a negative constitutional obligation not to impair the learners' right to a basic education.

The Court ordered the MEC to take steps to secure alternative placements for the learners. The MEC was required by the Court to file a report setting out, amongst other things, the steps she had taken to ensure the learners' right to basic education was respected. With the Court having been satisfied that alternative arrangements for the placement of learners had been made, it then granted the eviction order as it was satisfied that a case for eviction had been established.

The significance of the case, as noticeable from the Constitutional Court's approach, is how the Court analysis the nature and importance of the right to basic education as guaranteed by the Constitution. The Court also used the opportunity to pronounce on the duties resting on the state and private persons, as required by sections 7(2), 8(1) and (2), and 29(1)(a) of the Constitution, to provide a basic education.

3.3 Madzodzo v Minister of Basic Education⁶⁰

3.3.1 Factual Background

The matter concerned the impact of a failure by the government to provide essential school furniture, in the form of desks and chairs, to public schools throughout Eastern Cape in particular in impoverished rural areas. This was a further round of litigation on the same issue. The first phase commenced on 29 November 2012 with an application by parents of learners attending three schools in the province seeking an order declaring the DBE to be in breach of the learners' rights to basic education,⁶¹ equality⁶² and dignity.⁶³ They alleged these rights were violated by the DBE's failure to provide age and grade appropriate furniture at

⁵⁹ See note 35 above, para 58

⁶⁰ 2144/2012

⁶¹ Section 29(1)(a) of the Constitution

⁶² Ibid section 9

⁶³ Ibid section 10

these schools. The applicants sought a further order requiring the appointment of an independent firm of auditors to be tasked with establishing the furniture needs of all schools in the province which should take three months, and within one month of the delivery of that report to the DBE there should be delivery of adequate and appropriate furniture to all the schools identified in the audit report. On that occasion the parties entered into an agreement which was made an order of court, the order included that:

- The DBE should ensure that the three applicant schools receive adequate and age and grade appropriate on or before 16 January 2013.
- The DBE should ensure that a comprehensive audit be carried out to assess the furniture needs at all public schools in the Eastern Cape. The audit has to be finalised on or before 28 February 2013, it must be combined with a detailed report of when each child of every school listed in the audit report will have his or her own separate reading and writing space delivered.⁶⁴
- The DBE file a report to the attorneys of the applicants indicating their compliance with the order.

The DBE did make an audit report available in May 2013 but no furniture was delivered to the schools which appeared in the report. In August 2013 the applicants launched further proceedings founded upon the respondents' failure to comply fully with the terms of the initial court order given out. This time around the applicants sought an order appointing an independent body to verify the results of the audit made by the DBE, an order directing delivery of a comprehensive plan detailing when each learner at the schools listed in the audit report would receive their own separate reading and writing space. Lastly, they sought an order compelling the DBE to deliver the furniture needed within ninety days of that verified audit being filed at court. The court granted the first two orders sought by the applicant. The issue of when the furniture needs recorded in the verified audit report must be delivered to schools was set to be argued before court by the parties on 30 January 2014. It was now this issue that was currently before the court. However, it was common cause that the Independent Development Trust, an independent body tasked with verifying the DBE's audit results as per second court order, had not yet finalised its audit. Nonetheless, the applicants were seeking an order specifying that all the required furniture in the audit report must be

⁶⁴ See note 60 above, para 5

delivered to the identified schools within ninety days of the finalisation of the verifying audit. The respondents, on the other hand, were asking the court for an open ended order.

It was not in dispute between the parties that the state of public school education in the Eastern Cape was seriously and adversely affected by a failure to provide adequate furniture to a significant number of schools in the province. It was also not in dispute that the shortage of furniture in schools was a serious impediment for children attempting to access the right to basic education in the province. It was neither denied by the DBE that the persistent lack of access to appropriate resources in public schools constituted a violation of the right to basic education. Instead, the respondents contended that budgetary constraints and the availability of resources constrain the Department's ability to meet the basic requirements of the right to basic education immediately. Reliance was placed on the National Norms and Standards for School Funding which, they submitted, envisaged the progressive realisation of the basic requirements of the right to basic education.

The court held that the state's obligation to provide basic education as guaranteed by the Constitution is not confined to making places available at schools. It necessarily requires the provision of a range of educational resources such as schools, classrooms, teachers, teaching materials and appropriate facilities for learners.⁶⁵ The court also held that the stance adopted by the DBE offered learners at public schools in the Eastern Cape no prospect of achieving access to basic resources required in order to access the right to basic education. It was common cause that the DBE had been aware since May 2011 that there was a very serious shortage of furniture in public schools in the Eastern Cape. Consequently, the court held further, the DBE should have taken action within this time to address this shortage and fulfil the right to basic education as required by sections 7(2) and 29(1)(a) of the Constitution.

In light of such circumstances, the court found it unacceptable that inadequate funds had been budgeted to meet the furniture needs of the public schools in the Eastern Cape. The court also relied on the dicta of the Constitutional Court in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*⁶⁶ in addressing the

⁶⁵ See note 60 above, para. 20

⁶⁶ 2012 (2) SA 104 (CC). In this case it was argued by the City of Johannesburg that it was not obliged to go beyond its budgeted resources to deal with emergency housing needs. The Court held "the court's determination of the reasonableness of measures within available resources cannot be restricted by budgetary and other decisions that may well have resulted from a mistaken understanding of constitutional or statutory

financial constraint argument advanced by the Department. Even though this case dealt with evaluating the reasonableness of steps taken to realise a progressively realisable right of access to housing, the court saw it fit to adopt a similar approach to dealing with monetary constraint argument presented by the government. Further, the court added, learners in the Eastern Cape are entitled as of right to have immediate access to basic education, to be treated equally and with dignity as our Constitution requires. For this reason, the court found the open-ended time approach to solving the problem as requested by the DBE to be unreasonable, also, because the lack of adequate age and grade appropriate furniture in public schools in the province undermines the right to basic education and the failure to deliver such furniture constitutes an on-going violation of this right. As a result, the court made the following order:

Declared that the respondents are in breach of the constitutional right of learners in the concerned public schools in the Eastern Cape Province to basic education as provided by section 29 of the Constitution, by failing to provide adequate, age and grade appropriate furniture which will enable each child to have his or her own reading and writing space.

The respondents are ordered to file at court and to provide the applicants' attorneys with a copy of the completed Independent Development Trust (IDT) audit of all learner furniture needs at Eastern Cape public schools on or before 28 February 2014;

The respondents are ordered to ensure that on or before 31 May 2014 all schools identified in the said audit as having furniture shortages shall receive adequate age and grade appropriate furniture which shall enable each child at the identified schools to have his or her own reading and writing space.

In the event that the respondents envisage that they will not be able to comply with the order, the respondents (DBE) must make an application on notice to the applicants supported by an affidavit, seeking an extension of time within which to comply. The application shall set out, inter alia, steps that will have been taken by the respondents up to that point to comply with the order, reasons for non-compliance and the nature and extent of non-compliance.

obligations. In other words, it is not good enough for the City to state that it has not budgeted for something if it should indeed have planned and budgeted for it in the fulfillment of its obligations".

3.4 Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure⁶⁷

An NGO known as *Equal Education*, which identifies itself as working for quality and equality⁶⁸ in South African education, brought an application to court seeking an order compelling the Minister of Basic Education to prescribe minimum norms and standards for school infrastructure. Infrastructural minimum norms and standards are regulations that define the infrastructural conditions that make a school a school. They stipulate the basic level of infrastructure that every school must meet in order to function properly.⁶⁹ These legally-binding standards set a standard for provincial education departments to work towards, and against which to be held accountable, and enable communities to hold government officials accountable. Norms and standards are therefore a mechanism for top-down and bottom-up accountability. This application concerned the alleged on-going violation of the rights of learners in public schools around the country as a result of the inadequate, often dangerous school infrastructure to which they are subjected. This situation, the applicants contended, is caused by the Minister of Basic Education's failure to exercise her power to prescribe binding minimum norms and standards for school infrastructure. It was common cause to both parties that many learners, most of whom are black and from poor families, do not receive the basic education to which the Constitution guarantees them. It was also common cause that inadequate school infrastructure contributed to this result. The applicants sought an order compelling the Minister to prescribe minimum norms and standards for school infrastructure in terms of section 5A of SASA.⁷⁰ In the relevant parts of

⁶⁷ GN 10067 of GG 37081, 29/11/2013

⁶⁸ <http://www.equaleducation.org.za>, accessed 16 September 2014

⁶⁹ *ibid*

⁷⁰ Section 5A of SASA in the relevant part states: **Norms and standards for basic infrastructure and capacity in public schools.**—

(1) The *Minister* may, after consultation with the Minister of Finance and the *Council of Education Ministers*, by regulation prescribe minimum uniform norms and standards for—

(a) *school* infrastructure;

(b) capacity of a *school* in respect of the number of *learners* a *school* can admit; and

(c) The provision of learning and teaching support material.

