



BROKEN AND UNEQUAL

THE STATE OF EDUCATION IN SOUTH AFRICA

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

© Amnesty International 2020

Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence.

<https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode>

For more information please visit the permissions page on our website:

www.amnesty.org

Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.

First published in 2020 by Amnesty International Ltd
Peter Benenson House, 1 Easton Street, London WC1X 0DW, UK

Index: AFR 53/1705/2020

Original language: English

amnesty.org



Learners at an Eastern Cape school make the most of a break in their school day.

© Amnesty International

**AMNESTY
INTERNATIONAL**



BROKEN AND UNEQUAL

THE STATE OF EDUCATION IN SOUTH AFRICA

CONTENTS

EXECUTIVE SUMMARY	6
ABBREVIATIONS	13
1. METHODOLOGY	14
2. BACKGROUND	16
2.1 Inequality and education	16
2.2 The Legacy of colonialism and apartheid	18
2.3 The Right to quality education	20
3. SOUTH AFRICA'S EDUCATION SYSTEM	22
3.1 Legal framework	22
3.2 Policy, plans and strategy	23
3.3 Organizational structure	25
4. SOME KEY CHALLENGES FOR PUBLIC EDUCATION IN SOUTH AFRICA	28
4.1 Poverty and inequality	28
4.2 Poor educational outcomes	30
4.3 Multiple languages	33
5. POOR INFRASTRUCTURE	35
5.1 Struggling to overcome apartheid's legacy	37
5.2 Continued use of poor and dangerous infrastructure	39
5.3 Gauteng: failings in South Africa's wealthiest province	47
5.4 Eastern Cape: difficulties in overcoming the toxic legacy of apartheid	49
5.5 Sanitation: unacceptable and dangerous	54
5.6 Government responses: resources failing to meet need	61
5.7 Conclusions	64

6. OTHER BARRIERS TO THE RIGHT TO EDUCATION	65
6.1 Inadequate school transport to and from school	67
6.2 Unsafe learning environments	70
6.3 Overcrowded classes	72
6.4 Teacher shortages	74
6.5 Excessive teacher workloads	76
6.6 Teacher capacity and training	78
6.7 Conclusions	81
7. FUNDING FOR EDUCATION	82
7.1 Levels of funding: keeping pace with needs?	85
7.2 Dysfunctional funding formula	87
7.3 Fees versus no fees: the need to ensure all schools are adequately funded	90
7.4 Conclusions	91
8. GOVERNANCE AND ACCOUNTABILITY GAPS	93
8.1 Governance and School Governing Bodies	93
8.2 Monitoring and inspection	96
8.3 Conclusions	98
9. INTERNATIONAL AND REGIONAL STANDARDS	99
9.1 Key provisions of international and regional law	101
9.2 Content of the right to education	101
9.3 Scrutiny	102
10. CONCLUSIONS AND RECOMMENDATIONS	107
10.1 Conclusions	107
10.2 Recommendations	108
Annex A: Survey questionnaire sent to School Governing Body representatives	110
Annex B: Results of NASGB survey	112
Annex C: Responses from the South African Department of Basic Education	114

EXECUTIVE SUMMARY

“School is key in life... Education is very important to me, just because I want a better life... It means a lot to me [but] my school is not 100% to learn in, just because [the] building is old so anything can happen”.

Ntsomi, pupil, Phillip Mtywaku Secondary School, Eastern Cape

South Africa is failing too many of its young people when it comes to education. Although it has made significant progress since the end of apartheid in widening access this has not always translated into a quality education for all pupils. The system continues to be dogged by stark inequalities and chronic underperformance that have deep roots in the legacy of apartheid, but which are also not being effectively tackled by the current government. The result is many schools with crumbling infrastructure, overcrowded classrooms and poor educational outcomes.



