



Report of the Public Hearing on the Right to Basic Education

Abbreviations and Acronyms

ABET	Adult Basic Education and Training
Constitution	Constitution of the Republic of South Africa Act 108 of 1996
Department	National Department of Education
EFA	Education For All
ECD	Early Childhood Development
FEDSAS	Federation of Governing Bodies of South African Schools
GEM	Girls Education Movement
HSRC	Human Sciences Research Council
ICESR	International Covenant on Economic and Social Rights
LSEN	Learners with Special Educational Needs
NAPTOSA	National Professional Teachers Organisation of SA
NSNP	National School Nutrition Programme
OBE	Outcomes Based Education
UN	United Nations
SADTU	South African Democratic Teachers' Union
SAHRC	South African Human Rights Commission (also referred to as the Commission in this Report)
SAOU	South African Teachers Union / Suid-Afrikaanse Onderwysersunie
SASA	South African Schools Act 84 of 1996
SAQA	South African Qualifications Authority
SGB	School Governing Body
SRNS	School Register of Needs

Contents

Foreword	1
Executive Summary	2
Chapter 1: Introduction	4
1.1 Legislative Mandate of the Commission	4
1.2 Purpose of the Public Hearing	4
1.3 Terms of reference for the Public Hearing	5
1.4 Methodology and rules of process	5
1.5 Structure of the Report	6
Chapter 2: The right to basic education	7
2.1 Introduction	7
2.1.1 Basic education	7
2.1.2 The nature of the right	8
2.1.3 Core content of the right to basic education	9
2.1.4 The obligations of the State	9
2.2 Legal frameworks to understand the right to basic education	9
2.2.1 Availability of education	10
2.2.1.1 Compulsory education	10
2.2.1.2 Provision of infrastructure	11
2.2.1.3 Teachers	11
2.2.1.4 Learner Teacher Support Material	12
2.2.2 Accessibility of education	12
2.2.2.1 Non-discrimination	12
2.2.2.2 Physical accessibility	12
2.2.2.3 Economic accessibility	12
2.2.3 Acceptability of education	14
2.2.3.1 The curriculum	15
2.2.3.2 A safe environment	15
2.2.4 Adaptability of education	15
2.3 Conclusion	16
Chapter 3: Key issues	18
3.1 Introduction	18
3.1.1 Quality education is not taking place in South Africa	18
3.2 Key issues	19
3.2.1 Poverty	19
3.2.1.1 Poverty impacts on the quality of education	19
3.2.1.2 Education is unaffordable due to school fees and other hidden costs	19
3.2.1.3 Transport costs can be a far greater burden than school fees	20
3.2.1.4 School uniforms are another burden for poor parents	20
3.2.1.5 Many learners are hungry at school	21
3.2.1.6 The drop-out rate of learners is concerning	21
3.2.1.7 SA is unusual as more girls than boys remain in the system	21
3.2.2 Children infected and affected by HIV/AIDS	22
3.2.3 Violence and Abuse	22
3.2.3.1 There is too much violence and abuse in our schools	22
3.2.4 Inclusivity	22
3.2.4.1 Education facilities are either not available or not accessible for some learners with disabilities	23
3.2.4.2 Inclusive education is not working for children with disabilities	23
3.2.5 Infrastructure	25
3.2.6 Teachers	25
3.2.6.1 Teachers lie at the heart of many of the challenges	25
3.2.6.2 Teachers lack passion and a culture of learning and teaching	26
3.2.6.3 Teachers are not in the classroom enough	26

3.2.6.4	Teachers are unqualified or underqualified	26
3.2.6.5	Teachers have not been trained to implement the new curriculum	27
3.2.6.6	Teachers use old methods of teaching.....	27
3.2.6.7	Teachers have too many children in their classes.....	27
3.2.6.8	Teachers are disconnected from the community in which they teach	27
3.2.7	Language of learning	27
3.2.7.1	Mother-tongue language is needed as a medium of instruction	27
3.2.7.2	Learners in rural poor schools do not understand their teachers.....	28
3.2.7.3	Many parents want their children to be taught in English.....	28
3.2.8	Governance & community participation	29
3.2.8.1	Many schools do not have adequately functioning school governing bodies	29
3.2.8.2	Social participation is a necessary component for education	30
3.2.9	Service delivery and monitoring	31
3.2.9.1	Districts need to be prioritised as the service delivery vehicle of education.....	31
3.2.9.2	There is a lack of monitoring and accessible information	31
Chapter 4:	Findings and recommendations	36
4.1	Introduction	36
4.1.1	Rights that inform, the content of the right to basic education	36
4.1.1.1	Dignity and equality.....	36
4.1.1.2	The Best Interests of the Child principle.....	36
4.1.2	Interpreting the Bill of Rights	37
4.2	General Findings.....	38
4.3	Findings and recommendations on key issues	38
4.3.1	Poverty.....	38
4.3.2	HIV/AIDS.....	40
4.3.3	Violence and abuse.....	41
4.3.4	Inclusivity.....	41
4.3.5	Infrastructure	42
4.3.6	Teachers.....	43
4.3.7	Language of learning	43
4.3.8	Governance and community participation.....	44
4.3.9	Service delivery and monitoring	44
4.4.	Conclusion	45

Foreword

South Africa has arguably one of the most progressive constitutions in the world, incorporating within it a Bill of Rights extensive in its provisions and bold in terms of the vision it seeks to advance. However, the litmus test of the Constitution cannot lie in the adequacy of its text but in the reality of the lives of our people. While we have achieved great successes in relation to human rights in the first 12 years of our democracy, we also face considerable challenges. One of the foremost of such challenges is how 'to free the potential of each person', as a prerequisite to position people more favourably to contribute to the enjoyment of their own human rights and that of others. The right to basic education is a critical right in the achievement of this objective.

The Commission has, for some years now, been engaged at various levels dealing with various issues in the education system. Following the receipt of many complaints concerning the right to basic education, the Commission decided to initiate a Public Hearing to explore the content of the right, and the context in our country within which this right is given effect to. The Public Hearing does not seek to be a definitive pronouncement on the content of the right, but rather aims to highlight the key issues that need to be addressed in order to fulfil the right to basic education. In addition, the public hearing is an important mechanism available to the Commission. It is essentially a forum that allows for public accountability as envisaged by the Constitution and also creates opportunities for dialogue between stakeholders. This public hearing also acts as an assessment tool as far as the advancement of public education is concerned and for critically evaluating the progress we are making in the sector. While it is not intended to be adversarial, it allows for robust, frank and open debate.

While great strides have been made in the past 12 years to equalise the education system, this process has not always produced equality or equity in outcomes for the learners who pass through our school gates. It is thus an opportune time to take stock of the achievements and identify the obstacles that block the realisation of the right to basic education.

The stark imbalances of access to resources, services and opportunity undoubtedly impacts on the fragility of our democracy. The right to basic education is a facilitative right that unlocks many other rights and it is a right that ultimately will decide whether, in a sense, one is able to give effect to the wonderful sentiments expressed in our Constitution. It is thus critical that we engage on these issues. This engagement is made easier by the large amount of research that has been completed in recent years and that has assisted the Commission in carrying out its task.

This Report synthesises the views that were expressed during the Public Hearing. It provides findings and recommendations that seek to assist role-players to grapple further with the issues that impede the full enjoyment of the right to basic education.

I would like to take this opportunity to thank everyone who participated in and contributed to the Public Hearing. In particular I wish to thank our colleague Commissioner Leon Wessels who has worked tirelessly behind the scenes providing leadership and guidance, and also my fellow panellists, Commissioner Tom Manthata, Ms Thandi Chaane and Professor Linda Chisholm who gave off their time and expertise. In addition, a special word of thanks to all the staff of the Commission who contributed in a variety of ways.

Jody Kollapen
Chairperson

Executive Summary

Introduction

The SAHRC has received many complaints concerning the right to basic education and has thus found it necessary to explore by way of a Public Hearing the meaning, content and the context in which the right to basic education is experienced in South Africa.

Chapter 2 of the Report seeks to provide a legal framework in which to understand the content of the right to basic education. Chapter 3 explores the context in which the right to basic education is delivered. The chapter seeks to synthesise the views that were expressed at the Public Hearing and highlight the key issues. Finally, Chapter 4 contains the findings and recommendations of the panel.

The right to basic education

We have two education systems in South Africa. In the one we have rural and township schools characterised starkly by poverty, and in the other we have former Model C schools characterised by being well resourced due to the legacy of the past. Dysfunctionality, vulnerability, alienation and a lack of social cohesion characterise many of the township and rural schools.

The State has the primary responsibility to ensure the enjoyment of the right to basic education. Much has been done since 1994 and for this due credit must be given. Resources have been poured into schools in order to ensure equal treatment. However, resources are not enough. Of more concern is that in the South African context, recent research indicates that we are not seeing the outcomes in terms of quality education that were anticipated.

The Public Hearing and this Report will engage with the right to basic education within the framework commonly referred to as the 4As that was developed by the former United Nations Special Rapporteur on the right to education of the United Nations Commission on Human Rights, Katrina Tomaševski. These 4As refer to making education available, accessible, acceptable and adaptable.

Key issues

Chapter 3 identifies nine key issues which impact on the enjoyment of the right to basic education and which were highlighted most starkly during the Public Hearing. Firstly, poverty impacts on the accessibility of quality education. For many, there is an inability to afford quality education due to school fees and other hidden costs such as school uniforms and transport costs. Also, many children are hungry at school because of poverty and this impacts on their participation in the classroom. The drop-out rate of learners in South Africa and the link with issues of poverty was raised as a matter of concern.

Secondly, children infected and affected by HIV/AIDS have special needs that the education system and teachers need to be aware of in order to ensure that education is adaptable in responding appropriately to this enormous challenge.

Thirdly, levels of violence and abuse experienced generally in society spill over into schools and are unacceptably high. The girl-child in particular is affected by this violence and abuse.

Fourthly, the inclusivity of the education system, or rather the lack thereof, came under the spotlight during the Public Hearing. The education system struggles to be available and accessible for children with disabilities. The system of inclusive education was criticised as not being implemented sufficiently to address the needs of children with disabilities.

Fifthly, issues regarding the lack of infrastructure, which impact on the availability of education, were raised. This was done particularly within the context of addressing the inequalities of the past.

Sixthly, teachers were identified as the most important role-players within the education system. They face many challenges. However, they were also connected to many of the challenges that were raised such as: teachers lacking passion and a culture of learning and teaching; not being in the classroom enough; being unqualified or underqualified; not being trained sufficiently to implement the new curriculum; using old teaching methods; having too many children in their classrooms; and, being disconnected from the community in which they teach.

The language of learning was raised as a sensitive issue due to our past history, but it is an important issue that needs attention as it impacts on the availability, accessibility and adaptability of the education system delivering quality education. Debates on mother-tongue language as a medium of instruction were raised. Concerns were also raised that many learners do not understand the language their teachers speak. Finally the role and importance of English as a language was raised.

Next, issues concerning governance and community participation were raised within the context of many schools not having adequately functioning school governing bodies. The lack of social participation impacts on the accessibility and adaptability of schools.

Finally, service delivery and monitoring was raised as an issue within the context that districts need to be prioritised as the service delivery vehicle of education. Also, the lack of monitoring systems and accessible information was raised as impacting on the availability and adaptability of the education system.

Findings and recommendations

The findings of the Public Hearing came to the conclusion that the lived daily reality at school for many children in South Africa, particularly those children in rural and township schools is incongruous with the legislation and the policies of the Department of Education. Those children who are most disadvantaged in enjoying the right to basic education lack the means and the social power to speak out and claim their rights. And, whilst much has been done to improve the enjoyment of the right to a basic education, not all of these interventions have resulted in the outputs that were anticipated.

The Report sets out specific findings and recommendations on the key issues raised during the public hearings. Many of the recommendations point to amendments in the legislative and regulatory framework; the need for further resources; more participation by role-players particularly communities in schools; the need for consultation between role-players; the need for greater accountability; research; further support at a district level and the establishment of adequate monitoring systems.

Chapter One

INTRODUCTION

The right to basic education is a central facilitative right in our constitutional democracy. It is aimed at providing opportunities and gateways for ensuring the promotion and protection of all other human rights. Approximately 12 million learners and 350 000 teachers attend 27 000 schools across the country on a daily basis.

Education itself is a component of human dignity. It is an indispensable means of realising other human rights effectively in a free society, to appreciate and exercise human rights, to develop the ability to make political and civil choices, and to be able to access economic and social rights. In South Africa, the right to basic education is an economic and social right that is not subject to progressive realisation. However, it is a right that is interdependent on the progressive realisation of other economic and social rights.

1.1 Legislative mandate of the Commission

The South African Human Rights Commission (SAHRC) is one of the independent constitutional bodies supporting democracy established in terms of chapter 9 of the Constitution of the Republic of South Africa. It derives its mandate from the Constitution and from the Human Rights Commission Act 54 of 94 (the Act).

The SAHRC is mandated by section 184 of the Constitution to:

- a) Promote respect for human rights and a culture of human rights;
- b) Promote the protection, development and attainment of human rights; and
- c) Monitor and assess the observance of human rights in South Africa.

The Commission has powers in terms of section 184(2) of the Constitution read with section 9 of the Act to:

- a) Investigate and to report on the observance of human rights; and
- b) Take steps to secure appropriate redress where human rights have been violated.

The Act confers further powers, duties and functions on the SAHRC. These include the power to conduct an investigation into any alleged violation of human rights, to call any person to appear before it and produce to it all articles or documents in his or her possession or under his or her control and which may be necessary in connection with such investigation, and to ask any person who appears before it to give evidence under oath or affirmation.

1.2 Purpose of the Public Hearing

The SAHRC has received many complaints concerning the right to basic education and has thus found it necessary to explore further the meaning, content and the context in which the right to basic education is experienced in South Africa.

The purpose of the Public Hearing was to create a framework within which to evaluate the issues pertaining to the right to basic education. We hope that this will contribute to the current dialogue. In achieving its purpose, the Public Hearing allows all role-players to share their ideas and understanding of the right. Also, the Public Hearing provides a public accountability mechanism and an educational opportunity to all who attend.

1.3 Terms of reference for the Public Hearing

The Public Hearing set out to explore the content of the right to basic education and the context within which it is implemented in the country. The Public Hearing focused on legislative and policy provisions relating to the right to basic education and the implementation thereof.

Although basic education is part of a compendium of educational rights, the Public Hearing focused on the provision of education for learners aged between 7 and 15 years (or grade 9 whichever comes first). Limiting the Public Hearing to this group has drawn criticism, particularly from role-players who have an interest in Early Childhood Development (ECD) and Adult Basic Education and Training (ABET). The Commission finds it necessary in its work to set limitations due to resource and time constraints. Parameters thus had to be drawn in terms of the scope of an inquiry. This does not imply that these other areas of education are less important but rather that the current process would be unable to do justice to the specific challenges which are faced.

The Hearing set out to investigate the meaning of the right to basic education; to explore the impact of the context in which basic education is delivered; and to assess the realisation of the right to basic education in the country.