(2) The norms and standards contemplated in subsection (1) must provide for, but not be limited to, the following:(a) In respect of *school* infrastructure, the availability of—

(i) classrooms;

(ii) electricity;

(iii) water;

(iv) sanitation;

(v) a library;

their heads of arguments the applicants also dealt with the negative consequences experienced by learners in public schools as a result of the non-adoption of these norms and standards by the Minister.

3.4.1 The Educational Consequences of Inadequate Infrastructure

The applicants were of the view that there is a direct relationship between adequate school infrastructure and learner performance. Adequate infrastructure is a key element of an adequate education. Conversely, the applicants argued further, inadequate infrastructure has a negative effect on educational outcomes, leading to less effective learning and teaching and higher failure rates. It was known to the applicants that the Minister had acknowledged this direct relationship between infrastructure and educational outcomes in policy documents and in correspondence to them. According to *EE*, inadequate infrastructure at public schools similarly infringes a number of rights, not least the right to a basic education, equality and dignity. Section 7(2) of the Constitution requires the state to develop an integrated and comprehensive response to ensure that adequate infrastructure is provided. Just as, for instance, independent corruption-combatting mechanisms are an indispensable part of the response to corruption, minimum uniform norms and standards are indispensable to respond to the infrastructure needs of public schools. According to the applicants the norms and standards envisaged by section 5A of SASA have three key features each of which would constitute part of the integrated and comprehensive response required of the state to address the violation of the learners' rights to basic education, equality and dignity.

- First, they set minimum norms and standards, guarding against standard below which the right to dignity of the learners is violated.
- Second, they establish a measure of uniformity, securing a measure of equality.
- Third, lastly, the substance of the norms and standards would relate to the substantive standards required to provide adequate infrastructure ensuring that the adequate infrastructure required by the learners to enjoy the right to a basic education is provided.

(vi) laboratories for science, technology, mathematics and life sciences;
(vii) sport and recreational facilities;
(viii) electronic connectivity at a *school*; and
(ix) perimeter security

Just days before the date for which the case was set, the Minister agreed to settle the matter outside court, a request to which *EE* agreed. In accordance with this agreement, the Minister published Infrastructure Guidelines which, according to *EE*, were not of the appropriate standard as they were not legally binding and therefore could not ensure that schools be equipped with adequate minimum core level infrastructural facilities necessary.⁷¹ As a result, *EE* continued to prepare for the court hearing. With the initial court date having been postponed, the Minister breaching the settlement agreement and seeking numerous time-frame extensions and months of correspondence between the parties, the matter was finally heard and decided by the Bhisho High Court on 11 July 2013.⁷² The Court made an order by consent compelling the Minister to publish norms and standards for school infrastructure. The Minister ultimately complied with this order and published binding norms and standards for school infrastructure on 29 November 2013.⁷³

3.5 Conclusion

The cases considered indicate that courts have played and continue to play a crucial role in the progress being made with regard to the realisation of the right to a basic education. The judgements are adding to the growing jurisprudence that has started to define the content, nature and scope of the right to a basic education as guaranteed by the Constitution. The cases demonstrate a willingness by the courts which is to identify the basket of resources, or sub-rights, that are necessary for the fulfilment and enjoyment of the entire right to basic education. In the Limpopo case Judge Jody Kollapen found that “the provision of learner support material in the form of text books, as may be prescribed is an essential component of the right to basic education and its provision is inextricably linked to the fulfilment of the right to basic education”.⁷⁴ The furniture case noted that the states’ duty to provide basic education is not confined to making a place in a school available to learners but also includes a range of educational resources including the provision of text books.

Both the Eastern Cape furniture case and the Limpopo textbook case are examples of ways in which poor governance and mismanagement are contributing to the education crisis in its various manifestations. These case studies serve as examples of how the state can be held

⁷¹ See note 68 above

⁷² *Equal Education v Minister of Basic Education* 81/2012

⁷³ See note 68 above

⁷⁴ *Section 27 v Minister of Basic Education* 24565/2012 para. 25

accountable and governance can be improved.⁷⁵ It is concerning that the Minister in the Furniture case sought to interpret the right to basic education as a right to be progressively realised over time according to various policy documents. The Constitutional Court, through the *Juma Masjid* case, has in clear terms interpreted the right to basic education to mean that the right is immediately realisable. Regrettably though, both the High Court and the SCA in this case appear to have erred by granting the eviction order without having taken into cognisance its impact on the learners' right to basic education. This was put right by the Constitutional Court by holding that the Trust does have a negative constitutional duty not to impair the learners' right to basic education. This interpretation is sanctioned by section 8(2) of the Constitution. What has also become apparent from the judgement is that the primary duty to provide basic education lies on the state, through the MEC in this case, and then the Trust, as a non-state actor, has a secondary duty. In the furniture case Judge Goosen reaffirmed this characterisation of this right by holding that "the right to basic education provided for in section 29 (1) (a) of the Constitution is an unqualified right which is immediately realisable and is not subject to the limitation of progressive realisation, as is the case with other socio-economic rights guaranteed by the Constitution".⁷⁶ With this textual interpretation of section 29 (1) (a) of the Constitution it is not difficult to understand why the Minister's other defence of budgetary constraints could not stand.

⁷⁵ Faranaaz Veriava ' Our Courts are Schooling the State' Mail&Guardian available at <http://mg.co.za/article/2014-03-14-our-courts-are-schooling-the-state/> accessed on 14 March 2014

⁷⁶ See note 60 above, para. 15

CHAPTER 4

International and Regional Framework Relevant to Basic Education⁷⁷

4.1 Introduction

Instruments which protect the right to education have been adopted at the international and regional levels. By having ratified international agreements in which the right to education is protected, state parties assume obligations under international law enjoining them to realise the right to education. The failure of a state that has ratified these conventions to comply with these obligations amounts to a violation of international law.⁷⁸ Currently, education is compulsory up to a certain age in some countries including South Africa.⁷⁹ Compulsory education constitutes a fundamental principle of international human rights law.⁸⁰ For instance, the *International Covenant on Economic, Social and Cultural Rights*⁸¹ states that primary education shall be compulsory and available free to all. At least in this aspect of making basic education compulsory South Africa may be said to be observing its international law obligation as there is legislation in place making basic education compulsory for learners of a certain age and grade.

The purpose of this chapter is to examine certain international and regional instruments that address the right to education. In doing so, South Africa's progress in realising the right to basic education will be measured against the standards set by international law through instruments that South Africa is a member state thereto. Also instruments that South Africa has not yet signed nor ratified will be examined to determine whether there is a way by which the government can better deliver on the right to basic education. The non-ratification status of these treaties does not prevent us from looking towards them as a guide to interpreting the right to basic education.⁸² In *S v Makwanyane*⁸³ the Constitutional Court held that binding and non-binding international law are applicable in interpreting the rights in the Bill of

⁷⁷ Most international instruments speak of 'primary' rather than 'basic' education as we do in South Africa, for the purposes of this Chapter the two terms will be used interchangeably as they refer to the same level of education. See Mandla Selwane 'A Right to Free Basic Education For All?' pg. 26

⁷⁸ K Beiter *The Protection of the Right to Education by International Law* (2006) 2

⁷⁹ Section 3 of SASA makes basic education compulsory for children between the first day of the school year in which they turn seven years old and the last day of the year in which they turn fifteen or reach the ninth grade, or whichever comes first.