Imiqhayi school, Mount Coke, King Williams Town, Eastern Cape. © Amnesty International

The state of education must be seen within the wider context of one of the most socio-economic unequal countries in the world. Black South African households earn on average less than 20 per cent of white households whilst nearly half of the black population is considered to be below the poverty line compared to less than 1% of the white community. Recent austerity measures have worsened the situation for the poorest and most disadvantaged. At the same time corruption is a major problem impacting on both available resources and confidence in government, culminating in the Zondo Commission on State Capture and Corruption established in August 2018.

Many schools and the communities they serve continue to live with the consequences of the political and economic decisions made during the apartheid era. The result is that a child's experience of education in South Africa still very much depends on where they are born, how wealthy they are, and the colour of their skin. A recent survey of school principals across OECD countries reported that 71% of South African teachers work in schools with over 30% of socio-economically disadvantaged students, more than treble the OECD average of 20%. Problems are further compounded by the multiple languages that exist in the country with 60% of teachers working in schools with more than 10% of students whose first language is not the language of instruction, compared to an OECD average of 21%.

Within this context it is not surprising that in terms of outcomes South Africa has one of the most unequal school systems in the world, with the widest gap between the test scores of the top 20% of schools and the rest. Children in the top 200 schools achieve more distinctions in maths than children in the next 6,600 schools combined. More than three quarters of children aged 9 cannot read for meaning in some provinces this is as high as 91% (Limpopo) and 85% (Eastern Cape). Of 100 learners that start school, 50-60 will make it to matric, 40-50 will pass matric, and only 14 will go to university.

Yet is this surprising when thousands of pupils and teachers are having to learn and teach in schools which have wholly inadequate infrastructure and an absence of essential facilities? According to the government's own statistics for 2018, out of 23,471 public schools 19% only had illegal pit latrines for sanitation with another 37 schools having no sanitation facilities at all; 86% had no laboratory; 77% had no library; 72% had no internet access and 42% had no sports facilities. 239 schools lacked any electricity. 56% of South African head teachers report that a shortage of physical infrastructure (compared to an OECD average of 26%) is hindering their school's capacity to provide quality instruction. 70% report a shortage of library materials compared to an OECD average of 16%.

Many of the shortcomings are in breach of not just the government's international human rights obligations but its own Minimum Norms and Standards for educational facilities. In 2013 the government enacted these binding regulations requiring the government to ensure that by November 2016 all schools have access to water, sanitation and electricity; all plain (unimproved and unventilated) pit latrines are replaced with safe and adequate sanitation; and schools built from inappropriate materials, such as mud and asbestos, are to be replaced. Yet as the government's own statistics show it has not met these targets.

The repeated failure of government – both at the national and provincial level – to meet its own targets with respect to infrastructure upgrades is not just a question of institutional accountability. It has consequences for the life chances of thousands of young people who have the right to a better life regardless of their status or circumstances.

As the government continues to miss its own upgrading targets, Amnesty International's research in Gauteng and Eastern Cape found numerous examples of schools with poor infrastructure and lacking basic facilities. These included badly maintained buildings that had never been renovated, many of them dating back decades to the apartheid era and even previously; hazardous buildings with

dangerous material such as asbestos; poor maintenance, in some cases putting the safety and security of learners at risk; unhygienic, poorly maintained and unsafe sanitation, with some schools only having pit latrines; overcrowded classrooms without basic equipment and materials such as furniture and textbooks; and lack of security exacerbating the problems of vandalism and burglary. All of these issues impact on the enjoyment of the right to education as well as pupils' other rights such as water, sanitation, privacy and dignity as highlighted by their testimonies.

Our findings were reinforced by a survey we conducted with the National Association of School Governing Bodies (NASGB) amongst 101 school governing body representatives in three provinces – Gauteng, Eastern Cape and Limpopo. Some of the key findings are that only 17% of respondents indicated that either all or most school buildings in their area had been renovated in the last 20 years; 37% said that in their area at least some schools did not have enough classrooms, including 11% who said that none of the schools in their area did; 24% responded that none of the schools in their area had any sports facilities and 38% said that none had a library.