The Public Hearing and this Report will engage with the right to basic education within the framework commonly referred to as the 4As that was developed by the former United Nations Special Rapporteur on the right to education of the United Nations Commission on Human Rights, Katrina Tomaševski. These 4As refer to making education available, accessible, acceptable and adaptable. This framework will be explored further in Chapter 2. The Report also incorporates the theoretical framework of rights to, in and through education developed by the work of Wilsonⁱ.

The Hearing also considered significant issues related to the right to basic education such as governance and management, labour relations and community participation. Finally, the hearing explored the right to basic education from the perspective of the experiences of those who are vulnerable and live with disabilities, impacted by HIV/AIDS and who live in farming communities, rural areas, townships and also those who were from previously disadvantaged groups and now participate in education systems in the former Model C system.

1.4 Methodology and rules of process

The Public Hearing is not a court of law, but a platform that contributes to the dialogue on the right to basic education. As such the Hearing also provided opportunities to those who did not make formal written submissions to come forward and express themselves on the issue.

The Public Hearing was conducted in terms of the rules of procedure promulgated in terms of section 9(6) of the Act. In terms thereof the Commission called for submissions from the public and interested parties including institutions, organisations and individuals on any matters referred to in the terms of reference. Provision was made for the Legal Services Department of the Commission to assist persons in formulating their submissions.

The call for submissions was published in the Government Gazette on 19 August 2005ⁱⁱ. The closing date for submissions was 23 September 2005. However, the Head of the Legal Services Department had the discretion to consider late submissions. The Public Hearings were held from 12–14 October 2005 at the Commission's head office in Johannesburg.

A panel nominated by the Chairperson of the Commission presided over the public hearing. The panel consisted of the SAHRC Chairperson Jody Kollapen, who also chaired the panel, Commissioner Tom Manthata (SAHRC), Ms Thandi Chaane, an education expert, and Linda Chisholm of the Human Sciences Research Council (HSRC).

Whilst the Commission provided in the Terms of Reference the powers to require or even subpoena persons or institutions to submit written responses and appear before a panel at the Commission, it was not necessary to use these powers. Testimony at the Public Hearing was not given under oath or affirmation. Rather, the aim was to create an environment for an open, frank discussion about the right to basic education in the spirit that all interested parties are commonly and genuinely committed to achieving a quality education for all.

1.5 Structure of the Report

Chapter 2 of the Report seeks to provide a legal framework in which to understand the content of the right to basic education. Chapter 3 explores the context in which the right to basic education is delivered. This chapter seeks to synthesise the views that were expressed at the Public Hearing and highlight the key issues. Finally, Chapter 4 contains the findings and recommendations of the panel.

-
- i Wilson, D, "Human rights: Promoting Gender equality in and through education", Background paper for UNESCO Education for all global monitoring report, Paris, 2003
 - ii Government Gazette Notice 1416/2005

THE RIGHT TO BASIC EDUCATION

2.1 Introduction

A broad overview of international human rights instruments and discourse indicates that basic education should be compulsory and free. In order to unpack the content of the right a useful framework refers to the right demonstrating the following four inter-related features: Education should be available, accessible, acceptable and adaptable (the 4As). However, these 4As are subject to the proviso that the right to basic education must be delivered within the context of each countryⁱⁱⁱ. Thus, the content of the right to basic education is not static nor is it the same for all countries. This calls for a contextual approach when seeking to understand and define the content of the right in South Africa. To date, there has been no Constitutional Court decision that addresses the meaning of the right to basic education. It thus remains to be tested what interpretation of this right would be given by our Constitutional Court. The right is also not defined in any legislation. The Constitution provides that when interpreting rights, we may look to international law for guidance.

Box 2.1 South African Constitution

28(2) A child's best interest is of paramount importance in every matter concerning the child.

29(1) Everyone has the right

a) to a basic education, including adult basic education;

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

a) equity

b) practicability; and

c) the need to redress the results of past racially discriminatory laws and practices.

2.1.1 Basic education

Section 29(1) of our Constitution guarantees the right to basic education and adult basic education. It is recognised that primary education is the most important component of basic education. Although there is a close correspondence between basic and primary education, it is not synonymous^{iv}. As the Public Hearing was limited to children who are subject to compulsory education, it is beyond the scope of this Report to explore further the wider meaning of basic education, suffice to mention that basic education includes fundamental education. The right to fundamental education extends to all those persons who have not yet had their basic learning needs satisfied. This would refer to those who are in need of adult basic education, which is not limited by age or gender^v.

Box 2.2 Education for All – EFA Dakar Goals

- Expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children.
- Ensuring that by 2015, all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to a completely free and compulsory primary education of good quality.
- Ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programmes.
- Achieving a 50% improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for adults.
- Improving every aspect of the quality of education and ensuring excellence so that recognised and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.

2.1.2 The nature of the right

The United Nations Committee on Economic, Social and Cultural Rights in its General Comment No. 13 on the right to education states that the precise and appropriate content of the right to receive an education depends upon prevailing conditions in a country. The right within international discourse is also subject to progressive realisation, like other economic and social rights. It could thus be argued that within the South African context, since 1994, the State has had to deal with a unique situation of addressing gross and iniquitous past distribution of educational resources on the basis of race. Given the size and complexity of the education system it would be unreasonable to expect the State to address all aspects of the right to basic education immediately.

What must not be ignored, is that the South African Constitution frames the right differently from many other constitutions in that the right is not subject to progressive realisation. Therefore, a legal test to determine whether the South African government is complying with its constitutional obligations is not subject to the constitutional test of determining progressive realisation. The test would thus have to be different from the one set out in the seminal Grootboom Constitutional Court judgment, which deals with economic and social rights within the context of progressive realisation^{VI}.

The text of the South African Constitution does not subject the right to the internal limitation of progressive realisation as it does for the other economic and social rights (e.g. housing, health care, food, water and social security). The Constitution thus does not subject the right to an internal qualifier that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right. Much of the international discourse on the right to basic education is written from the perspective that the right is subject to progressive realisation. This must be borne in mind when considering the international discourse within the South African context.

The limitations clause contained in section 36 of the Constitution allows for rights to be limited by a law of general application to the extent that the law is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and taking into account all relevant factors. The limitations clause could certainly impact on specific aspects of the content of the right to basic education. It could be foreseen that justifiable limitations could be placed for example, on matters concerning language, culture and religion where these rights need to be balanced against the rights of the child; the Best Interests of the Child principle; and, the right to education. However, such limitations would have to satisfy the provisions of section 36.

2.1.3 Core content of the right to basic education

The United Nations General Comment no.13 provides guidance on the core content at an international level of the right to basic education, and also sets out specific legal obligations of the State. These include:

1. The right of access to public educational institutions and programmes on a non-discriminatory basis.
2. Ensuring that education conforms to the objectives set out in article 13(1) of the International Covenant on Economic and Social Rights (ICESR), namely, that: "... education be directed to the full development of the human personality and the sense of its dignity; strengthen respect for human rights and fundamental freedoms; 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".
In order to do this, the State is obliged to establish and maintain a transparent and effective system that monitors whether or not education is in fact conforming to the objectives^{vi}. Also, minimum educational standards must be established, and transparent and effective systems to monitor these standards must be established^{viii}.
3. Providing primary education for all that is compulsory and free. It is argued that states are obliged to prioritise the introduction of compulsory, free primary education^{ix}.
4. Adopting and implementing a national educational strategy, which includes provision for secondary, higher and fundamental education.
5. Ensuring free choice of education without interference from the State or third parties, subject to minimum educational standards.

It must be pointed out again that the General Comment is drafted in line with the international discourse that subjects the right to basic education to progressive realisation whereas, as previously discussed, the South African Constitution does not subject the right to progressive realisation.

2.1.4 The obligations of the State

In terms of international law, the State should respect, protect and fulfil economic and social rights. These duties extend to the right to basic education. The obligation to respect requires the State to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect imposes a duty on the State to take measures that prevent third parties from interfering with the enjoyment of the right. The obligation to fulfil requires the State to take positive measures that enable and assist individuals and communities to enjoy the right. Fulfil refers to a facilitative obligation which includes an obligation to provide, where individuals or a group cannot realise the right themselves due to reasons beyond their control^x. There is a strong presumption against retrogressive steps being taken by the State.

The right to basic education is formulated in the positive and not in the negative. This means that the State has the primary responsibility to provide basic education and to ensure that each of the 4As is respected, protected and fulfilled.

2.2 Legal frameworks surrounding the right to basic education

In order to unpack the content of the right to basic education, K Tomaševski, the former United Nations Special Rapporteur on the right to education for the UN Commission on Human Rights, has developed a framework that sets out four interrelated features of basic education. This framework is referred to as the 4As and refers to basic education being available, accessible, acceptable and adaptable. An alternative yet complementary legal framework in which to consider the content of the right is the one developed by D Wilson, of rights *to*, *in* and *through* education. Available and accessible refers largely to the right *to* basic education, whereas acceptable and adaptable refers to rights in education; and adaptable refers to rights through education^{xi}.

Box 2.3 4As UN General Comment ^{xii}

Availability

Refers to available functioning educational institutions and programmes available in sufficient quantity e.g. buildings, sanitations, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, library, computer facilities and information technology.

Accessibility

Refers to three overlapping dimensions. Firstly, the principle of non-discrimination is applicable. Secondly, education must be physically accessible both in terms of geographic distance and physical safety when traveling. Thirdly, education must be economically accessible, it must be affordable to all, and primary education should be free to all.

Acceptability

Refers to the form and substance of education, including curricula and teaching methods.

Adaptability

Refers to the capacity of the education system to adapt to the diverse needs of learners, parents and communities, and in particular the vision of an inclusive education system.

2.2.1 Availability of education

Availability of education refers to what must physically be in place before the right to education is accessed. Availability thus refers to the necessary resources that must be available in order that the right to basic education can be accessed. Features that are considered include:

- Legislative provisions ensuring compulsory education.
- Physical infrastructure of schools.
- The provisioning of teachers.
- The supply of teaching materials and aids.

Availability refers to what government must physically provide in order that education can take place. Since 1994, the Department has placed enormous resources into addressing the iniquitous provision of educational resources inherited from Apartheid.

2.2.1.1 Compulsory education

Education in South Africa is compulsory for learners in grade R through to grade nine (9) or from age seven (7) to fifteen (15), whichever happens first^{xiii}. South Africa enjoys high enrolment rates and good progress is being made in achieving the targets set for enrolment rates in the Millennium Development Goals of 100% enrolment by 2015. The drop-out rate, which will be discussed in Chapter 3, must be noted within this discussion.

Box 2.4 Millennium Development Goal 2: Achieve universal primary education

Target – Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.

The Department is of the view that basic education should include schooling up to Grade 12^{xiv}. Internationally, even though the right to basic education is subject to progressive realisation in most international instruments, it is specifically stated that primary education as a component of basic education should be free and compulsory.

Box 2.5 Free and compulsory – International instruments

Universal Declaration of Human Rights

Article 26 – Free and compulsory education in the elementary fundamental stages

International Covenant on Economic, Social and Cultural Rights

Article 13 – Free and compulsory primary education

Convention on the Rights of the Child

Article 28 – Free and compulsory primary education

African Charter on the Rights and Welfare of the Child

Article 11 – Free and compulsory basic education

Who should ensure that education is compulsory?

The high drop-out rates from schools is concerning. This will be explored further in Chapter 3 under the heading of poverty. It is, however, debated on whom the obligation lies and how the obligation should be shared between parents and state actors to ensure that children attend school. Whereas in the past the obligation fell squarely on parents, there is an international shift towards placing the obligation more on the State to encourage attendance. This means that the State must take measures to encourage regular school attendance.

Article 28(1)(e) of the Convention on the Rights of the Child provides that the State shall:

“(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.”

The South African Schools Act (SASA) places the responsibility of ensuring attendance at school on the parent, who can be found guilty of an offence if the learner fails to attend a school^{xv}. The Department has discretion to investigate, take appropriate measures or issue a written notice to a parent requiring compliance^{xvi}.

2.2.1.2 Provision of infrastructure

In terms of international law there are two obligations on government in respect of providing school infrastructure. Firstly, non-state actors must be allowed the freedom to establish educational institutions. This is in terms of the right to education being a civil and political right. In accordance therewith, sections 29(3) and (4) of the Constitution entrench this right to establish and maintain independent educational institutions. SASA also provides for the establishment and regulation of independent schools^{xvii}. Issues of infrastructure will be discussed as a key issue in Chapter 3.

2.2.1.3 Teachers

Tomaševski states that in order for the right to basic education to be available, there must be sufficient numbers of educated, trained and qualified teachers “who have a perfect command of the language in which they teach”^{xviii}. Teachers are not physical objects and thus their availability must be within a context in which their rights, particularly their labour rights, are respected. Teachers should have the right to be able to join trade unions, participate in union and even strike activities, and receive domestically competitive salaries.

Internationally there is a concern about the perpetuation of stereotypes and sexism, with women teachers being confined largely to primary education. There is much debate about the role and importance of teachers in delivering quality education. This will be explored in Chapter 3.

2.2.1.4 Learner/Teacher support materials

There must be sufficient available quantities of teaching materials including library books and computer facilities. Since 1994, the Department has had to address the challenge of ensuring that textbooks arrive on time and that teachers are sufficiently trained with the introduction of a new curriculum to know how to effectively use the new teacher support materials.

2.2.2 Accessibility of education

The right to basic education being accessible refers to three overlapping dimensions. Firstly, no child can be denied access to education on the basis of discrimination. Secondly, educational institutions must be geographically accessible. This refers to both geographic distances that must be covered to access the school, as well as the physical safety of the learner when travelling to school. Thirdly, education must be economically accessible and affordable to all. International instruments specifically state that primary education should be free to all. The State therefore has the duty to ensure the elimination of legal, administrative, financial and geographic barriers that may prevent learners from accessing their right to education.

2.2.2.1 Non-discrimination

In South Africa, equality is one of the founding values of the Constitution. Discrimination is prohibited in terms of the Constitution and specific statutory laws, such as the Promotion of Equality and Prevention of Unfair Discrimination Act 2 of 2000 (PEPUDA). These legal provisions create formal equality. The international obligation of non-discrimination in relation to the right to basic education is to eliminate discrimination. Elimination of discrimination calls for the ability to monitor and identify patterns of discrimination and to address these. “Efforts to eliminate discrimination require a fundamental review of the system of education to expose and address patterns of discrimination and to reorient education to avoid recreating a negative social reality.”^{xix}

2.2.2.2 Physical accessibility

Physical accessibility refers to the distances that learners must travel and also their safety when travelling. This has both a poverty aspect as well as a gender aspect with girls being more vulnerable to violence and sexual abuse. The burden of transport costs on parents and caregivers will be discussed in Chapter 3 under the poverty heading.

2.2.2.3 Economic accessibility

International instruments are clear that primary education should be free. The South African Schools Act (SASA) does not provide explicitly for free education. However, no learner may be refused admission due to an inability to pay school fees^{xx}. Chapter 3 will explore the impact of poverty on the ability of parents and caregivers to afford school fees and the resultant discrimination that takes place in some instances, despite laws that protect learners from such discrimination.