⁸⁰ Selwane (note 77 above; 30)

⁸¹ International Covenant on Economic, Social and Cultural Rights of 1966 Article 13(2)(a)

⁸² L Arendse *The Obligation to Provide Free Basic Education in South Africa: An International Law Perspective* (2011) available at <http://dx.doi.org/10.4314/pelj.v14i6.4> accessed on 20 April 2014

⁸³ *S v Makwanyane* 1995 3 SA 391 (CC) para 35

Rights. For purposes of this chapter, the term “instrument” refers to both treaties which, as international agreements, legally bind state parties thereto, and to soft law documents such as resolutions, declarations or standard rules adopted by international bodies that are not binding in the legal sense.⁸⁴

In terms of the Constitution a court, tribunal or forum must consider international law and may consider foreign law.⁸⁵ Furthermore, courts are obliged by the Constitution when interpreting legislation to prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.⁸⁶

4.1.2 The Universal Declaration of Human Rights⁸⁷

The *Universal Declaration of Human Rights*, hereafter the “UDHR”, was the first international instrument to protect the right to education. The UDHR was adopted by the United Nations General Assembly on 10 December 1948 to give content to the notion of ‘human rights’.⁸⁸ As a resolution of the General Assembly, the UDHR is of a non-binding nature.⁸⁹ The Declaration provides for the right to education in these words:

“(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.

⁸⁴ See note 78 above at page 85

⁸⁵ Section 39(1)(b) and (c) of the Constitution.

⁸⁶ *Ibid* section 233.

⁸⁷ 1948

⁸⁸ Beiter (note 78 above; 90)

⁸⁹ *ibid*

(3) Parents have a prior right to choose the kind of education that shall be given to their children.”⁹⁰

In terms of this article everyone has the right to education and elementary and fundamental education shall be free and compulsory. In this context elementary education refers to formal schooling for children of primary school age.⁹¹ Beiter suggests that Article 26(1) reflects the social aspect of the right to education, it expects the state to attend positively to the realisation of the various levels of education. Further, he adds, the state must take deliberate steps towards realising the right to education, the state must devote financial, technical and other resources which may be available nationally to this end.⁹² As has been mentioned, in so far as making basic education compulsory the South African government can be said to adhere to this requirement through SASA which makes basic education compulsory for children of a particular age and grade.⁹³ The relevant section of the Act further criminalises the prohibition, by a parent or any other person, of a child who is age and grade appropriate from attending school.

Article 26(1) must be read in conjunction with Article 2 which introduces the economic, social and cultural rights provisions of the UDHR.⁹⁴ Article 2 in the relevant part states that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Therefore, the right to education accrues to everyone equally.⁹⁵ Beiter is of the view that, at a minimum, this entails that nobody should be discriminated against in as far as access to education is concerned, the state must therefore refrain from unfairly excluding any person from education on the basis of any of the criteria mentioned in Article 2.⁹⁶ It is submitted that Article 2 should also be interpreted as entailing a duty on the state to take positive measures in respect of UDHR rights. This means that the state would have to adopt non-discrimination legislation in order to achieve formal equality in the realisation of the right to education. However, the state should also be preferably required to take steps directed towards a certain measure of

⁹⁰ Article 26

⁹¹ E A Taiwo *The Implementation of the Right to Education in South Africa and Nigeria*(published LLD theses Nelson Mandela Metropolitan University, 2011) 42

⁹² Beiter (note 78 above; 91)

⁹³ See note 3 above

⁹⁴ Beiter (note 78 above; 91)

⁹⁵ Beiter (note 78 above; 93)

⁹⁶ *ibid*

substantive equality in the enjoyment of the right to education.⁹⁷ This would compel the state to take steps to ensure equal opportunities and equal treatment for all in need of education.⁹⁸

In the South African context, Article 2 bears a striking resemblance to section 9(3) of the Constitution. It is common cause by now that most of the learners whose right to basic education is violated by the government are black and are largely from poor family backgrounds. In this regard, Pierre De Vos argues that, “This right [to basic education]– so it seems to me – becomes more potent when it is linked to the right to equality and non-discrimination (guaranteed in section 9 of the Constitution), which our courts have argued is also closely linked to the protection of the human dignity of all. Where the state provides shockingly unequal education to children and when this inequality is largely based on the race of the children, the state may well be failing to meet its commitments in terms of section 29(1), read with the obligations imposed by section 9 of the Bills of Rights”.⁹⁹ Finally, it seems safe to argue that the ongoing violation of the right to basic education by the state, as shown by the cases discussed in the previous chapter, simultaneously violates the learners’ rights to equality and non-discrimination as also guaranteed by international law through Article 2 and 26(1) of the UDHR.

4.1.3 The International Covenant on Economic, Social and Cultural Rights¹⁰⁰

The *International Covenant on Economic, Social and Cultural Rights*, hereafter “ICESCR”, was adopted and opened for signature and ratification by the General Assembly on 19 December 1966.¹⁰¹ South Africa has signed but not ratified this Covenant. ICESCR is an international agreement which imposes legally binding obligations on state parties¹⁰² and is one of the two treaties drafted to turn the principles of the UDHR into a binding instrument.¹⁰³ Article 13 of ICESCR is arguably said to be the most important formulation of

⁹⁷ *ibid*

⁹⁸ *ibid*

⁹⁹ De Vos, P ‘Time for Litigation on Education’ 2011 available at <http://constitutionallyspeaking.co.za/time-for-litigation-on-education/#> accessed on 10 May 2014

¹⁰⁰ 1966

¹⁰¹ Taiwo (note 91 above; 44)

¹⁰² Beiter (note 78 above ; 94)

¹⁰³ The other being the International Covenant on Civil and Political Rights of 1966 which will be discussed below

the right to education in an international agreement.¹⁰⁴ In the relevant parts Article 13 states that

“1. The states parties to the present Covenant recognise 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 recognise that, with a view to achieving the full realisation 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) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of primary education.....”

State parties under article 13(1) recognise every person’s right to education. This article repeats the provisions of article 26(2) of the UDHR but adds two more provisions. Firstly, article 13(1) speaks about the development of human personality and the sense of its dignity. In this regard, Beiter is of the view that the reference to human dignity in article 13(1) appears to require that education must make the individual aware of his or her own inherent worth and of the human rights which accrue to him or her on this basis. Secondly, article 13(1) adds that “education should enable all persons to participate effectively in a free society”. This aim requires that education must not solely be theoretical but must also teach students how to satisfy their practical needs in life.¹⁰⁵

What also needs to be noted is that both the UDHR and ICESCR prioritise the realisation of basic education and that it should be made free and compulsory. This requirement of free and compulsory basic or elementary education is not as strict when it comes to secondary or

¹⁰⁴ Ibid

¹⁰⁵ Taiwo (note 91 above; 45)

higher education. This also is the case with section 29 (1) (b) of the Constitution which subjects further education to progressive realisation within available resources. Therefore, it will be difficult for the state to discharge the onus of proving that it has not complied with its duty of realising basic/elementary education because of a scarcity of resources.

The immediate nature of the duty on states to provide basic education is further enforced by article 14 of ICESCR which states that “Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its 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.” Article 14 guides action by state parties in respect of the realisation of free and compulsory basic education in their territories. It limits the period within which a state party should progressively realise basic education to within a clearly specified period, specified by that particular state in a plan of action drawn within two years of becoming a member state after which such education should be free and compulsory. The supervision of ICESCR is entrusted to the Committee on Economic, Social and Cultural Rights. State parties are instructed to submit reports on the measures they have adopted and the progress made in achieving the observance of the rights recognised in the Covenant.¹⁰⁶

4.1.4 The International Covenant on Civil and Political Rights¹⁰⁷

The *International Covenant on Civil and Political Rights*, hereafter referred to as “ICCPR”, was adopted by the United Nations General Assembly and opened for signing in December 1966. The Covenant creates binding legal obligations for state parties. The obligations it imposes on state parties are set out in article 2(1). However, the ICCPR does not provide much for the right to education. One may argue that this is because education has been extensively provided for by ICESCR. The ICCPR does not expressly mention the right to education as part of those rights it guarantees, but some of its provisions do mention the right to education. Article 18(4) is the closest by stating that 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

¹⁰⁶ Article 16(1) of the International Covenant on Economic, Social and Cultural Rights of 1966

¹⁰⁷ 1966

their own convictions.” Rather than obligating State parties to take positive steps, article 18(4) requires them to refrain from acting in a certain manner.¹⁰⁸ The right protected by article 18(4) is said to be justiciable.¹⁰⁹ This is confirmed by the fact that ICCPR obligates state parties to ensure to persons, whose rights recognised in the Covenant have been violated, an effective remedy, and to ensure to persons claiming such a remedy that their rights are determined by competent judicial, administrative or legislative authorities.¹¹⁰ The supervision of the ICCPR is entrusted on the Human Rights Committee to which reports are submitted by member states.