Breaking the results down by province also reveals some stark differences. In Gauteng 48% stated that no schools had been renovated and 41% said that only a few or some had been. Only three respondents (10%) said that all schools in their areas had sufficient classrooms, while 28% indicated that most schools did have enough. 48% said that few or none had a sufficient number of classrooms. 75% indicated that few or no schools had their own sports facilities with only 11% stating that most did. Half of respondents said that either few or no schools in their area had a library. In Eastern Cape 62% indicated that few or no schools had been renovated in the last 20 years compared to only 12% indicating that all or most had been; 47% that stated few or no schools in their area had enough classrooms; 56% said either few or no schools had sports facilities whilst 74% indicated that few or no schools had a library.

One of the key infrastructure issues is poor sanitation which impacts on a range of rights including not just education, water and sanitation but also health, privacy and dignity. Amnesty International researchers found numerous examples of badly maintained, broken or unsanitary toilets, including pit latrines. This is despite the fact that a key requirement of the 2013 Minimum Norms and Standards is that plain pit latrines are eradicated. Of the students Amnesty International interviewed, 67 out of 87 who identified toilets as an issue in Gauteng said the toilets were dirty and/or unhealthy; 32 out of 45 did so in Eastern Cape. Issues of particular concern included lack of sufficient toilets for the number of pupils in line with the learner to toilet ratio of the Norms and Standards for School Infrastructure of 1:30; lack of an adequate and/or reliable water supply often requiring use of a borehole; poor hygiene with associated health problems among learners; leaking septic tanks; broken sanitation infrastructure that could not be repaired owing to lack of funds and an inability to remedy vandalism or theft in sanitation facilities.

Looking at the bigger picture in the joint survey carried out with the NASGB, 47% of respondents across the three provinces indicated that schools in their area had pit toilets, including 21% where either all or most schools had them. Eastern Cape scored the worst, with 63% of respondents indicating that at least some schools still had pit toilets, with 25% stating that all or most schools still had them. In Limpopo, 59% still had schools with at least some pit toilets. In Gauteng, 14% still had schools with at least some pit toilets.



The lack of safety and security for learners and staff also continues to be a significant problem. Among the examples that Amnesty International came across were a school that had been burgled six times in the last year but still depended on volunteers to provide security instead of paid staff; a school whose repeated calls for better security to the Provincial Education Department (PED) have gone unheeded, despite suffering an average of one break-in per month and a school that had

been burgled more than 10 times in a year still had no security guard, relying instead on a voluntary school patrol.

Beyond infrastructure there are additional barriers that children in South Africa face to access a quality education. Pupils experience a lack of sufficient transport, which often impacts on not just their ability to access education but also can put their safety at increased risk. The problems with transport were confirmed by the NASGB survey with 26% of respondents saying that either all or most learners have to travel more than 2km to school in their area with a further 45% stating that some have to; at the same time 54% said no transport is provided by the PED for pupils who need it. 60% thought that lack of transport affects pupil attendance. When broken down by province, differences are notable: In Eastern Cape 76% stated that all or most learners have to walk more than 2km to school compared to 58% in Limpopo and 27% in Gauteng. In Limpopo 59% said no transport was provided for pupils who need it compared to 51% in Eastern Cape and 37% in Gauteng. 59% in Eastern Cape thought that lack of transport affects pupil attendance, compared to 52% in Gauteng and 39% in Limpopo.

Nationally the picture is just as bleak. According to the 2013 National Household Travel Survey of the 17.4 million learners who attended educational institutions, about 11 million walk to school. Of these 22% (or more than 2.4 million children) walk for between 30 minutes and an hour to get to their educational institution meaning it is likely to be more than 3km. This is despite the fact that the Department of Transport, in collaboration with the Department of Basic Education, is required to ensure that transport is provided to grades R to 12 pupils who live more than 3km from the nearest school. Children in the lowest income groups are also more likely to walk to school than those in the highest income group. In KwaZulu-Natal alone, where more learners walk to school than in any other province, more than 210,000 pupils walk for more than an hour each way, and 659,000 walk for between 30 minutes and an hour each way.