A system was created in terms whereof the school governing body is given the power to determine school fees. The decision to allow school fees to be charged was based on an attempt to prevent the privileged classes from leaving the State education system and the creation of another separate system of education. Currently 97% of parents send their children to public schools and only 3% of learners attend at independent schools. It was also anticipated that the charging of school fees would free up resources to be spent on poorer schools. This was done at a time when there was a growing voice at an international level and from civil society calling for school fees to be abolished. The 2000 Dakar Framework for Action calls for free education. The charging of school fees created by the legislative and framework has ensured that the formerly white schools

maintain their quality. This has resulted in white pupils remaining there and thereby retained islands of educational excellence^{xxi}. Thus, two systems of education mirroring the country's economy exist, which display glaring inequalities and high differentiation between public schools.

“There is ample evidence that where free universal schooling has been provided without the resources to assure its quality, the only consequence has been that the private school system has flourished and learners have left the public school system, particularly the middle classes, which sure have dangerous implications for public schools which become even poorer in quality and, as I say, we have seen evidence of that to the north.”^{xxii}

Free schooling does not refer only to the charging of fees, but also to the many indirect costs borne by parents and caregivers in ensuring that their children attend school. These indirect costs include school uniforms, transport, learner materials and the cost of the child's labour to the family. These issues will be discussed further in Chapter 3 under the poverty heading.

Box 2.6 Availability and access of farm schools is still a challenge

Farm schools provide specific challenges in terms of availability and access. Historically, farm schools were created in order to ensure that workers would remain on farms and that this would contribute towards a stable workforce. Broadly, during the Apartheid era poorly resourced farm schools were established for the educational needs of rural black children; whereas, well-resourced schools were provided for rural white children in towns. In dealing with this anomaly and ensuring equitable access to education, government has legislatively created the model of public schools on private land. In terms of this model the owner of the farmland upon which a school is situated is expected to enter into what has become known as a section 14 agreement (this refers to the relevant section in SASA) with the provincial department of education in order that the relationship can be regulated. Not all agreements have been signed to date. In terms of SASA these agreements were supposed to come into operation within six months of the promulgation of the Act. This has not happened. In fact, not many agreements have been signed. There are varying percentages between 6% and 50% between the different provinces^{xxiii}.

Thus, it has been argued that these schools are operating in legal limbo^{xxiv}. This has caused much uncertainty, confusion and frustration. “The placement of farm schools on private land has meant that the interests of learners at schools on private land sometimes clash with those of property owners to the detriment of all – learners, educators, parents and employers. It is therefore essential that schooling is severed from political and labour dynamics on the farms.”^{xxv}

The number of learners in farm schools has declined rapidly from 639 032 learners in 1996 to 256 148 learners in 2000^{xxvi}. Farm schools thus provide education to approximately 2% of learners. These children attend 3 550 farm schools throughout country. This number of schools constitutes 13% of all State-funded schools in the country.^{xxvii} Many schools have too few children and it is difficult to justify the expense it would take for the schools to be adequately resourced in order to provide quality education. This must be placed within the context also of a decreasing population of workers who live on farms. “Farmworker-households are among the least stable, the most seasonal and the most mobile. It is no longer true that people stay on a particular farm for 20 to 30 years.”^{xxviii}

Farm schools are reported as being the poorest. “Farm children may attend schools without electricity, drinking water, sanitation, suitable buildings or adequate learning materials. Also, children may face harassment from farm owners.”^{xxix}

Other issues that confront farm schools is the fact that governance models do not appear to work successfully. The Ministerial Committee that looked into the status of farm schools concluded that these schools require different models of governance. A possible model being considered by the Department is district-based governance of these schools^{xxx}.

The future of farm schools is unclear. However, the Department is clear that the current model of having public schools on private land does not work^{xxxi}.

Additional challenges which farm schools face include:

- Learners having to walk long distances to access the farm school.
- Very few farm schools provide for secondary schooling. This leads to high drop-out rates in secondary schooling, as parents cannot afford the high transport costs.
- Farm schools tend to be small in numbers and teachers must teach in multi-grade classrooms.

Some of the suggestions that have been put forward to address the specific challenges that farm schools raise include:

- Ensuring that all schools are on State-owned land.
- Creating rural boarding facilities.
- No school fees.
- The provincial department of education must play an active role in management and governance of schools.
- Ensuring that social grants are accessed.
- Consolidating farm schools into bigger schools in central locations.
- Providing adequate learner transport^{xxxiii}.

However, even where the physical accessibility to schools is resolved and the schools are well resourced and have the necessary infrastructure, this does not automatically ensure quality education. This does not improve children's social mobility according to a study that was done comparing learners attending farm schools in Mpumalanga and Western Cape^{xxxiv}. Other external societal factors such as low expectations of parents on children, and broader social contextual factors explain the ongoing inability of farm education to meet the needs and aspirations of farm-based learners^{xxxv}.

2.2.3 Acceptability of education

This feature refers to the form and substance of education, which includes curricula and teaching methods being relevant, culturally appropriate and of good quality. It is a trend since the 1990s that education must be of good quality in addition to being available and accessible^{xxxvi}.

The duty to provide relevant, culturally appropriate and quality education in a diverse society such as South Africa is an enormous challenge. Some of the rights issues arising from this obligation have been experienced in many countries around the world. Examples of these issues include:

- The prohibition of corporal punishment.
- Responding to teenage pregnancy.
- Respect for religious convictions.
- The language of instruction.
- Teaching of and teaching in indigenous minorities.

In South Africa corporal punishment is prohibited in all aspects of public life. Within the education domain, SASA specifically prohibits the use of corporal punishment in schools^{xxxvii}. The prohibition has had to withstand a Constitutional Court challenge^{xxxviii}. South Africa has policies on religion and language in schools. There is currently a matter before the Equality Court concerning the wearing of nose rings based on religious convictions. There are many issues concerning language that are still widely debated. This will be more fully addressed in Chapter 3.

Box 2.7 The challenge of teenage pregnancy

Teenage pregnancy and motherhood has been identified by the Department as a challenge to the enrolment of girls in school. According to the Education For All (EFA) Report, South Africa's policies are non-discriminatory on the basis of pregnancy.

The Department states that it has developed a life skills programme that addresses teenage pregnancy and its effects. In 2003, the Girl's Education Movement (GEM) was launched. The Department claims that GEM clubs are active in 40% of schools in the country^{xxxix}. Whilst officially the education system does not discriminate against pregnant learners, these girls drop out of school due to stigma or being unable to cope as young mothers.

2.2.3.1 The curriculum

The curriculum must also be acceptable. Since 1994, the national curriculum has been revised to bring it in line with human rights norms and standards. The initial introduction of a learner-centred Outcomes Based Education (OBE) was difficult due to its complexity, lack of training of teachers, and lack of teaching materials. The Department reviewed and revised the curriculum. In 2004, the Revised National Curriculum Statement was introduced based on design principles which include social justice, a healthy environment, human rights and inclusivity. The South African Qualifications Authority (SAQA) cautions that the curriculum should not be changed too often:

“The continual pruning of our yet-to-mature attempts may very well leave us with a Bonsai instead of the great oak that our former liberation struggle comrades envisaged.”^{xi}

Box 2.8 Life orientation

The Public Hearing was told that there are a number of challenges facing the teaching of life orientation in schools. Life orientation seeks to support and equip learners with life skills. It is a specific subject in which norms and values can be transferred. Some would even argue that it is the conceptual home of human rights education. However, experience shows that schools do not adhere to the life orientation curriculum, that specialist life orientation teachers are not used, that teaching is fragmented and often misunderstood, or that the time allocated to it is often regarded as a free period. Furthermore, many teachers are not comfortable with the curriculum due to their own personal values and beliefs. Research indicates that life orientation is not achieving its objectives. In sum, it fails to be recognised as an important subject^{xii}.

In response, the Department stated that Life Orientation is not compulsory after Grade 9 because the Department is concerned about curriculum overload^{xiii}. However, the National Curriculum Statement being introduced into Grade 10 in 2006 makes Life Orientation one of four compulsory subjects up to Grade 12.

2.2.3.2 A safe environment

Another feature of acceptable education is that the environment must be safe. “Forcing girls to attend schools which may endanger their health or their life is an abomination of the right to education. Sexual abuse and physical violence against girls are particularly invidious dangers, which will undermine any effort at gender equality in and through the classroom. Recent reports from human rights groups suggest that such violence confronts girls with disturbing frequency.”^{xiii} This issue will be explored further in chapter 3 under the violence and abuse heading.

2.2.4 Adaptability of education

Adaptability refers to education being flexible in order that it can adapt to the ever-changing needs of our society and communities. This feature relates to both rights in and through education. Should the education system not be adaptable, then the rights to be realised through education will remain elusive. The adaptability of the education system needs to be closely monitored and assessed in order that the necessary changes can be made timeously. Many debates currently in South Africa revolve around the adaptability of our education system. It is questioned whether even if the other As are achieved and realised, whether the learners we produce will be equipped with the skills and knowledge that will fulfil their rights through education and whether they will be able to participate in the economy and the development of the country.

Adaptability also refers to exclusion and inclusion. It refers to the extent to which the education system includes rather than excludes minorities and vulnerable sectors of our communities such as refugees and child migrants, minority children; working children; and children with disabilities (the

latter will be explored more fully in Chapter 3). Within the South African context this also refers to child-headed households and children living in households affected by HIV/AIDS (to be discussed in more detail in Chapter 3), street children and children in prison. The challenge for the State is to adapt the education system in the child's best interest rather than the child having to adapt to the education system.

2.3 Conclusion

The international discourse on education has moved from merely ensuring access for all children through providing inputs into the system, to ensuring that within a rights-based discourse there is quality learning taking place. This is recognised within a context for the purpose behind education namely to achieve rights through education and ensure that we create citizens who are responsible and can participate in and enjoy our democratic system.

“In the South African context, ‘adequate’ education could refer to a standard of education that empowers people to rise above the poverty cycle and compete effectively in the labour market, enables people to understand and enjoy their new found democratic values, rights and freedoms, encourages people to participate in and protect the fledgling democratic system, and enhances their feeling of self worth as human beings.”^{xiv}

This chapter provides a framework and an overview of the legal content of the right to basic education. The following chapter will address key issues that were raised during the Public Hearing which impact negatively on the right to basic education.

Notes

- iii. The precise and appropriate extent of the realisation of each of the 4As depends on the conditions prevailing in the State. United Nations, Economic and Social Council, The right to education (Art. 13):. 08/12/99, E/C.12/1999/10. (General Comments), par. 6
- iv. Ibid par. 9
- v. Ibid par. 23
- vi. Government of the Republic of South Africa v Grootboom 2000 (11) BCLR 1169 (CC)
- vii. See note iii par 49

-
- viii. Ibid par. 54
- ix. Ibid par. 51
- x. Ibid par. 47
- xi. See note 1
- xii. Tomaševski, K, "Right to Education Primers No. 3 Human Rights obligations: making education available, accessible, acceptable and adaptable", Novum Grafiska AB, Gothenburg, 2001
- xiii. Section 3 of SASA provides for compulsory attendance from ages 7 to 15 and section 5(3) provides that no learner may be refused admission to a public school on grounds that his or her parents are unable to pay or have not paid school fees that have been determined by the governing body.
- xiv. Transcription, Public Hearing, National Department of Education, Hindle, D, 103 (Day 3)
- xv. SASA, section 3(1) and 3(6)(a)
- xvi. Ibid section 3(5)
- xvii. Ibid sections 45 -51
- xviii. See note xii, 23-24
- xix. See note 1, 8
- xx. Section 3 of SASA provides for compulsory attendance from ages 7 to 15 and section 5(3) provides that no learner may be refused admission to a public school on grounds that his or her parents are unable to pay or have not paid school fees that have been determined by the governing body.
- xxi. Fiske & Ladd, "Elusive Equity, Education reform in post-apartheid South Africa", HSRC Press, Cape Town, 2005, 130 - 153
- xxii. Transcription, Public Hearing, National Department of Education, Hindle, D, 103 (Day 3)
- xxiii. Human Rights Watch, "Forgotten Schools: Right to Basic Education for Children on Farms in South Africa", May 2004, 29
- xxiv. Department of Education, "Report of the Ministerial Committee on Rural Education, A new vision for rural schooling," May 2005, 51
- xxv. Ibid 50
- xxvi. Ibid 49
- xxvii. See note xxiii, 7
- xxviii. Transcription, Public Hearing, Wilson, S, 67 (Day 2)
- xxix. See note xxiii1
- xxx. Transcription, Public Hearing, National Department of Education, Hindle, D, 124 – 5 (Day 3)
- xxxi. Ibid 124 – 5(3)
- xxxii. Transcription, Public Hearing, Wilson, S, 48 –49 (Day 2)
- xxxiii. Ibid 52(Day 2)
- xxxiv. Ibid 50(Day 2)
- xxxv. Transcription, Public Hearing, Wilson, D, 51 (Day 2)
- xxxvi. See note 3, par c
- xxxvii. SASA, section 10
- xxxviii. Christian Education South Africa , Minister of Education, CCT4/00
- xxxix. Education for All in Africa, "EFA – Paving the Way for Action", Dakar, 2005,9
- xl. SAQA, South African Qualifications Authority, "The Right to Basic Education in South Africa," 23 September 2005, 20
- xli. Transcription, Public Hearing, Rooth, E, 71 – 75 (Day 3)
- xlii. Transcription, Public Hearing, National Department of Education, Hindle, D, 132(3)
- xliii. See note 1, 12
- xliv. Malherbe quoted in FEDSAS, Federation of Governing Bodies of South African Schools, "submission to the South African Human Rights Commission on the Right to basic Education", 23 September 2005, 3

Chapter Three

KEY ISSUES

3.1 Introduction

The challenges facing the right to basic education are both complex and interrelated. During the first 12 years of democracy, huge resources have been spent on addressing the inequalities of the past. Yet, there are still enormous challenges that face the country.

A recurring theme throughout the Public Hearing was that South Africa inherited two education systems from Apartheid. The one system, located in townships, former homelands, in rural areas and on farms, was impoverished in terms of resources. The education delivered in these schools during Apartheid was not intended to realise black children's right to basic education, but rather to systematically deprive the majority of our citizens of the right. The other system provided for a small white minority at the expense of the majority to experience educational excellence within a framework of Christian national education aimed to support, uphold and perpetuate inequalities. These are the well-resourced former Model C schools. High levels of differentiation mirroring the economic disparities of society exist within the education system. This history of inequality still pervades both the physical provisioning at these schools as well as the quality of the education that is received.

"The research clearly shows that if you are black – particularly if you are rural and poor – schooling and education does not work for you. For 60 – 80% of our children, education reinforces marginalisation, trapped in a second economy of unemployment and survival with few ways out. It may even be said that there exists 'two education systems' in South Africa, mirroring the problems of two economies."^{xliv}

3.1.1 Quality education is not taking place in South Africa

It came through strongly during the Public Hearing that quality education is not taking place in South Africa. Some went as far to describe this as a crisis.