4.1.5 The Convention on the Rights of the Child¹¹¹

The *Convention on the Rights of the Child* (CRC) was adopted by the General Assembly in 1989 and entered into force in 2 September 1990. South Africa ratified it on 16 June 1995.¹¹² The Convention defines a child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.¹¹³ This Convention contains express and detailed provisions about education unlike the ICCPR discussed above. The CRC contains provisions relating to education in articles 28 and 29. Article 28 reads as follows “1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular-

(a) Make primary education compulsory and available free to all; (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need. (c) Make higher education accessible to all on the basis of capacity by every appropriate means. (d) Make educational and vocational information and guidance available and accessible to all children. (e) Take measures to encourage regular attendance at school and the reduction of drop-out rates.

¹⁰⁸ Taiwo (note 91 above; 47)

¹⁰⁹ Beiter (note 78 above; 103)

¹¹⁰ Article 2(3) of ICCPR

¹¹¹ 1989

¹¹² Arendse (note 82 above; 99)

¹¹³ Article 1 of the CRC

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.”

Article 28(1)(a)-(c) addresses the issue of primary, secondary and higher education respectively, and the provisions are comparable to article 13(2)(a)-(c) of the ICESCR. It is contended that the use of the word “make” in article 28(1)(a) of the CRC introduces the notion of progressiveness to the obligation with regard to primary education.¹¹⁴ It is contended further that the CRC accords lower priority to the progressive introduction of free secondary and higher education. The ICESCR mandates the progressive introduction of free secondary and higher education while the CRC only mentions it as a possible measure as regards secondary education and does not even mention it as regards higher education. Beiter concludes that considering that the CRC purports to lay down universally valid international norms, the lowering of standards by the CRC, as compared to ICESCR, is to be regretted.¹¹⁵

However, the CRC introduces two elements not provided for in ICESCR. Article 28(1)(d) obliges states parties to make educational and vocational information and guidance available and accessible to all children. Article 28(1)(e), on the other hand, requires that States parties take measures to encourage regular attendance at schools and the reduction of drop-out rates. Also, article 28(2) directs states parties to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.” The significance of this provision is said to protect the child against cruel, inhuman or degrading disciplinary measures in school.¹¹⁶ This argument was one of the arguments advanced by the state while fighting for the abolition of corporal punishment in South African schools in the *Christian Education*¹¹⁷ case. Article 28(1) should be read together with article 4 of CRC. Article 4 obliges state parties to take all appropriate measures to implement the rights protected in the CRC.¹¹⁸

Also of relevance at this point is article 29 of CRC which sets out the aims and objectives of education and also guarantees the liberty of individuals/bodies to establish independent educational institutions. It provides thus:

¹¹⁴ Beiter (see note 78 above; 116-117)

¹¹⁵ *ibid*

¹¹⁶ Taiwo (note 91 above; 54)

¹¹⁷ *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC)

¹¹⁸ Beiter (note 78 above; 118)

“1. States Parties agree that the education of the child shall be directed to:

The development of the child’s personality, talents and mental and physical abilities to their fullest potential. The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations. The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own. The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin. The development of respect for the natural environment.

2. No part of the present article or article 28 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 principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”

Apart from articles 28 and 29, the CRC contains a few other provisions concerning the right to education. Article 32(1) directs States parties to “recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education...” Article 40(4) equally provides that education and vocational training must be available as alternative to institutional care in the context of juvenile justice. The supervision of the CRC is entrusted on the Committee on the Rights of the Child. State parties are instructed to submit reports on the measures they have taken which give effect to the rights recognised in the Convention and on the progress made on the enjoyment of those rights.¹¹⁹

4.1.6 The International Convention on the Elimination of All Forms of Racial Discrimination¹²⁰

For the last of the international instruments we now look at the *International Convention on the Elimination of All Forms of Racial Discrimination*, (ICERD), and its relevance to

¹¹⁹ Article 44(1) of CRC

¹²⁰ 1965

education. Discrimination on the basis of race is a problem in many countries, it is encountered in the education systems of many states and South Africa is no exception.¹²¹ As discussed earlier, the overwhelming majority of children who suffer from the state's inability to recognise the right to basic education in the country happen to be black and from impoverished parts of the country.¹²² Discrimination on the basis of race may take the form of active discrimination by the state as was the case under apartheid. However, more often than not, such discrimination may be static in nature taking the form of discriminatory practices which have manifested themselves in the society with the state failing to take steps to eliminate these practices.¹²³ ICERD defines discriminations as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, and cultural or any other field of public life."¹²⁴ In the Limpopo text book scandal the learners whose text books were undelivered were of one race and ethnicity, their enjoyment and exercise of their right to basic education, on an equal footing as others whose books had been delivered, was unjustifiably impaired by the government's failure to deliver text books on time. The same can be said about the learners in the Eastern Cape who had no furniture in their classrooms up until the courts intervened. Therefore, in this regard of realising the right to basic education equally and without discrimination the South African government can be said to be lacking behind.

As an international agreement, ICERD is binding on state parties. In pursuance of the undertaking to eliminate racial discrimination, States agree to guarantee civil and political rights and economic, social, and cultural rights in a non-discriminatory manner. In terms of article 5(e)(v) of the Convention, States parties undertake to eliminate racial discrimination in all forms and guarantee enjoyment without distinction of the right to education. Article 2 of the ICERD demands positive action from the State parties directed towards eliminating discrimination. Article 2(1)(c) requires that laws and regulations which have the effect of creating or perpetuating racial discrimination be abolished. It is submitted that this would, for example, cover a law which has the effect of denying access to defined schools to persons

¹²¹ Beiter (see note 78 above; 105)

¹²² For a further discussion on this see the discussion under the UDHR and section 9(3) of the Constitution under heading 4.2 above.

¹²³ Beiter (see note 78 above; 105)

¹²⁴ Article 1(1) of ICERD

belonging to certain racial groups by imposing an unreasonable language admission requirement.¹²⁵ By the wording of article 2(2) state parties must take special measures to ensure the adequate development of disadvantaged racial groups for the purpose of guaranteeing them the equal enjoyment of human rights and fundamental freedoms. In other words article 2(2) mandates affirmative action.¹²⁶ The supervision of the ICERD is entrusted to the Committee on the Elimination of Racial Discrimination. State parties are instructed to submit reports on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the Convention.¹²⁷

4.2 THE PROTECTION OF THE RIGHT TO EDUCATION BY REGIONAL LEGAL INSTRUMENTS.

Not only legal instruments adopted at the international level protect the right to education. The right to education is also protected in some legal instruments adopted at regional level. Such instruments have been prepared in the European, American, African and certain other regional contexts. For the purposes of this chapter only the African regional instruments which are *The African Charter on Human and Peoples' Rights* and *The African Charter on the Rights and Welfare of the Child* shall be examined.