  Dangile primary school, Peddie Eastern Cape. © Amnesty International

When children do make it to school, they often find that teaching is hampered by a range of factors. These include an insufficient number of trained teachers many of whom have to teach in overcrowded classes with an increasing workload, while the government struggles to address teacher retention and recruitment. In some schools, classroom shortages impact on learning as more and more students are put into already overcrowded spaces. In one school we visited a shortage of classrooms meant that two years – Grades 1 and 2 – had to be taught together but only received 2.5 hours tuition per day owing to lack of available staff. In another, there are 16 classrooms for 978 pupils, leading in some cases to a teacher to pupil ratio of 1:70 double the stipulated ratio of 1:35. In our joint survey with the NASGB, 48% of respondents indicated that the average class size was more than the official stipulated figure of 1:35 in all or most schools in their areas; 41% responded that either no or few schools in their areas had sufficient numbers of teachers; 21% stated that it was hard to recruit new teachers; and 32% responded that schools in their area had a problem with teacher absenteeism.

Teachers who spoke to Amnesty International expressed concern about a number of challenges. These included multiple changes to the curriculum and the trend towards more content with consequently less time for preparation and creative pedagogical input. They added that the increasing complexity has meant teachers have become facilitators rather than educators. At the same time, they reported, support for teachers is often lacking, with insufficient professional development and engagement from curriculum subject advisors. For many teachers, this has resulted in increasing stress with a consequential impact on the right to education of their pupils.

Another issue is the amount of actual teaching time that is being conducted during lessons. During a typical lesson, teachers spend on average 66% of classroom time on actual teaching and learning compared to an OECD average of 78%. Actual teaching and learning time is lower in schools with high concentrations of students from socio-economically disadvantaged homes - an equivalent of more than 3 minutes of actual teaching and learning per 60-minute lesson. Unsurprisingly this also means that classroom management practices are also more common in South Africa, with 84% of teachers reporting frequently calming students who are disruptive (compared to an OECD average of 65%).



July High school, nr Peddie, Eastern Cape. © Amnesty International

In these circumstances it is not surprising that teacher retention and recruitment is a significant challenge. Vacancies continue to be a major problem, with serious consequences for the ability of learners to access a quality education. Again, it tends to be the poorer provinces that have the most vacancies such as Limpopo, Eastern Cape and Mpumalanga. The problem of teacher numbers is borne out by the NASGB survey with 41% responding that either no or few schools in their areas had sufficient numbers of teachers (48% in Eastern Cape, 46% in Gauteng, and 22% in Limpopo); and 54% stating that they faced problems recruiting new teachers (70% in Eastern Cape, 64% in Gauteng and 29% in Limpopo).

South Africa also faces major challenges in the level of teacher skills and ability, particularly in specialist areas such as mathematics and science, with thousands being either unqualified or under-qualified. A study in March 2018 found that South African teachers could not pass simple mathematics and English tests, with some scoring as low as 10% for English first additional language and 5% for mathematics. Another study by Stellenbosch University found that Grade 4 to 7 (Intermediate Phase) mathematics teachers in under-resourced schools in the Eastern Cape are not proficient in English, the language in which they are supposed to teach, and that they lacked knowledge of mathematics.

Clearly adequately fulfilling the right to education requires both sufficient resources and an effective means of allocating these resources to meet particular needs. South Africa has historically spent relatively well on education. Yet during the last decade spending has plateaued and then fallen both as a share of public expenditure as well as a percentage of GDP. Most significantly real annual per learner spending has continued to fall year on year during the last decade as austerity budget cuts took their toll.