"It is not a crisis of disintegration We have a Department that is able to run exams, that can get exam papers out, that can get textbooks out. There are schools that are running, so it is not a disintegration, we do have certainly at government level and beyond that, lots of organisations and institutions that are able to tackle the issues, but somehow we are not finding the priorities and the means to begin to really feel that we are addressing the problems."^{xlvi}

"And therefore we experience from the provincial departments of education a crisis management style where they stumble from one crisis to another."^{xlvii}

"There exists neither the capacity nor the humility in the national education system to concede and indeed deliver on the deep inequalities in the provision of basic education in our country."^{xlviii}

The process of transforming the country's education system and achieving equity does not take place within a vacuum, nor it is a task of merely providing resources. Rather, the process takes place within a social context that involves people who are grappling with and responding to transformation in different manners. The process also takes place within a context of addressing the entire legacy of Apartheid. The right is not static and the obligations of government to deliver the right will be different in different contexts.

This chapter seeks to identify the key issues that were highlighted during the Public Hearing. It synthesises the views that were expressed in a manner that identifies those factors that are inhibiting the enjoyment of the right to basic education. The key issues have been captured under the following headings: poverty; HIV/AIDS; violence and abuse; inclusivity; infrastructure; teachers; language of learning; governance and community participation; and service delivery and monitoring. In identifying the key issues that were highlighted during the Public Hearing, the internationally developed framework of the 4As (available, accessible, acceptable and adaptable) will be applied.

3.2 Key issues

3.2.1 Poverty

3.2.1.1 Poverty impacts on the quality of education

Since 1994, government has pumped enormous resources into education and it has remained the largest budgetary item^{xlix}. However, for what has been put in, the results are tremendously concerning for everyone. The Department has a long list of achievements and no one disputes that they have done a lot to improve and transform the education system in South Africa. However, those who are poor are still not enjoying quality education. The Department is aware of this:

“I want to state categorically that we are failing our poor.”^l

“I think in many ways, yes we are failing the poor, not as the Department of Education, as the country. The very existence of a second economy is indicative that in these ten, 11 years, we have not been able to address what was a hugely inherited legacy and it has not come about. ... It is about what you are getting access to that is the problem. It is conditions of schools, kinds of teaching and learning, it is related to poverty, linked to school management, school governance, teachers, infrastructure and materials, service delivery, districts, need for norms and standards.”^{li}

It was consistently pointed out during the Public Hearing that the greater the poverty in a province, the greater the inequality in terms of quality of education experienced. In poorer provinces the amount spent on education per learner is less than that spent in wealthier provinces where there is the further ability to raise school fees to supplement the resources received from government. All role-players are in agreement that it is clear that the mere reallocation of resources is not producing quality education.

3.2.1.2 Education is unaffordable due to school fees and other hidden costs

Many parents and caregivers cannot afford to pay school fees. However, many battle to afford school uniforms and school transport. This is because education is highly valued and many parents are prepared to make enormous sacrifices in order that their children receive education. Thus, despite the charging of school fees within a society that has high poverty, there are high enrolment rates of 97–98,5% at schools. However, the drop-out rate must be considered alongside these figures (this will be discussed further in 3.2.1.6). The Department pointed out that school fees are not a deterrent to universal enrolment in South Africa^{lii}. It is simple, quality education has become commodified and parents understand that schools that charge fees have more teachers and resources and there is a corresponding increase in the quality of education. Parents are thus placed in a situation where they feel obliged to pay school fees in order that their children can access a better quality education. The inability to pay school fees leads to social exclusion and isolation both within the family and between the family and the school. The Nelson Mandela

Foundation Report, *Emerging Voices*, states that this prevents children from going to school and creates tensions between poor families and schools.

“School fees can make children of very poor families feel welcome neither at school nor at home.”^{liii}

The Public Hearing was told a number of times that children are still discriminated against due to an inability of their parents and caregivers to pay school fees. This is despite express legislative provisions that provide for an exemption from the payment of school fees and a prohibition against discriminating against a learner or parent who cannot afford to pay school fees.

Despite laws in place, there are still many incidences of:

- parents not being informed about fee exemption policies;
- school records being withheld due to non-payment;
- children being sent home;
- children being discriminated against at school;
- services at the school being withheld from learners;
- legal processes to claim unpaid school fees being instituted against parents, including letters of demand being sent, summonses being issued and default judgments obtained; and
- school registration fees used as a means test to exclude poor learners^{liv}.

Many are not persuaded that the most recent legislative amendments will assist. The latest Education Laws Amendment Bill 2005 is criticised as merely complicating an already complicated situation. For example, parents will still not know from one year to the next whether the learners' school will this year be a fee school or a fee free school. This will create a lot of uncertainty for learners and parents may have to move their children^{lv}. Also, the means test of partial and total exemptions is complicated. There is concern that people will not be able to understand it and work out if they qualify for an exemption^{lvi}. The Department is confident that there is enough flexibility in the provisions to address these concerns^{lvii}.

Legislation and policy is criticised generally as not being responsive to realities. Rather, the legal framework sits more comfortably with those who are privileged.

“The law sees the learner as having access to middle class privileges, rather than as being poor, inadequately housed and fed.”^{lviii}

There are still those who criticise the current system of paying school fees by arguing that the system is fundamentally flawed in that the funding follows the school and not the individual^{lix}.

3.2.1.3 Transport costs can be a far greater financial burden than school fees

Many children, particularly those in rural areas, have long distances to travel to school. Transport costs are often more of a burden on parents and caregivers than school fees. For many parents, transport expenses cost far more than actual school fees. The Department's policy is to assist only where a learner has to walk further than five (5) kilometres per day. The Department is aware of this issue and is considering various initiatives to address this challenge. An example is the Free State Department of Education in which farm schools have been consolidated and boarding facilities provided to learners.

The Gauteng Department of Education has had a dramatic increase in the number of learners requesting subsidised transport following the implementation of transport assistance programmes^{lix}.

3.2.1.4 School uniforms are another burden for poor parents

The purchasing of school uniforms is a further financial burden for parents and caregivers. The Department is currently addressing this issue through developing National Guidelines on School Uniforms (in terms of section 8(3) of SASA) that standardise and simplify school uniforms.

3.2.1.5 Many learners are hungry at school

In South Africa, many children attend school on a daily basis having had little or nothing to eat. In order for effective learning to take place it is necessary that these children are provided with food. School meals support physical accessibility and are a major incentive for children to go to school^{lxi}.

The National School Nutrition Programme (NSNP) is administered by the Department of Education. In 2004/5 the programme fed approximately 5 million children in 16 000 schools at a cost of R838 million^{lxii}. During the Public Hearing a number of criticisms of the programme were raised, such as:

- The programme stops feeding children at a particular grade.
- It does not extend to children in the secondary schools.
- The reliability of the service is questionable in some areas.

The Eastern Cape Provincial Department of Education representative told the Public Hearing about the difficulties they have experienced with service providers such as providers defaulting on their obligations and children receiving food on three days only instead of five^{lxiii}.

3.2.1.6 The drop-out rate of learners is concerning

The assertion was made that whilst South Africa enjoys a high enrolment rate this belies the reality that many children are dropping out of the system along the way. Many question whether we have accurate indicators to measure enrolment rates.

According to the National Professional Teachers Organisation of South Africa's (NAPTOSA) observations, based on the 2002 "Education Statistics in South Africa at a Glance", figures demonstrated that:

- Access to Grade R, which is compulsory, is considerably lower than the number of children in Grade 1 (1 007 865 learners less).
- The drop-out rate between grade 1 and grade 3 is 26,2%.
- The drop-out rate between grades 4 and 6 is 3,5%.
- The drop-out rate between grades 9 and 10 is 19,6%^{lxiv}.

These observations indicate that South Africa has a disturbingly high drop-out rate in the first three years of schooling. The Department does not agree with these observations and there appears to be somewhat of a debate concerning statistics and drop-out rates^{lxv}.

These figures must also be considered in the light of the fact that South Africa, in comparison with other sub-Saharan countries, has not had the destabilising effects of internal war to contend with. Also, unlike many other countries that were emancipated from colonial rule, South Africa has had the advantage of inheriting an extensive – albeit grossly unequal – infrastructure from the Apartheid regime^{lxvi}. Clearly, initial access does not guarantee continued access.

3.2.1.7 South Africa is unusual as more girls than boys remain in the system

In South Africa's 2005 EFA Country Status Report under progress made in gender it is stated:

"While there has been a net decline in enrolment in the final examinations for both male and female learners, females continue to outnumber males and, as a cohort, perform better in the examinations."^{lxvii}

South Africa is one of two or three countries in the world where there are more girls than boys in high school^{lxviii}. Whether this is an achievement to be proud of is questioned, as the underlying reasons for why more females rather than males are in school need to be understood. As some argue, "(boys) are dropping out into anti-social activities and criminal activities and we need to make sure that we keep boys in school in some way or the implications of that are quite staggering at all levels."^{lxix}

3.2.2 Children infected and affected by HIV/AIDS

In South Africa, there are an ever-increasing number of young children who are infected and/or affected by HIV/AIDS through the death of one or both parents or through having to care for an ill parent or family member. Despite this, very little was mentioned about this issue during the Public Hearing.

The impact on education is unclear because studies are inconclusive. However, one survey amongst Grade 10 learners indicated that 7% of learners in the Free State and 4% of learners in Limpopo were double orphans and 10% of learners were maternal orphans^{lxx}. The Nelson Mandela Study, *Emerging Voices*, found that teachers are not generally aware of learners who have lost family members due to HIV/AIDS and that there is silence due to taboos and stigma surrounding sexuality and HIV/AIDS which prevents open discussion. However, it is clear that the impact of HIV/AIDS makes existing challenges in the education system worse^{lxxi}.

The Department has drafted a National Policy on HIV/AIDS for Learners and Educators in Public Schools and Further Education and Training Institutions^{lxxii}.

There is still not much research that has been conducted to determine the impact that this has on the child's right to basic education. A recent Human Rights Watch Report pointed out that these learners are particularly vulnerable in that they

- are prone to discrimination, social exclusion, rejection and isolation,
- have an increased inability to pay school fees and other related educational costs (due to poverty but also medical and funeral costs),
- have increased nutritional demands, and
- they are more likely to be subjected to sexual exploitation, trafficking, hazardous labour and disinheritance^{lxxiii}.

The Report concludes by saying: "(f)ar from addressing the specific educational disadvantages of AIDS-affected children, governments are simply letting them fail."^{lxxiv}

"Education can be considered a 'social vaccine' against HIV/AIDS: evidence suggests that HIV prevalence is lower among those with higher levels of education." Human Rights Watch^{lxxv}

3.2.3 Violence and abuse

3.2.3.1 There is too much violence and abuse in our schools

South Africa experiences unacceptably high levels of violent crime. This crime spills over into the schools and playgrounds. During the Public Hearing, a learner painted a picture of teachers indulging in sexual relationships with other teachers during school time and on school property. Of greater concern were the accounts of teachers taking advantage of their positions of authority and coercing sex from girls. An example was given of a learner coming late and having to exchange sex with a teacher in order to be allowed onto the school premises that had been locked. A second example was of teachers exchanging food for sex from poor girl learners. The learner went further to state that in her view the school does not protect the learners and that teachers receive warnings or are merely told not to do it again^{lxxvi}.

"To put it starkly, getting young people to school is important but doesn't make sense if the young women who get there are then raped."^{lxxvii}

A Human Rights Watch Report confirms that on a daily basis teachers and male learners subject girls across the country to sexual abuse and harassment in our schools. The effects of this violence impacts on the right to a basic education as it results in poor performance by the learner due to an inability to concentrate, losing interest in school or dropping out. The Report confirms that in many instances the violence is concealed^{lxxviii}.

School officials recognise that school safety is a significant challenge. Not only is sexual abuse a serious issue but so too is the infiltration of gangsterism and drugs into schools. This calls for an interdepartmental approach that includes the community in keeping schools safe. At the Public Hearing, learners recounted how gangsters come onto school property through holes in the school fences^{lxxxix}.

Many schools are vandalised. In the Eastern Cape this was cited as one of the biggest problems facing the provincial directorate responsible for infrastructure. Vandalism takes place on a daily basis in townships. This drains the resources of the provincial department and impacts on the speed with which upgrading of infrastructure can take place. In the past, many schools were provided with security guards, caretakers and cleaners. This is no longer the case and schools have become soft targets for crime. This challenge is being addressed by engaging community policing forums and providing additional security fences to the schools^{lxxx}.

Finally, whilst corporal punishment has been prohibited in South African schools there are still reports of its ongoing use. It has been found that it is still used in some schools, often with the tacit support of the parents. Teachers respond by saying that they do not know what alternatives to use. Research shows that children vigorously oppose the use of corporal punishment^{lxxxi}.

3.2.4 Inclusivity

3.2.4.1 Education facilities are either not available or not accessible for some learners with disabilities

Although there has been an increase in the number of LSEN (Learners with Special Educational Needs) schools (270–390 schools between 1997 and 2000), there is unequal access across the country to these schools. The example is given of Gauteng having 100 LSEN Schools for 28 320 learners with disabilities, whereas the Eastern Cape has 43 LSEN schools for 8 379 learners with disabilities. Given that there are approximately 1,6 million and 2 million learners in the respective provinces, it can be inferred that there are insufficient numbers of LSEN schools available in the Eastern Cape^{lxxxii}. The pattern of inequality based on the wealth or poverty of a province is repeated. Learners with disabilities in poorer provinces are being disadvantaged through inequitable access to LSEN facilities. In addition, where inclusive education is implemented, teachers do not always feel competent and confident to deal with the special needs of children with disabilities^{lxxxiii}.

The Department is aware that there are shortcomings in the system. The Gauteng Department of Education admits that the "... physical infrastructure of the learning institutions remains a barrier for learners with physical disability."^{lxxxiv} The Deputy Minister of Education is aware that some learners with disabilities are not in school and "... are not being paid attention to"^{lxxxv}. This is confirmed in the Nelson Mandela Foundation Report, *Emerging Voices*. "In rural schools, it seems that learners with disabilities either do not go to school because of the difficulties in accessing schools, are hidden by their families, or are mainstreamed by default without any recognition of the attention they may need."^{lxxxvi}

3.2.4.2 Inclusive education is not working for children with disabilities

White Paper 6 on Inclusive Education (Special Needs Education: Building an Inclusive Education and Training System) (2001) sets out a framework policy for providing education to children with disabilities. Whilst the policy supports a holistic approach towards disability and mainstreaming, it is recognised that special schools are needed for those learners who cannot be easily mainstreamed^{lxxxvii}. During the Public Hearing, the Commission received detailed submissions from the blind and deaf communities. These submissions are useful in highlighting some of the challenges that are faced by learners with disabilities.