4.2.1 The African Charter on Human and Peoples' Rights¹²⁸ (ACHPR)

The *African Charter on Human and Peoples' Rights*, also known as the Banjul Charter, was adopted by the Organisation of African Unity in 1981 and entered into force on 21 October, 1986.¹²⁹ The Charter recognises the basic civil and political rights as well as economic, social and cultural rights. It spells out the basic obligations of the States parties in its article 1 by providing that the States “shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.” However, regrettably so, the ACHPR says little on the right to education as it is only article

¹²⁵ Taiwo (see note 91 above; 49), also for more on this point see Head of Department : Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another (CCT40/09) [2009] ZACC 32

¹²⁶ Beiter (see note 78 above; 106)

¹²⁷ Article 9(1) of ICERD

¹²⁸ 1981

¹²⁹ Taiwo (see note 91 above; 61)

17(1) dedicated to the right to education. The article provides that every individual shall have the right to education and that every individual may freely take part in the cultural life of his community. The supervision of the ACHPR is entrusted to the African Commission on Human and Peoples' Rights. State parties are required to submit reports on the measures taken by them to give effect to the rights of the Charter.¹³⁰

4.2.2 African Charter on the Rights and Welfare of the Child¹³¹

The African Charter on the Rights and Welfare of the Child, hereafter ACRWC, which was adopted by the Organisation of Africa Unity in 1990 does a much better job in providing for the right to education than the Banjul Charter. Article 11 guarantees the right to education and further sets out the purpose of education and the duties of States parties with regard to achieving the full realisation of the child's right to education. Article 11 reads as follows

“1. Every child shall have the right to an education.

2. The education of the child shall be directed to:

(a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples; (c) rights and international human rights declarations and conventions; (d) the preservation of national independence and territorial integrity; the promotion and achievement of African Unity and Solidarity; (e) the development of respect for the environmental and natural resources; (f) the promotion of the child's understanding of primary health care.

3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of this right and shall in particular:

(a) provide free and compulsory basic education; (b) take measures to encourage regular attendance at schools and the reduction of the drop-out rates; (c) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community, (d) the promotion and development of the child's personality,

¹³⁰ Article 62 of the ACHPR

¹³¹ 1990.

talents and mental and physical abilities to their fullest potential; (e) the preservation of national independence and territorial integrity; (f) the promotion and achievement of African Unity and Solidarity; (g) the promotion of the child's understanding of primary health care.

5. States parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

6. States parties to the present Charter shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.”

The ACRWC contains similar provisions in part to the CRC discussed above. In addition to re-stating the aims of education stated by the CRC, the ACRWC introduces three new educational aims. They are the preservation of national independence and territorial integrity,¹³² the promotion of African unity and solidarity¹³³ and the promotion of a child's understanding of primary health care.¹³⁴ Also, article 11(6) of the ACRWC is new. It requires States parties to take all appropriate measures to ensure that children who become pregnant before completing their education have an opportunity to continue with their education on the basis of their individual ability. This provision is said to be necessary in view of the pattern in some schools in the country which categorise pregnancy as a disciplinary offence, which usually leads to the suspension or even expulsion of the pregnant girl from school.¹³⁵ The supervision of the ACRWC is entrusted to the Committee on the Rights and Welfare of the Child. State parties are instructed to submit reports on the measures taken to give effect to the rights provided for by the Charter.¹³⁶ The Committee is further empowered to request from state parties any information relevant to the implementation of the Charter and to resort to any appropriate method of investigating the measures which state parties have adopted to implement the Charter.

¹³² Art 11(2)(e)

¹³³ Art 11(2)(f)

¹³⁴ Art 11(2)(h)

¹³⁵ Taiwo (see note 91 above; 64)

¹³⁶ Art 43(1)

4.3 CONCLUSION

International and regional instruments appear not to provide much on the timely provision of learning material such as textbooks. This intentional omission I perceive as a good move because member states to these instruments have different social, political and economic backgrounds. This is important because each individual member state is best suited to determine its budget and agree on policies that are best to help it realise the right to education. The instruments simply prescribe guidelines such as the overall objectives of education and place a duty on member states to take all appropriate measures with a view to achieving the full realization of the right to education. For member states with a justiciable bill of rights, like South Africa, this omission also creates space for the judiciary to define the scope and content of this right when hearing cases about the state's failure to realise the right to a basic education. This means that a court would be able to order the government to provide such learning material after having concluded that such material forms part of the scope and content of the right.

However, it is also apparent from the international and regional instruments examined above that basic education should be made up of two distinctive features. It should be compulsory and freely available. The requirement of compulsory education obliges States parties to enact laws which make primary education mandatory. This has been complied with in view of the enactment of the Schools Act. In this regard, Khoza submits that South Africa has tried to meet its duties to provide basic education by making this phase of education compulsory and by prioritizing this in government policy, planning and spending.¹³⁷

When it comes to basic education being free the story is different however. In terms of the Schools Act, schools may charge school fees. The Act provides that school fees are to be determined and charged at a public school only if a resolution to do so has been adopted by a majority of parents attending the meeting to consider and approve the annual budget.¹³⁸ This provision is inconsistent with international law requirements. Of particular relevance are the *Convention on the Rights of the Child* and the *African Charter on the Rights and Welfare of the Child*, both of which have been ratified by South Africa. This is particularly problematic as charging of school fees has the potential to serve as a barrier to accessing basic education for many poor children whose families cannot not afford the fees. SASA does provide

¹³⁷S. Khoza (ed) *Socio-Economic Rights in South Africa* 420

¹³⁸ Section 39(1) SASA

exemptions to parents who are unable to afford school fees, however, this does not seem to do much to help those who need to be exempted. Learners from poor families remain vulnerable in these schools, which withhold their reports, deny them access to the schools' facilities, or send them home because their parents have not paid the fees. This situation prevails despite the existing laws protecting learners from being discriminated against and from being excluded from schools if parents have not paid the fees.¹³⁹

Kriel¹⁴⁰ argues that international instruments and legal jurisprudence require public education to play a role as a developer of human potential, as a foundation for good citizenship and to be functionally effective in the labour market. This adds to the many aims of education cited by the various international instruments. One of those aims mentioned by the CRC is that education should be directed at “[t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential.” The kind of basic education poor learners are subjected to in South Africa, as shown in the previous chapter through case law, is still far from reaching the goals set by international and regional instruments. The Limpopo text book scandal revealed some factors within the DBE that hinder the achievement of the aims set out by international and regional instruments.

¹³⁹ F. Veriava ‘Enforcing the current laws on school fees’ 11. See also Sorsa and Sorsa v Simonstown School Magistrates Court, Case 2759/02, 29 May 2003

¹⁴⁰ Ross Kriel *Right to Education in Constitutional Law of South Africa* 38-3 as quoted by Karthy Govender *The Educator and the Constitution* 51

CHAPTER 5

Inadequacy of the Basic Education offered in South Africa.

5.1 Introduction

The right to receive education does not only guarantee access to education but also implies that the aims of education must be met.¹⁴¹ The purpose of education, inter alia, is to equip learners with basic skills and knowledge that will enable them to break out of poverty and be productive members of society. This is why the right to education is also referred to as an empowerment right. The purpose of education is however defeated if the education offered does not meet the aims of education in general. The Committee on Social, Economic and Cultural Rights notes that education in all forms and levels must be characterized by availability, accessibility, acceptability and adaptability.¹⁴² These features are commonly known as the 4A-scheme. This chapter uses the 4A-scheme to assess the adequacy of the basic education offered in South Africa. These features form a useful benchmark against which to measure government's performance towards the realisation of the right to adequate education.¹⁴³ Section 29 of the Constitution enshrines the right to basic education but does not provide for a specific standard of such basic education. As mentioned, such basic education should be of a particular standard and be adequate for it to successfully empower the learners receiving it.

In the United States case of *Campaign for Fiscal Equity Inc v The State of New York*¹⁴⁴ the applicant had argued that the standard of education in New York City schools did not meet the requirement of a "sound basic education" found in the State of New York's Constitution. The New York State Court of Appeal (the State's highest court) had, in a preliminary judgment, defined "sound basic education" as the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable

¹⁴¹ Taiwo (see note 91 above; 94)

¹⁴² Katarina Tomasevski was the United Nations (UN) Special Rapporteur on the Right to Education from 1998 to 2004. She developed the 4 A-scheme and the UN Committee on Social, Economic and Cultural Rights (CESCR) adopted it in their *General Comment on the Right to Education*, issued in 1999

¹⁴³ Ann Skelton 'The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law' 5 available at www.saflii.org/za/journals/DEJURE/2013/2.pdf accessed on 3 May 2014

¹⁴⁴ 100 NY 2d 893 ('CFE II') as quoted by Woolman, S and Fleisch, B *The Constitution in the Classroom: Law and Education in South Africa 1994-2008*

of voting and serving on a jury. The definition also embraced the ability to find employment and participate in political life. On appeal, the Court of Appeal added that an education had to enable people to obtain competitive employment and that the requirement of civic participation “means more than just being qualified to vote or serve as a juror, but to do so capably and knowledgeably.”¹⁴⁵ In light thereof, this chapter will also attempt to demonstrate that South Africa’s basic education falls short of achieving such objectives. Since the Constitution does not define of what standard basic education should be, this USA judgement can serve as a guide for South African courts to define how adequate our basic education should be in order for it to sufficiently empower learners. Furthermore, for this country’s basic education to achieve the goals of basic education it should be one that is available freely to all without discrimination, accessible to all physically and financially, and be acceptable and adaptable to meet the learners’ and community’s needs.