According to representatives of learners with disabilities, the policy of inclusive education is yet to be realised through schools demonstrating the necessary adaptability to include these children. They are critical of the policy that provides for learners with disabilities. In addition, the current policy is not implemented satisfactorily or in a manner which is in these childrens' best interests. Thus, despite changes in policy it cannot be said that the education system is accessible to all learners with disabilities.

The blind community criticised the policy and current provisioning of education on the following grounds:

1. The White Paper does not adequately address the needs of blind and partially sighted learners.
2. Provincial departments of education are uncertain on how to implement the Policy.
3. The curriculum for blind learners is not adequate in that it does not address their specific learning needs such as braille skills, social skills and mobility training.
4. The Department underestimates the complexity of producing braille materials and there are not enough of them.
5. Inclusive education, if implemented properly, is an expensive route to follow. There are insufficient options being provided to parents.
6. Rural learners who are blind are not accommodated in the education system.
7. There are no comprehensive statistics on the number of blind and partially sighted learners upon which to monitor and evaluate the provision of education.
8. There is a lack of consultation with the blind community on how to approach and deal with many of these issues.
9. More research is needed^{lxxxviii}.

Blind SA further asserts that the Department should legislate the manner in which education will be provided to blind persons and that it is insufficient that it is merely set out in a White Paper.

“We believe that the White Paper, as it stands, violates the fundamental rights of learners because it lays down philosophical principles of inclusion only, but it does not commit the State in sufficient detail by way of legislation to providing the means required by blind children and their parents to have access to the education system, whether through special needs education or through public school education.”^{lxxxix} Blind SA

The submission by the Deaf Federation of South Africa had the following criticisms:

1. In South Africa, educating deaf learners is centred on a medical approach. This approach focuses on speech training at the expense of education. This results in the lack of a regular curriculum and many deaf persons being functionally illiterate.
2. In its experience, the policy contained in the White Paper has not been translated into reality.
3. The Department fails to consult and engage sufficiently with the deaf community. In its view, the Department should start consulting as they have demonstrated little or no knowledge of deaf education practice, SASL or deaf culture.
4. Deaf people are not provided with sufficient opportunities to speak for themselves. Instead they are too often reliant on others who interpret on their behalf^{xc}.

It was not only representatives of learners with disabilities but also other role-players that pointed out the challenges facing inclusive education. The Federation of Governing Bodies of South African Schools (FEDSAS) stated that:

- White Paper 6 on Inclusive Education is being interpreted and applied differently throughout the country.
- The implementation of the policy is not always in the best interests of the child.
- Educators do not always have the necessary knowledge to teach children with disabilities effectively in a way that caters for their special needs.
- This results in social exclusion rather than inclusion of learners with disabilities within the classroom^{xc}.

3.2.5 Infrastructure

In order to ensure the availability of education, the right to basic education requires government to establish and fund schools. The responsibility to provide public schools rests with the Member of the Executive Council (MEC of a province) and the funds come from the provincial budget. This leads to different amounts being spent on education in different provinces. Provision is also made in SASA for public schools on private property, such as farm schools. In addition, provision is made for democratic participation by parents and communities in the governance of schools through the creation of statutory School Governing Bodies (SGBs).

Infrastructure also refers to functioning schools that are provided with basic resources such as buildings, sanitation, water, electricity, telephones, etc.

The Department is still in the process of addressing inherited stark inequalities and redressing them in a context of huge demographic shifts taking place in some provinces. There are still many schools that are without basic infrastructure such as telephones, water, electricity and toilets. The pattern of inequality from the past persists with those provinces that are historically poorer being the ones that have the least basic facilities.

The School Register of Needs Survey (SRNS) conducted in 1996 and 2000 demonstrates that improvements have occurred. However, there is still a need for further improvement.

“The present survey estimates that 27% of schools have no running water, 43% have no electricity, 80% have no libraries and 78% have no computers. Even in schools that have toilets, 15,5% are not working. The survey also suggests that due to overcrowded conditions, over 10 700 additional classrooms are needed.”^{xcii}

Since 2000, the Department has implemented a pro poor policy in order to provide more resources to those schools that are more needy. However the policy is criticised because it excludes major budget items such as capital expenditure and teachers’ salaries.

3.2.6 Teachers

3.2.6.1 Teachers lie at the heart of many of the challenges

Teachers are undoubtedly the most important role-players within the education system. They are the people who spend large amounts of time with our country’s children and are responsible for ensuring that quality learning takes place successfully in the classroom. A number of issues concerning teachers came under the spotlight during the Public Hearing. A picture was created of many teachers not playing the role that they ought to. The reasons for this were varied.

Whilst there are many teachers who are passionate, committed and hard working, the Public Hearing was told of too many teachers who have low morale; spend too little time in the classroom; are unqualified or underqualified; are not sufficiently trained in the new curriculum; use outdated teaching methods in classes that are too big; and, who are disconnected with the communities in which they teach.

“It is clear that a supportive social context might very well play a crucial role in promoting academic achievement; but the ways in which this happens is still far from clear. What is clearer, is that teacher quality, teaching material (principally textbooks), and instructional time hold the clearest evidence of impact on student achievement.”^{xciii}

3.2.6.2 Teachers lack passion and a culture of learning and teaching

Low teacher morale was consistently raised as a serious issue. According to a recent report, 54% of educators indicated that they had thought about leaving, whereas 29% indicated that they thought about this often. The most likely reason for a teacher to quit is a change in career choice. Other reasons for leaving include low job satisfaction due to lack of career advancement and recognition and, dissatisfaction with teaching conditions (e.g. working hours, work load, policy overload, lack of discipline in the classroom and lack of respect from learners)^{xciv}. The high rate of low morale undoubtedly impacts on behaviour and the many accounts given of teachers not caring, arriving late or simply not being in the classroom.

3.2.6.3 Teachers are not in the classroom enough

This issue was raised many times during the Public Hearing. The pattern of inequality repeats itself, with the poorer the school, the less likely the teacher is to be in the classroom. A study in 2005 showed that teachers in former white schools spent 19.11 hours on average teaching per week whereas in black schools, teachers spent 15.18 hours teaching per week^{xcv}. Teacher unions insist that they are not tolerant of teachers who are not in the classroom. The Department is aware of the problem and states quite frankly:

“No training is needed to arrive at school on time or to teach for the full seven-hour day.”^{xcvi}

Reasons given for teachers not being in the classroom included:

- Teachers simply not arriving on time or leaving early.
- Involvement in union meetings and activities.
- Departmental training, functions, workshops and conferences
- Attendance of funerals.
- Illness (of concern is the figure of 12,7% of teachers who are HIV-positive).

Thus, many argue that a basic starting point in addressing educational challenges in the country is simply to ensure that teachers are in their classrooms

3.2.6.4 Teachers are unqualified or underqualified

In 1994, there were approximately 70 000 unqualified teachers and many poorly qualified teachers. Since then, 40 000 teachers have had their qualifications upgraded. There are still approximately 30 000 unqualified teachers^{xcvii}. In addition to unqualified teachers are the many teachers who were trained at the impoverished teachers' training colleges in the former homelands^{xcviii}. Also, the 1996 right-sizing of the Department through voluntary severance packages has been acknowledged as a failure. Many teachers with good qualifications and who could command work elsewhere were the first to take advantage of these severance packages.

The 2005 Education Labour Relations Council Report indicates that there are insufficient numbers of teachers being currently trained, with fewer being trained than are leaving the profession. By 2008 it is anticipated that there will be a projected shortfall of between 32 000 and 34 000 teachers. Although initiatives could be introduced to reduce this shortfall, a best case scenario still indicates a shortfall of 15 000 teachers due to resignation, death and retirement. It is further predicted that the impact will be felt most in rural schools and schools situated in poor urban areas^{xcix}.

In addressing the need to train more teachers, it was pointed out at the Public Hearing that with teacher training being moved to universities, the profession has become less accessible to poor students who cannot afford the fees. This situation is further compounded with bright students pursuing other avenues of study at university that will provide them with better paying jobs^c. In 2006, the Department will allocate R63 million through the National Student Financial Aid Scheme (NSFAS) for teacher education bursaries^{ci}.

3.2.6.5 Teachers have not been trained to implement the new curriculum

Many role-players stated that teachers have not been sufficiently taught how to implement the new curriculum and struggle to do so. Teaching resources are often not available or some teachers do not know how to utilise the teaching resources. On the other hand, parents cannot understand why teachers say that OBE is difficult whilst they are constantly on OBE training workshops. Whilst, SADTU, the teacher union which represents 220 000 teachers, says there is no clear departmental strategy for teacher development and ongoing support,^{cii} academics say:

“(T)he quality, depth and sophistication of subject matter knowledge among South African teachers is perhaps the single most important inhibitor of change in education quality measured in student achievement terms.”^{ciii}

3.2.6.6 Teachers use old methods of teaching

Despite the introduction of OBE, many teachers have not changed or have been unable to change their teaching methods as this quote demonstrates:

“(S)chool days are dominated by formal and customary procedures such as greeting, cleaning, assembling, praying, writing, corrections and taking dictation. There is no reference to spontaneous interaction during lessons.”^{civ}

3.2.6.7 Teachers have too many children in their classes

Although reports reflect average class sizes, there were a number of accounts of teachers having large classes, particularly in rural and township schools. Learner/teacher ratios impact on the quality of teaching and learning that takes place within a classroom.

3.2.6.8 Teachers are disconnected from the community in which they teach

It is difficult to recruit and retain teachers in rural areas. Many educators in these schools live some distance from the school where they work. A recent study shows that teachers in rural areas are mostly women who live on average 36km away from the school where they teach and who prefer not to live close to the school where they teach.^{cv}

3.2.7 Language of learning

3.2.7.1 Mother-tongue language is needed as a medium of instruction

Language and race are inextricably linked in South Africa and mother-tongue language, as a medium of instruction, has to be discussed within its historical context. The Apartheid government used language to divide racial groups and mother-tongue education was enforced in all schools. The language policy of forcing Afrikaans to be taught in black schools resulted in the 1976 Soweto uprisings. This history of racism perpetuated through language has influenced how language usage in schools has been dealt with since 1994.

Section 6(2) of SASA provides that SGBs can determine the language policy of a school. Giving this power to the SGB was specifically aimed at improving democratic participation in education. In other words, parents determine the language of instruction and the number of languages taught at a school. SASA must be read together with the 1997 Language in Education Policy. Furthermore:

“The revised National Curriculum enhances multilingualism, diversity and respect for different language traditions in a national context, and provincial departments of education are obliged to make the necessary arrangements to ensure that the language requirements of learners are met at local level”^{cvii}.

The importance of mother-tongue language as a medium of instruction was consistently raised during the Public Hearing as a necessity for effective learning to take place. “It is increasingly recognised that there is a strong educational, political and cultural rationale for home-language instruction, especially in the early years of schooling.”^{cviii}

Currently the debate on this issue is centred on the role of SGBs; the possible exclusion of black learners from the former Model C schools; and the lack of recognition of African languages in former Model C schools.

The granting of power to SGBs to determine language policy is increasingly being questioned. Many SGBs are not fully functional or sufficiently representative and thus the decision may not reflect the wishes of the broader community or broader parent body. Concerns are being raised over whether parents act in the learners’ best interests, are sufficiently informed about the consequences of their language decisions and whether the decisions are in the best interests of the learners.

“Since the language policy is centred on parental choices, there are no guarantees that parents would opt for language policies that are supportive of cognitive growth and broad transformation goals of the country in general.”^{cxiii}

Another concern is the potential of SGB members to use the chosen medium of instruction to directly or indirectly influence the racial composition of a school. Indirectly this impacts on accessibility to a school and retards the Department’s broader transformation goals. It has also resulted in some instances of schools being underpopulated, as there are insufficient learners who want to be instructed in the languages that are offered^{cxiv}. This, in turn, impacts on the Department’s responsibility of ensuring that education is available.

During the Public Hearing the issue of a lack of acknowledgment and promotion of African languages in former Model C schools was raised. Despite paying substantial fees and many SGB teacher posts being made available, offering African languages as a subject is clearly not a priority in some schools. Parents who raise this issue are critical of the Department, arguing that they do not engage sufficiently with language issues, that they are not monitoring what is happening and that there is no sense of urgency to deal with the issues.^{cxv}

3.2.7.2 Learners in rural poor schools do not understand their teachers

An issue that is not debated as loudly is the impact of mother-tongue learning on educational outcomes in poor, rural and township schools. In rural areas it is often difficult to obtain and retain teachers. Very often these teachers do not speak the language or the dialect that is used in the area. The Nelson Mandela Report, *Emerging Voices*, states that 42% of children said that they had difficulty understanding their teachers^{cxvi}.

Studies also demonstrate the necessity of teacher proficiency in the language that they use to teach in order for effective learning to take place. This must be placed in the context of the increasing number of monitoring tools that are consistently demonstrating that South Africa is simply not achieving the educational outputs that it ought to, when compared with its resource inputs.

“An inadequate command of language, whether by the teacher, the learner or both, constitutes a serious barrier to effective schooling and education.”^{cxvii}

3.2.7.3 Many parents want their children to be taught in English

Whilst English is the home language of only 8,2% of the population, it enjoys the status of being a global economic language. For many it is an aspirational language. Many parents want their children to be taught in English from as early an age as possible (subtractive / transitional bilingualism). However, research has indicated that mother-tongue learning is critical for the absorption of numeracy and literacy skills. Once these basic skills have been obtained through mother-tongue learning, then additional languages can be added (additive multilingual models).

3.2.8 Governance and community participation

3.2.8.1 Many schools do not have adequately functioning school governing bodies

The democratic dispensation sought to ensure the participation of parents and communities in the governance of schools. SGBs are created in terms of SASA. All of their functions and powers emanate from this legislation. In terms of section 16, the governance of every school is vested in its governing body. Every SGB must have a constitution, a code of conduct and has a number of duties including administering and controlling the schools property, buildings and grounds, and recommending the appointment of educators, amongst others. SGBs also have powers to determine policy related to language, religious observances and admission to schools. There are over 200 000 parents who participate in SGBs across the country. The Department has recently conducted a review of SGBs.

SGBs have proven to work most effectively in economically advantaged communities and former Model C schools. In these schools, SGBs are positive and essential for effective school governance. Some argue that SGBs are used to sustain privilege in these schools by providing a vehicle through which resources can be raised to sustain quality education. However, in poor communities these structures appear to not function well. This leads to the continued marginalisation of those who are poor and prevents education from transforming the lives of all children. The Ministerial Report on Rural Education confirms this by stating that governance and management structures are suited to urban environments and not rural environments. Furthermore, the model of schools raising their own funds for their own development simply does not work in impoverished communities^{cxiii}.

“In spite of the considerable efforts and achievements since the democratic transition to improve the participation of communities in education and training, it is clear that some communities remain marginalised. The experiences and voices of working class, poor, vulnerable and disabled people are not heard clearly or loudly in the education and training system.”^{cxiv}

The Public Hearing was repeatedly informed of SGBs that are not functioning effectively, that create tensions at a number of levels and that do not always act in the best interest of children.

- In rural areas, there is tension in relationships between teachers and parents and between teachers and learners. “On the surface things go well but underneath there are simmering resentments and sometimes anger as a result of unmet needs and unrealised capabilities.”^{cxv}
- There are tensions in many relationships between principals and SGBs. Some schools were alleged to have autocratic principals who take advantage of illiterate parents and take control of the SGB. Parents become scared of the principal and there is a lack of any meaningful engagement on issues. Many SGBs are afraid to approach principals^{cxvi}.
- There are even tensions in relationships and struggles between SGBs and provincial government. According to FEDSAS provincial government views some SGBs as the enemy^{cxvii}.

- SGBs are not sufficiently representative in terms of both gender and race. SGBs tend to be predominantly male and in some Model C schools there are few black parents who sit on these SGBs. “A recent survey illustrated that women are, relatively-speaking, under-represented on the governing bodies, especially so with respect to parent members. Educator and learner representation is more balanced. In addition, most SGB chairpersons are male.”^{cxviii} This leads to exclusion within communities.
- School Governing Bodies do not always act in the best interests of children. SGBs have the power to determine the language policy of the school. However, parents are not always the most well-informed persons on such issues to make decisions that are in children’s educational and developmental best interests.

In summary, a picture was created of SGBs that do not function in poor, marginalised and rural communities. This image is also within the context of others saying: “(t)he functionality of schools is directly linked to the functionality of the SGBs”^{cxix}.

3.2.8.2 Social participation is a necessary component for education

There was great concern expressed during the Public Hearing over either the lack of community and parental involvement in the governance of schools or the dysfunctionality of the governance structures. The concern stems from the exclusion of parents due to structures that are not facilitating the participation of parents and communities.

“It is not communities that are dysfunctional. The policies and structures are not working. That is, policy and structures do not fit the communities. More than just policy and symbolism is required. Efforts should be made to hear the communities and parents.”^{cxx}

Given that the social context of South Africa is fraught with challenges, it is necessary to ensure community involvement. It is important that everyone responds to the challenges that are facing the education system. It is thus vital that the structures created to facilitate the voices of parents are effective and accessible for all sectors of the community and not just those who are privileged or urban.

It was suggested that if necessary, different structures must be created that would ensure that voices of different communities are heard. For example, arising out of research in rural areas, the Nelson Mandela Report, *Emerging Voices*, proposes the establishment of community forums or forums for rural education as a vehicle that would more effectively facilitate the voices of the rural poor. There are no quick fix solutions, there must be meaningful participation and decision-making empowerment by communities.

The issue of non-participation of parents and communities also impacts on broader issues such as rural development. It is necessary for the voices of parents to be heard in order for rural education to play a role in rural development and assist in the development of social policy^{cxxi}. Education is a social process and social participation is thus necessary for it to take place effectively and be adaptable to the communities in which it is located. Education is part of development and social participation is important.

“(w)e tend to define these communities in economic terms, specifically defining them in terms of what they do not have, and the danger with that approach is that we tend to hide the strengths that these communities have.”

“It takes a village to raise a child. If you want to have a good nation you have to provide them with a good education.”^{cxixii}

3.2.9 Service delivery and monitoring

3.2.9.1 Districts need to be prioritised as the service delivery vehicle of education

Two key messages came through during the Public Hearing. Firstly, there is insufficient communication and planning taking place between national, provincial and district spheres of government. Secondly, support and services at the district level are lacking and this is where support should be concentrated.

NAPTOSA pointed out that there is insufficient communication and planning. It is difficult for provincial departments to plan their budgets due to the rate of change, often without clear directives, time lines or adequate warning time.^{cxxiii}

Only the Western Cape, Eastern Cape, Gauteng and North West provincial departments made written submissions or participated in the Public Hearings. The anticipated inputs from the other provinces never materialised.

Challenges faced by district offices that impact on their ability to carry out support functions include:

- District offices lack sufficient resources to provide an adequate support function^{cxxiv}.
- There is a lack of human resource capacity with a high percentage of unfilled posts at provincial and district level^{cxxv}.
- There is an emphasis on administration at the expense of curriculum and pedagogy^{cxxvi}.
- Districts are not included in national initiatives and thus become side lined^{cxxvii}.

“The role of the district office is in most cases not considered to be supportive. The district office is not visited often, and is still seen as the ‘inspectorate’. District officials are known to call educators into workshops at the last minute with no contingency plans for learners. When the school itself makes special requests for assistance, the district office is seen to respond negatively and rudely.”^{cxxviii}

The Department clearly identified the district level as the place where a concentration of efforts is needed to ensure effective delivery of the right to basic education. The education system is being hampered by a lack of service delivery at district level. To address this issue, the Department identified the following solutions: introduction of norms and standards for districts; a concentration of resources at district level; and developing support structures that suit the needs of districts. From the end of 2005, the Department released matric results on a district level in order to assist in identifying and prioritising where support is needed^{cxxix}.

3.2.9.2 There is a lack of monitoring and accessible information

A recurring theme during the Public Hearing was the need for better monitoring and information recording and gathering systems, in order that government can make decisions based on empirical data. Indicators are needed with regular information inputs to ensure that these are achieved. A rhetorical question that was posed during the Public Hearing was: how are issues addressed if there is insufficient information to inform what is currently happening?

“It is very difficult for me to accept that one cannot, by picking up a telephone, get from the Department of Education immediate data on how many kids progress through school at what rate. This should be right in front of the computer of every educational planner”^{cxxx}

Matric results are currently the only repeat measure of learner performance. These results demonstrate that:

- There are huge inequalities of performance across the provinces;
- Only 8.7% of learners passed mathematics on higher grade and 16,7% of learners passed physical science on higher grade (with worst performance in poorer provinces); and
- 30% of students fail their matric exams^{cxxxix}.

Using matric results as an indicator of quality, education is criticised as not all children who enter the education system in Grade 1 complete up to Grade 12. It thus ignores many learners who enter the system and leave before competing Grade 12.

Various monitoring assessment tools paint a bleak picture of what is happening in education. Various assessments have been conducted nationally and internationally. There are many studies that demonstrate how quality education is not being achieved in South African schools, for example:

1. The Department monitors results by determining learner attainment in literacy, numeracy and life skills as indicators in Grades 3, 6, & 9. The Department stated: "... the results quite honestly are a national disaster."^{cxxxix}
2. In 2003, the TIMSS Survey (Third International Mathematics and Science Survey), rated South African learners as the lowest in the world^{cxxxix}.

South Africa is also not faring well in comparison to other countries in the region. "Thus although Tanzania spends about half as much as South Africa in terms of expenditure over GNP, scores measuring reading skills amongst Tanzanian learners are about 50% higher than South Africa's scores."^{cxxxix}

The need for reliable and accurate monitoring systems was raised in many contexts such as:

- In relation to the budget, the present per capita funding convergence in provincial education funding is largely unplanned and un-theorised. There are no policies that guide funding allocations. This points to the need for a monitoring system that provides provinces with data upon which spending is determined^{cxxxix}.
- Key issues are not picked up on due to a lack of planning and adequate education management information systems.
- "The monitoring and evaluation of the six Dakar Goals is affected by lack of sufficient data, exacerbated by the demands of the ongoing reforms within the education system. Also, in the past ten years South Africa was primarily addressing the legacy of segregation and differentiation in education, therefore more focus was on redress. Also, during these ten years South Africa was transforming the education system in terms of input equalisation (learner educator ratios, funding) and process transformation (policies and curriculum change)^{cxxxix}.

In response to this identified need, the Department has established a directorate that will focus on regular systemic evaluations. The Department also intends establishing a management information system where each learner will have a unique number and can be traced through the system^{cxxxix}.

Some who participated in the Public Hearing identified monitoring as the solution to addressing the current challenges facing education^{cxxxix}. Others, though, have concerns about the current capacity to take on this enormous task: "... many policy makers and researchers find themselves isolated and perhaps even depressed rather than energised by the challenge."^{cxxxix}

Box 3.1. Summary of key issues and the 4As

		<i>available</i>	<i>accessible</i>	<i>acceptable</i>	<i>adaptable</i>
1.	<i>Poverty</i>		√		
2.	<i>HIV/AIDS</i>		√		√
3.	<i>Violence and abuse</i>		√	√	
4.	<i>Inclusivity</i>	√	√		√
5.	<i>Infrastructure</i>	√			
6.	<i>Teachers</i>	√			
7.	<i>Language of learning</i>	√	√		√
8.	<i>Governance & community participation</i>		√		√
9.	<i>Service delivery and monitoring</i>	√			√

Notes

- xlv. Bloch, G, Development Bank of South Africa, "The Crisis in Education: DBSA Submission to Human Rights Commission (Basic Education)", 21 September 2005, 1
- xlvi. Transcription, Public Hearing, Bloch, G, 137 (Day 1)
- xlvii. Transcription, Public Hearing, Colditz, P, 137 (Day, 2)
- xlviii. Transcription, Public Hearing, Jansen, J, 4 (Day 3)
- xliv. See note xxxix 5
- I. Transcription, Public Hearing, Western Cape Department of Education, Shay, S, 123 (Day 1)
- ii. Transcription, Public Hearing, National Department of Education, Hindle, D, 122 –3 (Day 3)
- iii. Ibid 102(3)
- liii. Nelson Mandela Foundation, "Emerging Voices: A Report on Education in South African Rural Communities", HSRC Press, 2005, 51
- liv. Transcription, Public Hearing, Veriava, F, 38-9 (Day 2)
- lv. Ibid 42(2).
- lvi. Ibid 42(2).
- lvii. Transcription, Public Hearing, National Department of Education, Hindle, D, 107 (Day 3)
- lviii. SADTU, South African Democratic Teachers' Union, "Submission to the Public Hearing on the Right to Basic Education, 9
- lix. Transcription, Public Hearing, Colditz, P, 88 (Day 2)
- lx. Gauteng Provincial Government, Department of Education, Right to Basic Education, Draft Document, 20
- lxi. See note liii 55
- lxii. xxxix, 5
- lxiii. Transcription, Public Hearing, Eastern Cape Department of Education, Tom Z, 199 (Day 1)
- lxiv. NAPTOSA," Submission: Public Hearing on the Right to Basic Education South African Human Rights Commission". Undated, 13

-
- lxv. Communication from Department of Education, 17 May 2006
- lxvi. Transcription, Public Hearing, Jansen, J, 6 (Day 3)
- lxvii. Department of Education, "Education For All – 2005 Country Status Report: South Africa", 2005, 7
- lxviii. Transcription, Public Hearing, Jansen, J, 9 (Day 3)
- lxix. Ibid
- lxx. Education Labour Relations Council, "Educator Supply and Demand in the South African Public Education System, Integrated Report", HSRC Press, Cape Town, 2005, 22
- lxxi. See note liii 57-9
- lxxii. General Notice 1926/1999
- lxxiii. Human Rights Watch, "Letting Them Fail, Government Neglect and the Right to Education for Children Affected by AIDS", October 2005, 10
- lxxiv. Ibid 4
- lxxv. Ibid
- lxxvi. Transcription, Public Hearing, learner, 89, 93 & 94(Day 3)
- lxxvii. Anti-Privatization Forum (APF & Education Rights Project (ERP), "Terms of reference of the Public Hearing on the Right to Basic Education," undated, received 26 September 2005
- lxxviii.
- lxxix. Human Rights Watch, "Scared at School: Sexual Violence in South African Schools", March 2001 (online at <http://www.hrw.org/reports/2001/safrica>)
- lxxx. Transcription, Public Hearing, Learner, 95(Day 3)
- lxxxi. Transcription, Public Hearing, Eastern Cape Department of Education, Tom, Z, 182 – 196(Day 1)
- lxxxii. See note liii, 92 - 92
- lxxxiii. See note lxiv 12
- lxxxiv. Ibid11
- lxxxv. Gauteng, DoE written submission, 24
- lxxxvi. Transcription, Public Hearing, Deputy Minister of Education, Surty,E, 72(Day 1)
- lxxxvii. See note liii 59
- lxxxviii. Transcription, Public Hearing, National Department of Education, Hindle, D 111(Day 3)
- lxxxix. Blind SA, "Submission to the SAHRC concerning the Fundamental Right to a Basic Education with reference to Disabled Learners and Inclusive Education", prepared by J Roos obo Blind SA, 22 September 2005
- xc. Ibid
- xc. DeafSA, Deaf Federation of South Africa, letter dated 10 November 2005
- xcii. Transcription, Public Hearing, Colditz 92(2) &105(3)
- xciii. See note lxxvii 5
- xciv. Jansen, J D, "Does Money Matter? Towards an explanation for the relationship between spending and performance in education in South Africa", Faculty of Education, University of Pretoria, July 2005, 12
- xcv. Educator Supply and Demand in the South African Public Education System, Integrated Report, HSRC Press, 2005, 50 - 51
- xcvi. See note xciii, 15
- xcvii. Transcription, Public Hearing, National Department of Education, Hindle, D, 106 (Day 3)
- xcviii. Ibid 100(3)
- xcix. See note xxi 106
- c. See note xciv 108 & 91
- ci. See note xlv 10
- cii. Department of Education, e-mail correspondence, 17 May 2006
- ciii. Transcription, Public Hearing, Ngobeni, J, 45 (Day 3)
- civ. See note xciii 13
- cv. See note liii 90
- cvi. Ibid 113
- cvii. See note lxvii 10
- cviii. Nelson Mandela Foundation, "Reflections on 10 Years of Basic Education", 24
- cix. See note lx, 25
- cx. Department of Education, "Submission on the right to basic education", 27 October 2005, 9
- cx. Transcription, Public Hearing, Khanye, V, 96-7 (Day 1)
- cxii. See note liii 88
- cxiii. SAOU, South African Teachers' Union, "Submission: The Right to Basic Education", 27 September 2005, 7
- cxiv. See note xxiv 32 -3
- cxv. DoE 10 Years of Education & Training, 57
- cxvi. See note liii118
-

-
- cxvii. Transcription, Public Hearing, Lukhele, D, & Vally, S, 30 - 33 (Day 3)
- cxviii. Transcription, Public Hearing, Colditz, 94 (Day 2)
- cxix. See note xxiv 36
- cxx. Transcription, Public Hearing, Colditz, P, 93 (Day 2)
- cxxi. Transcription, Public Hearing, Vali, S, 25 (Day 3)
- cxxii. Transcription, Public Hearing, Morojele, M, 11 (Day 2).
- cxxiii. Transcription, Public Hearing, Solo, M, 170 (Day 1)
- cxxiv. NAPTOSA, written submission, 5
- cxxv. See note xxiv 32
- cxxvi. NAPTOSA, written submission, 9
- cxxvii. See note liii 29
- cxxviii. Chisholm, L, "The Quality of Primary Education in South Africa' 2004, 16
- cxxix. See note liii, 129
- cxix. Transcription, Public Hearing, National Department of Education, Hindle, D, 123 – 4 (Day 3)
- cxix. Transcription, Public Hearing, Jansen, J, 8 (Day 3)
- cxix. Jansen, written submission, 5-8
- cxix. Transcription, Public Hearing, National Department of Education, Hindle, D, 133 (Day 3)
- cxix. See note lxiv 15
- cxix. Department of Education, Review of the Financing, Resourcing and Costs of Education in Public Schools, Pretoria, 108, 2003
- cxix. Wilderman, RA, "Funding Provincial Education in South Africa: Submission made to the South African Human Rights Commission on the Right to Basic Education", IDASA Budget Information Service, 3 October 2005, 6
- cxix. See note lxvii 2005, 3-4
- cxix. Transcription, Public Hearing, National Department of Education, Hindle, D, 127 (Day 3)
- cxix. Transcription, Public Hearing, National Department of Education, Patel, 134 (Day 3)
- cxl. See note xlv 3
- cxli.