5.2 The 4A- Scheme

5.2.1 Availability

Availability in relation to the right to basic education means the state must establish schools so that education should be available to all children in need of it.¹⁴⁶ This also implies that learner support material such as textbooks should be provided in time for learners to be able to commence with their studies as soon as the school calendar year starts. Availability also speaks to the right to establish private schools must be guaranteed¹⁴⁷ and the Constitution does this through section 29(3). Availability also means that in such schools teachers should be available and be properly qualified. This can hardly said to be the case in South Africa according to a recent report by the Centre for Development and Enterprise which stated that:

“South Africa has some of the least-knowledgeable primary school mathematics teachers in sub-Saharan Africa. Many of these maths teachers, especially those that serve poor and rural communities, have below-basic levels of content knowledge. In many instances these

¹⁴⁵ *ibid* 906

¹⁴⁶ Taiwo (see note 91 above; 101)

¹⁴⁷ Beiter (see note 78 above; 477)

teachers cannot answer questions their pupils are required to answer according to the curriculum.”¹⁴⁸

Given that teachers cannot teach what they do not know, these findings have severe implications for the quality of education in South Africa.¹⁴⁹ This means that even though schools might be available for learners but the quality and adequacy of the education they receive is not of the right standard to sufficiently equip learners. Availability of education is also an issue that was engaged in the case which is commonly referred to as the “mud schools”¹⁵⁰ case. In this case seven schools in the Eastern Cape had battled for almost a decade to get any attention from the provincial department about their severe infrastructure problems. The schools faced problems of dilapidated mud buildings, in some cases roofs missing and classes being held in neighbouring households, no running water, sanitation nor adequate seats and desks for the learners in the school. The Legal Resources Centre took up the matter on behalf of the seven schools. The relief sought was framed to benefit not only the 7 schools but all schools suffering from similar infrastructure backlogs in the province. The matter was settled, resulting in a memorandum of understanding which pledged a total of R8.2 billion over a 3 year period, specific amounts put aside for the 7 schools, a plan for infrastructure to be managed by the national Department of Basic Education.

One other case which dealt with a deterrent to the availability of basic education was *Freedom Stationery (Pty) Ltd v MEC for Education, Eastern Cape*,¹⁵¹ the case concerned a tender about the manufacturing, packaging and supply of scholastic stationery for grades R-12 in a large number of schools in the Eastern Cape. The applicants successfully sought an interim interdict against the government to stop it from entering into any agreement with another supplier in relation to the same tender. Freedom Stationery had brought this urgent application after it had been unsuccessful as one of the bidders for the tender. *The Centre for Child Law*, acting as amicus curiae, urged the court to ensure that whatever findings it made, the learners should not be left without stationery as stationery was necessary for learners to enjoy their right to basic education. Regrettably, the court held that the woes besetting the

¹⁴⁸ Spaul N ‘South Africa’s Education Crisis: The quality of education in South Africa 1994-2011’ 2013 report commissioned by the Centre for Development and Enterprise.

¹⁴⁹ Ibid 5

¹⁵⁰ *Centre for Child Law v Government of the Eastern Cape Province*, Eastern Cape High Court, Bisho, case no 504/10.

¹⁵¹ Unreported (59/2011) [2011] ZAECBHC1 (2010-03-10)

education system in the province was due to the fault of government and it was therefore not prepared to make an order in favour of the government. This meant that by granting the urgent interdict, the applicants' rights would not be ignored, but the learners would have to wait a while longer for stationary. Finally, this judgement stands in direct contrast to the overall approach that has been adopted by the judiciary as shown by the discussion of some of the important judgements about basic education. This is primarily because the court makes no clear provision in its judgement for the timeous delivery of stationery needed for the learners of the province to enjoy the right to a basic education. It seemed that the rights of the learners were not paramount.

5.2.2 Accessibility

Accessibility refers to the child's ability to enrol and attend school.¹⁵² This means that educational institutions and programmes have to be accessible to everyone.¹⁵³ Accessibility is said to encompass three aspects, accessibility without discrimination and physical and economical accessibility.¹⁵⁴ The issue of discrimination in education has been addressed in the previous chapter under paragraph 4.1.6 and the issue of charging school fees which is closely linked to economical accessibility has also been covered in the previous chapter.

Ensuring that education is economically accessible requires that those students who live in relative poverty should be assisted or supported by the State to ensure that they are able to access education.¹⁵⁵ In 2011 an application was brought to the North West Court¹⁵⁶ in Mafikeng by 37 applicants and the Centre for Child Law, represented by the Legal Resources Centre. The 36 applicants were the parents or caregivers of children who attend a High School in Mabskraal, North West. The families all lived in a village which is 25 km from Mabskraal. The children previously attended a local school within walking distance of their homes until it was closed down by the government in 2009, as part of the rural "rationalisation" process. Since transport was not provided some of the learners could not

¹⁵² *Centre for Child Law v Minister for Basic Education Eastern Cape* [2012] 4 All SA 35 (ECG)

¹⁵³ Beiter (see note 78 above; 487)

¹⁵⁴ *ibid*

¹⁵⁵ Woolman & Fleisch *The Constitution in the Classroom: Law and Education in South Africa 1994-2008* (2009) 131-132

¹⁵⁶ *Adam Legoale v MEC for Education, North West*, North West High Court, Mafikeng, case no 499/11, unreported

afford the bus fare and dropped out of school, whilst others struggled to manage the transport costs from their little income, mostly from grants. The relief sought in the application was the provision of adequate learner transport to learners, free of charge. The Centre for Child Law asked for the plans and programmes in the North West province for the provision of learner transport to be produced and for the details to be made public, so that learners and their parents could be made aware of their rights. The matter was settled, and a settlement agreement was made an order of court on 10 August 2011. The settlement of the case was crucial as it positively impacted on lives of many impoverished students.

In this case the state should be commended for ultimately taking measures which are aimed at promoting accessibility of basic education, albeit after threat of litigation and that the order would only benefit learners of that province.

5.2.3 Acceptability

Acceptability requires that the form and substance of education, including curricula and teaching methods, have to be acceptable to students and parents and that the form and content of education have to be relevant.¹⁵⁷ This is particularly important in the South African context because under apartheid township schools had their own separate curricula which were intentionally aimed at making African learners under-skilled “second class” citizens. The curricula and teaching methods after 1994 should be aimed at redressing this historical imbalance. According to Beiter, acceptability also requires that the state must set and enforce minimum standards in education concerning for instance, quality, safety and health.¹⁵⁸ The DBE, as mentioned in Chapter 3, has adopted such norms and standards. These norms and standards apply to all public schools and require MEC’s, within six months after the publication of the norms and thereafter annually, to provide the Minister of the DBE with detailed plans on the manner in which the norms and standards are to be implemented.¹⁵⁹ Adequacy should also be tied to acceptability because basic education which should be accepted should be one that adequately equips learners with the necessary skills needed to survive when they finish school.