Chapter Four

FINDINGS AND RECOMMENDATIONS

4.1 Introduction

From a human rights perspective it needs to be determined which issues within the current social context are blocking the enjoyment of the right to basic education. Measurable indicators are needed to determine how we are faring as a nation. In doing so we need to take into account the enormous legacy of our Apartheid past that is still being addressed in an ongoing manner. Also, the reality of poverty and the interconnectedness of the progressive realisation of other economic and social rights must be considered. The indicators may well continuously change in response to the social context. Hence the content of the right will continuously change.

There are no charted paths to follow. The responsibility for participating in this process of ensuring quality education belongs to all role-players. Whilst the State is primarily responsible for ensuring that all receive quality education, all role-players should responsibly assist and support government to identify problem areas, what should be prioritised and what can be done better. There is an urgency to act as the failure to receive a quality education will impact on a learner's ability to achieve his or her true potential throughout his or her life.

The key issues highlighted during the Public Hearing indicate where we, as a nation, are failing our children in providing them with a quality education. We may well in certain instances be violating their right to basic education.

4.1.1 Rights that inform the content of the right to basic education

4.1.1.1 Dignity and equality

Human dignity is both a founding value and a right enshrined in clause 10 of the Constitution's Bill of Rights. The right of everyone to have their dignity respected and protected must inform any interpretation of the content of the right to basic education. Where the experience of education negatively impacts on a person's dignity, then the right to basic education is not fulfilled. The right to dignity is thus one right that informs the right to basic education and assists in determining the dividing line between what could be better in an ideal world and what, within the South African social context, we can expect from our democratic dispensation.

The achievement of equality is a founding value of the Constitution and the right to equality is formally entrenched in clause 9 of the Bill of Rights. Like the right to inherent dignity, the right to equality is not subject to progressive realisation, as are economic and social rights such as the right to housing, health care, food, water and social security. Thus, where the enjoyment of the right to basic education compromises the right to equality, it cannot be argued that the right to basic education is being fulfilled. Race determined the past in South Africa. Dignity and equality for all shall determine the future. The need to respect, protect, promote and fulfil these rights in the discharge of the State's obligations to fulfil the right to basic education must be considered at all times.

4.1.1.2 The Best Interests of the Child principle

Clause 28(2) of the Bill of Rights enshrines the principle that a child's best interests are of paramount importance in every matter concerning the child. Thus, where there are competing claims on rights, such as the right to language, religion, the right to democratic participation by parents and caregivers in the governance of schools etc, the Best Interests of the Child principle must be acknowledged and upheld. Where legislative and policy decisions are taken and result in unintended consequences that violate the best interests of the child, the right to basic education is violated.

4.1.2 Interpreting the Bill of Rights

Clause 39 of the Constitution imposes a duty on the court when interpreting a right contained in the Bill of Rights to promote the values that underlie an open and democratic society based on human dignity, equality and freedom. The clause also states that the court must consider international and foreign law.

In coming to its findings and recommendation when seeking to explore the content of the right to basic education and the context in which it is implemented in South Africa the Public Hearing has taken into account the right to dignity and equality and the Best Interests of the Child principle. It has also considered international and foreign law.

Basic education is more than just primary education

SASA currently provides that education is compulsory from age 7 to 15, or grade 1 to grade 9 whichever occurs first. The Public Hearing used this section of the education system in which to consider and explore the enjoyment of the right to basic education. Arising from comments that were made during the Public Hearing, it needs to be clarified that the Commission does not consider that this is the only group of learners to whom the right to basic education applies. The right to basic education extends to Early Childhood Development, Secondary and Higher Education as well as Adult Basic Education and Training (ABET). Each of these sectors within the education system would however be subject to their own interpretation of the right to basic education.

4.2 General findings

(i) The lived daily reality at school for many children in South Africa, particularly those children in rural and township schools, is incongruous with the legislation and the policies of the Department

Many aspects of legislation and policy that seek to fulfil the enjoyment of the right to basic education is not being implemented in classrooms throughout South Africa. Statistics and reports also do not always reflect the realities of many classrooms throughout the country.

(ii) Those children who are most disadvantaged in enjoying the right to basic education lack the means and the social power to speak out and claim their rights. Poverty reinforces exclusion within education

Social cohesion through education is not promoted or nurtured within the current system. Township, poor and rural schools are currently marginalised within the dominant discourse on education.

Note to reader

In this chapter the findings are indicated with roman numerals and recommendations are indicated with letters of the alphabet. The chapter is further divided into general findings and thereafter findings and recommendations on the key issues highlighted in Chapter 3.

(iii) Whilst much has been done to improve the enjoyment of the right to a basic education, not all of these interventions have resulted in the outputs that were anticipated

Greater consensus is needed amongst stakeholders on what must be done to address the challenges.

A clear plan is needed for farm schools

The issue of section 14 agreements is not acceptable and must be dealt with as a matter of urgency. There is a clear potential that the right to education is being undermined where section 14 agreements have not been concluded. These schools appear not to enjoy legal status. There is no motivation for either the landowner or the State to improve the conditions of these schools whilst their future is uncertain.

It is **recommended** that a clear decision on the future of farm schools be taken and communicated to all relevant parties. This should include a proposed plan of action that details how this decision will be implemented. Relevant role-players are encouraged to participate in this process.

4.3 Findings and recommendations on key issues

4.3.1 Poverty

Poverty findings relate to accessibility

(iv) Poverty and dysfunctionality impact greatly on the right to basic education

There are enormous amounts of dysfunction throughout our society. The Public Hearing highlighted and reinforced the manner in which poverty exacerbates, feeds and exposes dysfunction. Poverty and dysfunctionality, separately and together, impact enormously on the context in which the right to basic education is delivered.

(v) The State should be more active in ensuring compulsory attendance at school

Whilst South Africa enjoys high levels of learner enrolment in school, submissions to the Public Hearing indicated that initial enrolment does not always ensure the same high-continued participation by children in the education system. There are children who drop-out of school and who do not attend due to a number of reasons, including the inability to pay school fees, teenage pregnancy, and the responsibilities of household commitments, particularly in rural areas. There is a concerning high drop-out rate amongst male learners. It also needs to be recognised that there is a growing number of child-headed households in South Africa due to parents who are deceased or who are very ill and are either dependent on their children for care or not in a position to supervise their children adequately and ensure that they attend school.

The current provisions of SASA provide discretion to schools to take steps to ascertain why a child is not attending school. There exists the possibility that some learners may disappear out of the school system without the Department being aware thereof. If a parent fails to act and ensure the attendance at school by a child for whatever reason, it is not in the best interests of the child that the State may exercise discretion whether to investigate and take measures.

Whilst education may be compulsory in terms of law and hence comply with international requirements, the failure to ensure adequate mechanisms to ensure attendance by learners and realise compulsory education falls short of our international obligations.

(vi) Compulsory education up to Grade 12 is desirable in the long term

The education system has a crisis in that it is failing to provide quality education to learners. Given this context, the focus currently should be on ensuring that the many challenges that confront

the provision of compulsory education are addressed and overcome. Careful consideration is necessary in order to ensure that any extension of compulsory education is not at the expense of addressing the challenges facing basic education.

(vii) Access to quality education should not be dependent on race, social class or geographic location

There are stark differences in the quality of education that are attributable to the race and social class of a learner, whether the learner is in a rural or urban environment and whether the learner resides in a poor or wealthy province. There ought to be no reason why the quality of education in a township school in the Eastern Cape is of an inferior quality to that of a former Model C school in a suburb in Johannesburg.

There are currently stark imbalances in the quality of education experienced by learners. This results in disadvantage on the basis race and social class. The social context of having to address the imbalances of the past as a justification for this inequality is fast losing cogency.

(viii) Poor learners who live far from their nearest school should receive State transport assistance in order to access education

The failure to provide transport to learners who travel long distances to school may render education physically inaccessible. Where the State fails to provide access to education within a reasonable distance of the learner's home, and the learner's parent or caregiver is unable to afford the travel expenses, and this results in the learner's non-attendance or impacts on the learner's ability to participate effectively in the classroom due to the physical exertion of walking to school, then the right to a basic education is denied.

(ix) No school fees

The right to primary education should be free. This is one issue on which the international instruments are clear and unambiguous.

(x) Drop-out rate is cause for concern

The school drop-out or attrition rates was raised a number of times during the Public Hearing and is thus a cause for concern amongst role-players. South Africa is unusual in that there is a high percentage of boys that drop-out of the education system. It cannot be ignored that these boys may be dropping out to engage in anti social and criminal activities.

Poverty recommendations

(a) Amend SASA

The legislation (SASA) should be amended to make it obligatory for the State to investigate why a learner is failing to attend school. Teachers and principals should be held accountable at district level to explain the non-attendance of children in their classrooms. It is not being suggested that this responsibility be removed from a parent but rather where a parent or caregiver has demonstrated that he or she cannot ensure the attendance of the child within a specified period then the school should have a compulsory obligation to investigate the reasons for non-attendance.

(b) Urgent measures are needed to address geographical differences in the provision of basic education

The Department should urgently determine the underlying reasons and seek to find solutions for the discrepancies that are apparent in the provisioning of quality basic education between provinces. It is not acceptable that a learner receives an inferior quality of education dependent on her or his geographical location.

(c) A comprehensive transport assistance programme for poor learners is needed urgently

The site of contestation and interpretation will be over how far and in what instances it can be expected that the State provide transport to learners. Given the high levels of poverty in South

Africa and the high take-up level of transport assistance as has been experienced by the Gauteng Department of Education, clear guidelines need to be drafted in each province that set out the acceptable distance that a child can be expected to walk to school and the indigency levels of the parent or caregiver that would qualify the child for such transport assistance. At a provincial level it may also be necessary to take into account other relevant factors, such as the weather, that may influence what constitutes a reasonable distance.

(d) Fee-free schools must be introduced rapidly

The government is urged to move rapidly and at greater speed to increase fee-free schools. Primary education should be made free as soon as possible.

(e) The school drop-out rate needs to be comprehensively understood and addressed

More research is needed to better understand the reasons for the phenomenon in order that this may be addressed.

4.3.2 HIV/AIDS

HIV/AIDS findings relate to adaptability

(xi) The impact of HIV/AIDS on education must be directly addressed within schools. It is concerning that more was not said during the Public Hearing and in the written submissions on the impact of HIV/AIDS on the lives of learners. There is still clearly much stigma that pervades communities.

(xii) Children infected and affected by HIV/AIDS have specific needs and challenges in terms of discrimination; inability to pay school fees and other related costs; increased nutritional demands and being more likely to be exposed to and become victims of violence and crime.

There is an uncanny sense that these issues are not raised either through a lack of caring on the part of teachers, or possibly the issue is too overwhelming. Alternatively, the system is failing to cope in addressing the issue. Whatever the reasons, until HIV/AIDS is spoken about openly in order that its' impact on education is more fully understood – it cannot be said that we are addressing the issue sufficiently. There may well be policies but these will make little difference in the lives of learners who head households and whose teacher is oblivious of the fact or chooses to ignore this.

It can thus not be said that the education system is displaying sufficient adaptability to addressing the needs of learners who are affected and infected by HIV/AIDS.

HIV/AIDS recommendations

(f) The education system needs to be more adaptable in responding to the challenges of children who are infected and affected by HIV/AIDS

- The Department of Education must ensure that there is adequate monitoring to ensure that there is empirical data to understand the impact of HIV/AIDS within the education system.
- Policies must be revised and adapted to the needs of these learners.
- Pilot studies and research should be undertaken to explore effective ways of ensuring that those infected and affected by HIV/AIDS have access to a quality education.
- Teachers must be educated and sensitised on their role of ensuring that the education system is sufficiently adaptable towards learners who are infected and affected by HIV/AIDS. Issues of silence and stigma need to be addressed urgently.
- The Department needs to act in collaboration with other relevant government departments and act in an urgent and ongoing manner to alleviate these conditions.

4.3.3 Violence and abuse

Violence and abuse findings relate to accessibility and acceptability

(xiii) There are unacceptably high levels of violence particularly sexual violence, which has a disproportionate impact on girl-child learners occurring within South African schools. Anti social activity such as gangsterism and drug usage occurs within some schools. This impacts negatively on the ability of children, particularly the girl-child, to access education in an environment that is acceptable. General crime and vandalism impacts on accessibility of education in that it affects the provision of infrastructure at schools.

(xiv) There are still instances of corporal punishment being used as a method of discipline by teachers in some schools.

Violence and abuse recommendations

(g) Inter departmental initiatives need to be fostered and programmes developed at local levels to assist in ensuring that schools are places in which all children's safety is guaranteed and protected. More proactive policies and measures need to be developed to create environments in which children are secure in coming forward to speak out about the violence which they are experiencing in schools.

(h) Dialogue is needed between government; civil society and chapter 9 institutions to determine whether the curriculum is being sufficiently and effectively used as a proactive tool to effectively promote a culture of human rights in which there is respect for the dignity of others. If necessary, steps must be taken to address this issue.

(i) There is an ongoing need for continued support and training to teachers on alternatives to corporal punishment.

4.3.4 Inclusivity

Inclusivity findings relate to availability, accessibility and adaptability

(xv) In some provinces there are not enough schools for children with disabilities

There are insufficient numbers of schools for learners with disabilities in the country. There are uneven concentrations of these schools in particular provinces

(xvi) Some children with disabilities cannot physically access schools

There are children with disabilities who are excluded from receiving education due to an inability to access schools that cater for their needs.

It is wholly unacceptable that the Department is aware of children who are totally excluded from receiving education due to disability and that immediate steps are not taken to rectify the situation.

(xvii) Inclusive education needs to be embraced

Submissions received indicate that whilst there is policy that guides inclusive education in South Africa, this policy has not been translated into practice. The current education system is not always equipped to provide a basic education to children with disabilities taking into account their special needs. Mainstreaming children with disabilities or failing to provide for their special needs can result in discrimination. Placing children who are disabled within a system that does not cater for their special needs is a violation of the right to basic education and the right to equality.

Inclusivity recommendations

(j) It is strongly recommended that the Department consult regularly with the disability sector in South Africa. The policy of inclusive education needs to be debated and transformed from written policy to lived experiences that are beneficial to the individual and promote a culture of learning.

(k) The Department needs to adequately determine, through regular consultation, monitoring and research, where the policy of inclusive education is failing children with disabilities, what the reasons are and what can be done to remedy the situation. This process needs to begin urgently.

(l) Where learners are currently completely excluded from the system, creative measures must be implemented with immediate effect.

4.3.5 Infrastructure

Infrastructure findings relate to availability

(xviii) A cut off date must be set for the provisioning of basic infrastructure and redressing the infrastructure imbalances of the past

There are still some schools that lack basic infrastructure such as water, electricity, toilets, fences, and sufficient classrooms. Whilst the social context of Apartheid discrimination has been aggressively addressed by government through pro poor policies and attending to the needs of schools that were inadequately resourced due to racial discrimination, at some stage, the process must be completed.

(xix) Provinces spend different amounts of money on education with poorer provinces spending less than wealthier provinces

It is unclear how determinations are made at a provincial level on how to spend and where to spend the budgets and whether spending matches the needs of the provinces. It is concerning that infrastructure is weakest in poorer provinces.

Infrastructure recommendations

(m) It is recommended that government ensure as urgently as possible that a minimum level of infrastructure is provided to all schools throughout South Africa. Such a minimum level would include for example: buildings, access to water, electricity, basic electrical equipment, sufficient toilets for the number of children attending the school, fences and a library.

(n) The Department of Education should engage with the Department of Arts & Culture on the provision of adequately resourced libraries in communities, in order that outcomes based education can be more effectively taught.

(o) Measures need to be developed in order to ensure that there is equitable provision of infrastructure between provinces.

4.3.6 Teachers

Teacher findings relate to availability

(xx) Teachers are central to ensuring that the right to basic education is enjoyed

There is a serious lack of teacher morale, which results in unacceptable patterns of behaviour amongst some teachers. This undermines a positive culture of learning being fostered.

(xxi) OBE cannot be successfully implemented whilst teachers are stating that they have received insufficient training to implement the new curriculum

(xxii) Teachers spend too little time in their classrooms

There is a lack of a culture of accountability in many schools amongst teachers. There are still unqualified and underqualified teachers teaching in schools across South Africa.

The above factors impact negatively on the enjoyment of the right to basic education of children.

Teacher recommendations

(p) A deadline must be set by when all teachers who are under or not qualified have received the necessary training.

(q) Concerns about a lack of OBE curriculum training must be assessed and measures introduced urgently to address challenges that teachers may be facing.

(r) The Department, trade unions and other affected parties must urgently address issues of morale and seek to improve working conditions of teachers. A culture of accountability needs to be fostered and teachers who do not perform their duties must not be tolerated by the Department or respective trade unions.

4.3.7 Language of learning

Language of learning findings relate to acceptability

(xxiii) Language of learning issues needs urgent attention and addressing

The language of learning debate should centre on the *acceptability* of the education system and what is in a *child's best interest*. Mother-tongue learning must be promoted in order to ensure that quality education takes place, which is acceptable. The State has a duty to ensure that arguments of availability and accessibility are not used to undermine acceptability. History, budgets, parents subjective choices, and systemic systems of inequality that are still perpetuated and upheld must not stand in the way of mother-tongue learning and language of instruction choices.

By allowing parents and SGBs to determine language policy, government has inadvertently deflected the responsibility of addressing the important intersection between quality education and language. However, the responsibility of ensuring the right to quality education resides ultimately with the State. There is convincing evidence that parents are not adequately informed to make such decisions and do not necessarily act in their children's best interests.

(xxiv) There is a disturbing silence on language issues in poor and rural schools. The high percentage of rural children who simply do not understand what their teachers are saying is alarming and cannot be ignored. Providing teachers who cannot communicate in a language understood by learners is a serious violation of the right to basic education.

The current debate on language policy is dominated and driven by parents at former Model C schools. It is at these schools that SGBs have access to resources and can publicise and litigate the issue if necessary. However, issues at these schools, which are few in number and unreflective of most schools in South Africa, should not overshadow what is happening in the majority of schools. This is not to discount the real and valid issues that are raised concerning language in these privileged schools.

Language of learning recommendations

(s) Given the recognised importance of mother-tongue learning, the Department must re-evaluate the decision of granting SGBs the power to determine language policy. Possible amendment to SASA should be considered. Affected parties need to approach the issue based on what is in the best interests of the child.

(t) Urgent research is needed to address language of instruction problems in rural schools in order that a better understanding of the nature and extent of these problems can be understood and thereafter addressed.

4.3.8 Governance and community participation

Governance and community participation findings relate to a 5th A – active participation

(xxv) Democratic participation by communities and parents in education is necessary in order to ensure that the social context is appreciated and given the necessary space to influence the fulfilment of the right to basic education

In terms of democratic governance, parents and caregivers have the right to be consulted on educational issues concerning their children. The voices of communities must be taken into account through active participation processes. The structures to achieve this need to be accessible to parents and caregivers. The current model of SGBs does not achieve this in all communities. Community participation needs to be encouraged through other models. This participation is necessary in order that the social context can be understood, interpreted and the education system be adaptable to changing social contexts.

A failure to achieve active participation models of community involvement in education could result in the social context not being adequately expressed and considered during decision making processes. This could potentially render legislation, policies and implementation strategies open to challenge in that the processes fail to demonstrate that the context has been taken into account. In order to take into account the context, it could be argued that government ought to have included community participation in order to fully understand and consider the context.

Governance and community participation recommendations

(u) It is recommended that alternatives to the current model of democratic participation (SGBs) such as rural community forums should be considered, explored and implemented in order to make community participation accessible to all parents and caregivers. Communities must take greater responsibility for involvement in their schools which ought to be a central and integral part of all communities.

(v) Active participation by communities in the governance of schools should be considered as a 5th key component of the right to basic education in order that social context can be fully acknowledged. Active participation by civil society including social movements is necessary in order to ensure that social context is truly given effect to in education.

4.3.9 Service delivery and monitoring

Service delivery and monitoring findings relate to accessibility and adaptability

(xxvi) Many district offices and officials are not rendering adequate support at a local level
The policies at national level are not being transformed into reality at a school level.

(xxvii) Adequate monitoring systems do not currently exist that are sufficiently capable to inform the Department accurately what is happening in schools and whether quality education is being delivered

The right to basic education is dependent on the social context in which it is delivered. In order to be responsive to that context and ensure that the right to basic education is delivered upon, adequate, reliable and accurate information must be collected. As the social context is subject to change, this information is necessary for planning, implementing changes and ensuring that the right to basic education is continuously delivered.

Without reliable information monitoring and gathering systems, the State will not be well placed in many instances to counter challenges that are violating the right to basic education.

Service delivery and monitoring recommendations

(w) The Department needs to ensure through adequate support, evaluation and monitoring that district offices and officials are rendering adequate support to schools. Districts need to be empowered and held accountable.

It is recommended that the Department continue in its stated efforts to establish adequate and reliable monitoring systems.

4.4 Conclusion

Each passing day we continue to fail many of our country's children. There is no rewind button that can be pushed and for the opportunity to provide a quality education to be played again. Education is necessary to develop and free the potential of each child in this amazing and wonderful country of ours. It cannot be accepted that in the constitutional democracy for which we fought, we live in a country where the potential of some children is met whilst the potential of others is neglected and destroyed. The right to dignity will be difficult to affirm when the hopes and dreams for a better future cannot be realised because our children have not been equipped with the necessary education and skills to embrace that future. There is indeed a continued dire sense of urgency that even though much has been achieved since 1994, we need to recommit with renewed energy and vigour matched with the necessary resources to address the challenges. Children are our future!

Acknowledgments

Written submissions and documents provided

1. Adult Learning Network, "Submission on the Right to Basic Education", 22 September 2005
2. Anti-Privatisation Forum (APF & Education Rights Project (ERP), "Terms of reference of the Public Hearing on the Right to Basic Education," undated, received 26 September 2005
3. Blind SA, "Submission to the SAHRC concerning the Fundamental Right to a Basic Education with reference to Disabled Learners and Inclusive Education", prepared by J Roos obo Blind SA, 22 September 2005
4. Bloch, G, "Draft Education Policy paper", Development Bank of Southern Africa (DBSA) 31 August 2005
5. Bloch, G, Development Bank of South Africa, "The Crisis in Education: DBSA Submission to Human Rights Commission (Basic Education), 21 September 2005
6. Catholic Institute of Education (CIE), "Right to Basic Education, Submission to the SAHRC", undated
7. Department of Education, "Education For All – 2005 Country Status Report: South Africa", 2005
8. Department of Education, "An Assessment of 10 Years of Education and Training in South Africa", Pretoria 2004.
9. Department of Education, Annual Report, 2004/5
10. Department of Education, "Submission on the right to basic education", 27 October 2005
11. Department of Education, "Report of the Ministerial Committee on Rural Education: A new vision for rural schooling," May 2005
12. Deaf SA, Deaf Federation of South Africa, letter dated 10 November 2005
13. Eastern Cape Provincial Department of Education, "Infrastructure Plan 2005 – 2014, 2006/7 Version: First Draft", 15 August 2005
14. Eastern Cape Department of Education, "Capacitation Plan", received 18 October 2005
15. FEDSAS, Federation of Governing Bodies of South African Schools, "Submission to the South African Human Rights Commission on the Right to basic Education", 23 September 2005
16. FEDSAS Limpopo, Report on Educational Matters, Limpopo Province, July 2004
17. Gauteng Provincial Government, Department of Education, Right to Basic Education, Draft Document
18. ISASA, Independent Schools Association of Southern Africa, "Education as a Basic Human Right, Submission by ISASA on The Role of the Independent School Sector in the provision of Education as a Basic Human Right", received 23 September 2005
19. Jansen, J D, "Does Money Matter? Towards an explanation for the relationship between spending and performance in education in South Africa", Faculty of Education, University of Pretoria, July 2005
20. Nelson Mandela Foundation "Reflections on Ten Years of Basic Education: Challenges to the Transformation of Basic Education in South Africa's Second Decade of Democracy," Johannesburg, September 2004
21. NAPTOSA, National Professional Teachers' Organisation of South Africa, "NAPTOSA's submission on the right to basic education", 13 October 2005
22. NAPTOSA," Submission: Public Hearing on the Right to Basic Education South African Human Rights commission". Undated
23. Nelson Mandela Foundation, "Emerging Voices: A Report on Education in South African Rural Communities", HSRC Press, 2005
24. Nelson Mandela Foundation, "Reflections on 10 Years of Basic Education".
25. Rooth, E. "The Right to Basic Education includes the Right to a Human Rights Education (Life Orientation)", undated", 30 September 2005
26. SAOU, South African Teachers' Union, "Submission: The Right to Basic Education", 27 September 2005
27. SADTU, South African Democratic Teachers' Union, "Submission to the Public Hearing on the Right to Basic Education
28. SAQA, South African Qualifications Authority, "The Right to Basic Education in South Africa," 23 September 2005
29. UMALUSI, Council for Quality Assurance and Further Education and Training, "Submission on Adult Education and Training to the Human Rights Commission, 10 October 2005
30. Wilderman, RA, "Funding Provincial Education in South Africa: Submission made to the South African Human Rights Commission the Right to Basic Education", IDASA Budget Information Service, 3 October 2005

Oral submissions

Day 1, 12 October 2005

1. Surty, E, Deputy Minister, Education, Tyobeka, P, Acting Director-General, National Department of Education & Mbambo, S, Chief – Director, National Department of Education
2. Shay, S, Chief Director, Western Cape, Department of Education
3. Khanye, V, parent
4. Bloch, G, Development Bank of South Africa (DBSA)
5. Solo, M, parent and community leader
6. Tom, Z, Chief Director, Eastern Cape, Department of Education

Day 2, 13 October 2005

7. Morojele, M, Motala, E & Hume, Nelson Mandela Foundation
8. Veriava, F & Wilson, S, Education Law Project, Wits University
9. Rooth, E, University of the Western Cape
10. Colditz, P & Mofolere, T.J., FEDSAS
11. Bennet, H, Ngobeni, P & Weber, H, Independent Schools Association of South Africa (ISASA)

Day 3, 14 October 2005

12. De Beer & Roos, J, BlindSA
13. Vally, S, Wits Education Policy Unit, Anti Privatization Forum & Education Rights Project, *With* Motah, S, (community member), Kgosani, P, (parent and member of SGB), Vulakhi & Lukhele, D
14. Jansen, J, academic
15. Ngobeni, D, South African Democratic Teachers Union (SADTU)
16. Roos, C, Suid-Afrikaanse Onderwyser Unie (SAOU)
17. Two learners and Concerned Learners Committee
18. Hindle, D, Director-General & Patel, Acting Deputy Director-General, National Department of Education

Books, Documents, Articles and Reports

1. Education Labour Relations Council, "Educator Supply and Demand in the South African Public Education System, Integrated Report", HSRC Press, Cape Town, 2005
2. Education for All in Africa, "EFA – Paving the Way for Action", Dakar, 2005
3. Fiske, E B & Ladd, H F, Elusive Equity, Education reform in post-Apartheid South Africa, HSRC Press, Cape Town 2005
4. Human Rights Watch, "Scared at School: Sexual Violence in South African Schools", March 2001
5. Human Rights Watch, "Forgotten Schools: Right to Basic Education for Children on Farms in South Africa", May 2004
6. Human Rights Watch, "Letting Them Fail, Government Neglect and the Right to Education for Children Affected by AIDS", October 2005
7. Tomaševski, K, "Right to Education Primers No. 1 Removing obstacles in the way of the right to education", Novum Grafiska AB, Gothenburg, 2001
8. Tomaševski, K, "Right to Education Primers No. 3 Human Rights obligations: making education available, accessible, acceptable and adaptable", Novum Grafiska AB, Gothenburg, 2001
9. Tomaševski, K, "Right to Education Primers No. 4 Human Rights in education as prerequisites for human rights education", Novum Grafiska AB, Gothenburg, 2001
10. Wilson, D, "Human Rights: Promoting gender equality in and through education" Background paper for UNESCO Education for all global monitoring report, Paris, 2003
11. United Nations, Economic and Social Council, The right to education (Art. 13): 08/12/99, E/C.12/1999/10. (General Comments)
12. United Nations, "Millennium Development Goals Report", New York, 2005

Boxes

- Box 2.1 South African Constitution
- Box 2.2 Education For All – EFA Dakar Goals
- Box 2.3 4As UN General Comment
- Box 2.4 Millennium Development Goal 2: Achieve universal primary education
- Box 2.5 Free & Compulsory, International instruments
- Box 2.6 Availability and access of farm schools is still a challenge
- Box 2.7 The challenge of teenage pregnancy
- Box 2.8 Life orientation
- Box 3.1 Key issues and the 4As

Thanks

Many thanks to the panellists Jody Kollapen (Chairperson of the SAHRC); Thandi Chaane (Education Expert); Tom Manthata (Commissioner of the SAHRC); Linda Chisholm (Human Sciences Research Council).

Special thanks to Commissioner Leon Wessels and our Legal Services Department, headed by Adv Kaya Zweni, for overseeing this project, engaging the public and handling all the necessary administrative tasks. Thanks to Judith Cohen who prepared and wrote this report.