¹⁵⁷ Taiwo (see note 91 above; 102)

¹⁵⁸ Beiter (see note 78 above; 477)

¹⁵⁹ GN 10067 of GG 37081, 29/11/2013 pg. 6

5.2.4 Adaptability

Adaptability requires that educational policies should be able to take full account of individual differences and should be able to give special attention to the needs of those children excluded from mainstream education, that is, the children with disabilities.¹⁶⁰ There should be the necessity for curriculum flexibility, addition and adaptation to meet special needs. Curricula should be adapted to suit the learning style of children noting also the children with disabilities.¹⁶¹

In South Africa this matter was the subject of *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa*.¹⁶² The Forum provides schools, centres and other services for 1200 children with intellectual disabilities in the Western Cape, but receives no support or funding from the Department of Education. After years of attempting to engage with government about this, the Forum, represented by the Legal Resources Centre, decided to take their case to court. The state argued that it provided education for children with moderate to mild intellectual disability but did not bear the responsibility to provide education immediately for profoundly intellectually impaired children. The court found that the identified group of children had been marginalised and ignored, denied their right to basic education and had had their dignity infringed. The final court order was a supervisory order which directed the government to provide sufficient funds to organisations that provide services to these children and to report on actions taken and to be taken in compliance with the ruling within 12 months of the judgment.

5.2.5 Conclusion

Berger is of the view that given the right to education established in section 29 of the Constitution and the Constitutional Court's recent attention to socioeconomic rights, unhappy parents might consider launching a claim that the government's current system of education is inadequate. Further that, should such a case arise, the Constitutional Court should find that the South African Constitution requires the government to provide an adequate education and

¹⁶⁰ Taiwo (see note 91 above; 102)

¹⁶¹ *ibid*

¹⁶² 2011 5 SA 87 (WCC), as quoted by Ann Skelton 'The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law.' available at www.saflii.org/za/journals/DEJURE/2013/2.pdf accessed on 3 May 2014

that, therefore, the current educational system is unconstitutional as applied to the worst schools.¹⁶³ So far the courts have done a commendable job in interpreting section 29(1) to give effect to the right to basic education through the cases highlighted in Chapter 3. However, since the Constitution says nothing about the adequacy of the basic education it guarantees in section 29(1), this paper suggests that the courts can still be used by the public to play a bigger role in trying to interpret the section in a way that obliges the state to provide not just basic education but adequate basic education. So, for example, if the evidence consistently shows that achieving competency in reading and mathematics is difficult, if not impossible, in the context of class sizes above 50, the courts could instruct the state to provide resources to ensure that classes are of the appropriate size to meet minimum adequacy standards.¹⁶⁴

Interpreting section 29 to require the state merely to provide education, without any implicit quality standard, would thus distort section 39's interpretative instructions. Not only would such an interpretation render section 29 virtually toothless, but also it would run counter to the democratic values the Constitution explicitly seeks to promote.¹⁶⁵ Finally, with most rural schools in the country still lacking basic services such as classrooms, furniture, teachers, inter alia, it will be a while before such schools will enjoy adequate basic education. Such adequate basic education can be realised progressively with the help of the society including parents, teachers, trade unions, courts and of course the state, amongst others.

¹⁶³ Berger, E 'The right to education under the South African Constitution' 615 (2003) available at http://digitalcommons.unl.edu/lawfacpub/26?utm_source=digitalcommons.unl.edu%2Fawfacpub%2F26&utm_medium=PDF&utm_campaign=PDFCoverPages accessed on 25 September 2014

¹⁶⁴ Woolman & Fleisch *The Constitution in the Classroom: Law and Education in South Africa 1994-2008* (2009) 169

¹⁶⁵ Berger (see note 162 above; 626)

CHAPTER 6

CONCLUSION

6.1 INTRODUCTION

This dissertation has examined the right to a basic education in South Africa as an empowerment right. This means that where the right to education is effectively guaranteed, it enhances the enjoyment of all other rights and freedoms. When it is denied, it precludes the enjoyment of many other human rights. Chapter one placed the study in a clear perspective by providing the general overview of the study. It started with the background to the study, the research problem, purpose of the research, the research methodology followed and the literature relied upon to write the dissertation. It asserts that everyone has the right to basic education given the obligations imposed on the State by the Constitution, legislation, international and regional instruments.

Through critical review of the current state of basic education in the country, chapter two of this dissertation has, by looking at the causes of the Limpopo text book saga, found that corruption and mismanagement have played a significant role in the failure to deliver text books on time. Corruption manifested itself through “ghost teachers”, where the DBE was paying salaries to two or more teachers yet the money went to one individual, and also through tender procurement, amongst others. Both education Departments of Limpopo and the Eastern Cape suffered from similar problems which the High Court, quoting the Minister of DBE, described as follows:

“The nature and extent of the crisis was recognised by the national Department of Basic Education. In a document dated 24 February 2011 entitled ‘Statement of Intent on the Remediation of the Present Challenges in Basic Education in the Eastern Cape Province’ the Minister expressed the view that ‘the problems being encountered in basic education in the Eastern Cape [and Limpopo] province are extremely serious’ and that the “consequences of these problems are such that many learners in the province are already being denied their full rights to quality basic education”. The Minister identified a major cause of the crisis as being “the weak capacity of the Eastern Cape Education Department to discharge its obligations effectively in respect of policy compliance; effective and efficient budgeting, planning and expenditure; and effective support of the pedagogic and administrative processes in schools”

She concluded that the cumulative effect of the problems that she identified ‘have given rise to a situation where many learners are being deprived of their Constitutional right to education’. This document proposed the s 100 intervention that duly came to pass.”¹⁶⁶

Chapter 2 further argued that the intervention team in Limpopo did fairly well after having taken over because the provincial Department of Education was ultimately handed back to the provincial authorities after finances of the Department were stabilised and some employees being criminally charged. While the debate of whether a crisis exists or not in the South African basic education system, which I think it does, major problems that need urgent attention still exist particularly in the poorest schools of the country. After 20 years of democratic rule most black children continue to receive an education which condemns them to the underclass of South African society, where poverty and unemployment are the norm, not the exception. This substandard education does not develop their capabilities or expand their economic opportunities, but instead denies them dignified employment and undermines their own sense of self-worth.¹⁶⁷ South Africa spends 20 percent of its budget on education, or 6.4 percent of gross domestic product, some say it is more than many other emerging economies spend, yet performs dismally in international comparisons.¹⁶⁸ The World Economic Forum’s competitiveness index for 2012–2013 ranks South Africa’s overall education system at 140 out of 144 countries, and its maths and science education at 143 out of 144.¹⁶⁹

6.2 LITIGATION AS A POSSIBLE SOLUTION

Chapter 3 examined the role played by the judiciary in trying to define the scope and content of the obligations placed on the state by section 29(1) of the Constitution. The chapter has indicated that the courts have played an important role in the progress being made with regard to the right to a basic education in South Africa. Furthermore, as appears from this chapter litigation, sometimes the threat thereof, has proved a formidable tool by which the

¹⁶⁶ Centre for Child Law v Minister of Basic Education 1749/2012

¹⁶⁷ Spaul N ‘South Africa’s Education Crisis: The quality of education in South Africa 1994-2011’ 2013 60 available at

<http://www.cde.org.za/images/pdf/South%20Africas%20Education%20Crisis%20N%20Spaul%202013.pdf> accessed on 16 September 2014

¹⁶⁸ Holborn L, ‘Education in South Africa: Where Did It Go Wrong?’ 2013 *Lucy Holborn was research manager at the South African Institute of Race Relations and now works as an analyst at Ernst & Young Advisory Services. This article first appeared in the journal of [Good Governance Africa](http://www.gga.org/stories/editions/aif-15-off-the-mark/education-in-south-africa-where-did-it-go-wrong) available at <http://www.gga.org/stories/editions/aif-15-off-the-mark/education-in-south-africa-where-did-it-go-wrong> accessed on 15 September 2014*

¹⁶⁹ *ibid.*

government is forced to realise socio-economic rights. It is now common cause that text books, furniture and minimum infrastructural norms and standards, inter alia, are all necessary in order for the state to give effect to the right to basic education, this is as a result of the courts having intervened. The courts have outlined state and private responsibilities to provide or, where the latter is concerned, at least not to hamper children's rights to basic education. Although the *Juma Masjid* case did not realise any direct benefits for the children whose rights were being fought for, it did set a precedent about the need for children's best interests to be considered in applications for eviction, and sent a strong message about the unqualified nature of the right to a basic education and government's as well as private parties' obligations in that regard.¹⁷⁰ Berger draws from the dicta of *Grootboom*¹⁷¹ and the *Treatment Action Campaign*¹⁷² cases to argue that "[e]ducation, like access to housing and health care, is a positive socioeconomic right that the state must fulfil, so a failure to provide it would therefore clearly implicate the Constitution."¹⁷³ Furthermore, just as the Court could instruct the state to do more to provide housing or HIV treatment for the poor while still affording the legislature some time and flexibility to determine how, so too could it order the government to improve schools without itself legislating such changes immediately.¹⁷⁴

The Limpopo text book scandal was ultimately resolved after a number of different actors came into play. First, the media reported on the issue resulting into a nation-wide interest which in turn mounted pressure on the government to act. Second, a public interest centre took the matter to court. Finally, the court forced the government to take action by interpreting the Constitution. This interplay is important as it highlights that the enormous problems facing the country's basic education can be dealt with much efficiently when the general society plays a role in trying to rid the education system of its problems, ultimately though, a greater duty still lies with the state.¹⁷⁵

The South African experience has shown that litigation and social mobilisation are mutually reinforcing. Social mobilisation prior to litigation has been used not only to force the government into acknowledging that a particular right is not being realised, thus rendering litigation unnecessary, but also to illustrate the problems and extent of the violations that

¹⁷⁰ Skelton (see note 143 above; 22)

¹⁷¹ 2001 (1) SA 46 (CC)

¹⁷² 2002 (10) BCLR 1075

¹⁷³ Berger (see note 162 above; 635)

¹⁷⁴ *ibid*

¹⁷⁵ K Govender *Administrative Justice and the Educator* (Doctoral dissertation in progress)

necessitated recourse to litigation.¹⁷⁶ This means that a court deciding a conflict does so in the knowledge of the expectations and lives that depend on the outcome.¹⁷⁷ In addition to the above, Mbazira argues that it is important to develop inter-institutional trust between the courts, the government and civil society. This can be achieved by promoting alternative dispute resolution and amicable settlements, not only as an alternative to court action, but also as part of the court processes.¹⁷⁸ There is no doubt that the state is more likely to carry out orders realised through amicable settlements. Indeed, it is especially at the level of remedies that the greatest potential lies for forging relations between institutions to bring about relief that is both effective and legitimate.¹⁷⁹

Chapter four of this dissertation examined South Africa's obligation to provide basic education as imposed by international and regional instruments. These instruments articulate specific goals that education should seek to meet and there are Committees set up to monitor compliance by state parties with the provisions of each particular convention. What all these instruments seem to have in common is the fact that basic education must be made free and compulsory by member states. This chapter contended that all though this country has done reasonable well to make basic education compulsory¹⁸⁰ however though, its attempt to also make basic education free has been unsatisfactory. South African children are frequently turned away from schools because of their parents' inability to pay school fees. Many learners are also barred from schools because they are not able to afford transport costs and other charges such as those for books and stationery.¹⁸¹ The chapter argued further that even though legislation allows for indigent parents to be exempted from paying school fees this approach seems to be problematic. Complaints received by the Centre for Applied Legal Studies (CALS) detail how schools are disobeying the existing laws on school fees. This situation prevails despite the existing laws protecting learners from being discriminated against and from being excluded from schools if parents have not paid the fees.¹⁸² This

¹⁷⁶ Mbazira, C 'Non-implementation of court orders in socioeconomic rights litigation in South Africa Is the cancer here to stay?' available at http://www.escri.net.org/sites/default/files/ESR_Review_Vol_9%284%29_November_2008 accessed on 25 April 2014

¹⁷⁷ *ibid*

¹⁷⁸ Mbazira C, *You are the 'weakest link' in realising socio-economic rights: Goodbye* 2008 35

¹⁷⁹ *ibid*

¹⁸⁰ See section 3 of SASA

¹⁸¹ See Arendse note 82 above

¹⁸² Faranaaz Veriava 'Enforcing the current laws on school fees' 11 See also Sorsa and Sorsa v Simonstown School Magistrates Court, Case 2759/02, 29 May 2003

everyday reality for many parents and their children makes it necessary that initiatives on education rights focus not only on the arguments for abolishing fees, but also on ensuring in the meanwhile that the current laws to assist poor families are enforced.¹⁸³

Chapter 5 looked at the inadequacy of the basic education offered in South Africa. The chapter argued that with section 29(1) of the Constitution not expressly mentioning the quality that basic education should be, our courts could rely on the cases decided in the United States of America which specifically dealt with what the quality of their basic education should be to interpret the Constitution as demanding quality basic education.¹⁸⁴ As CESCR pointed out in General Comment No.13, the chapter recognises the fact that the exact standard of the right to basic education may vary according to conditions within a particular country, but education must meet four features namely, availability, accessibility, acceptability and adaptability. The chapter used these four features to assess the inadequacy of the basic education currently offered in South Africa. The chapter found that this country is doing fairly well in trying to deliver basic education characterised by the 4A's, with the help of NGO's and the judiciary, but amongst its problems highlighted by the chapter which still need solutions, one of the most prominent is the lack of adequately skilled teachers. This effectively means that even if schools are built with the necessary text books and furniture, if these schools are short of capacitated and committed teachers, as is the case in some schools in the Eastern Cape and most rural parts of the country, then the government is still falling short of what the Constitution requires of it. The chapter concludes by contending that, in line with Berger's views, the current educational system as applied to most black schools in the country is unconstitutional as it infringes on sections 29(1)(a), 10 and 9(1) of the Constitution.

6.3 CONCLUSION

As mentioned earlier the research problem was to critically evaluate, using the Limpopo textbooks saga, the extent to which the state's inability to deliver text books fell short of the duties and obligations conferred on it to realise the right to basic education in the country.

¹⁸³ *ibid*

¹⁸⁴ Some of these cases include *Campaign for Fiscal Equity Inc v The State of New York* 100 NY 2d 893 ('CFE II')

This paper concludes that regardless of the significant attempts made by the government since 1994 to better our basic education, the state's inability to deliver textbooks in Limpopo and the Eastern Cape fell considerably short of its duties as imposed by the Constitution, legislation and international law. What happened in Limpopo should not happen again, the scandal should teach important lessons for the government and everyone involved in the education sector. Solutions suggested by the section 100 intervention teams, by the Human Rights Commission after its investigation and the Metcalfe report, amongst others, should be extensively scrutinised by the national DoE to determine how best to avoid an incident of similar nature.

Many issues dealing with the implementation of the right to basic education in the world over are not only legal issues, but also include policy, financial and social issues which are obviously beyond the scope of this study. This note has argued that the problems that face the South African education system can be successfully dealt with if all stakeholders which include the government, judiciary, civil society, media, inter alia can all play a role. The noticeable role already played by the judiciary, public interest law centres and the media in the Limpopo scandal and other cases was also mentioned. It is apparent that the overall scheme of the Constitution expected the government to do more when it comes to delivering socio-economic rights. Based on the analysis of this note it is safe to argue that the state is falling short of its constitutional mandate to deliver on the right to basic education particularly to impoverished schools in rural areas. The problem from the side of the government does not seem to be one of deliberate failure to realise the right to basic education. In fact, several laws and policies have been put in place to advance the realisation of this right, but rather it is the implementation of these laws and policies that is unsatisfactory.

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23 March 2015

Mr Siphelo Dlamini Mbeki (214581281)
School of Law
Howard College Campus

Dear Mr Mbeki,

Protocol reference number: HSS/0754/014M

New project title: Critical evaluation of the realization of the right to Basic Education in light of the 2012 Limpopo
Textbook SAGA

Approval Notification – Amendment

This letter serves to notify you that your request for an amendment received on 21 March 2015 has now been approved as follows:

- Change in Title

Any alterations to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form; Title of the Project, Location of the Study must be reviewed and approved through an amendment /modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

Best wishes for the successful completion of your research protocol.

Yours faithfully



.....
Dr Shenuka Singh (Chair)

/ms

Cc Supervisor: Professor K Govender
Cc Academic Leader Research: Dr Shannon Bosch
Cc School Administrator: Mr Pradeep Ramsewak

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