Amnesty International visited numerous schools that had insufficient resources to address even basic needs. Issues included budgets not taking constant thefts into account; budgets that are not needs-driven; insufficient additional funding from the Department of Basic Education (DBE) to compensate for the lack of school fees; insufficient allocation of funds provided by the DBE for maintenance and delayed payments due to a lack of planning by the PED resulting in money running out for activities later in the year.

Instead of an adequately funded system that ensures that primary education should be compulsory and available free for all in line with a core human rights obligation and that concrete and targeted steps to do the same at the secondary level, South Africa chooses to persist with a different system. Significant number of public schools which are still permitted to charge fees can raise additional revenue compared to those that are solely reliant on state funding which is often insufficient. Our joint survey with the NASGB found that only 30% of respondents indicated that either all or most schools in their area have sufficient funding. This is often compounded by delays with 31% responding that either none or few schools in their area receive funding on time impacting their ability to adequately resource the running of the institutions.

However, it is not just the amount of funding that is an issue. It is the way that funds are distributed which often fails to tackle or actually in some cases reinforces South Africa's stark inequalities. Instead of reflecting the longstanding structural and demographic issues of poorer provinces the funding formula that is currently deployed often discriminates against them. For example, the two poorest provinces – Limpopo and Eastern Cape – allocated more of their equitable share to basic education than any other province in 2016/17 (50.6% and 48.6% respectively but ended up with the lowest education allocations per learner. By contrast, Western Cape and Gauteng, the two richest provinces with among the lowest proportion of their population in school, actually spent more per learner. This is a major defect of the formula and is driving and deepening inequality. The Limpopo Education

Department has stated that based on its current budget, it would take an estimated 14 years to replace all pit latrines in the province's public schools.

For South Africa to comply with both its own constitutional and international human rights obligations with respect to education major change is needed. Not only do budget cuts need to be reversed but resourcing needs to be increased incrementally at least in line with inflation but also to meet demand. At the same time funding needs to be invested in a way that reduces inequalities and ensures the availability and accessibility of good quality education for all its children. The government should urgently review the current system of funding education including ensuring that the equitable share formula that it takes into account (a) that it is cheaper to provide education in urban areas owing to economies of scale and population density together with a better provision of goods and services and (b) the unequal starting points of historically disadvantaged and under-funded schools. The government should also set a goal of ensuring that all public primary schools move as expeditiously as possible to becoming free for users with all schools at secondary level also progressively moving to end user fees whilst ensuring that any loss of funding is met through sufficient government budgetary allocations.

Crucially South Africa needs to prioritise investment in order to stop missing and to actually meet its own targets on critical infrastructure. The complete removal of all pit toilets must be a key priority. Other key issues such as scholar transport, teacher recruitment and retention, capacity and training also need to be given urgent attention. In so doing the government can ensure that all schools including those serving the poorest communities can deliver a quality education for pupils.

The government should seek to do this in a way that applies its human rights obligations – both constitutional and international – as a means of monitoring progress and ensuring effective participation, transparency and accountability whilst tackling inequality and discrimination. The use of human rights compliant monitoring tools that encompass appropriate indicators and benchmarks would be an important means of achieving this. Such a process could be aligned to a more comprehensive inspection system.

The report builds on and acknowledges the work of a number of national experts and NGOs who have been working on the issue of education in South Africa for many years. It also highlights the scrutiny by a range of international and regional human rights bodies during the last five years with respect to South Africa's obligations concerning the right to education. Different bodies have repeatedly raised many issues highlighted in this report, such as poor infrastructure, teaching challenges, and widespread and persistent inequality.

We would like to acknowledge and thank all those who cooperated with us and gave their time to assist us with this research. By publishing this report now, with the government and President recommitting to tackling some of the key issues we highlight, Amnesty International seeks to contribute to the debate concerning this vital issue whilst offering constructive and concrete recommendations to ensure a better educational future for all children in South Africa. Above all our report seeks to give a voice to those key stakeholders in the system – pupils, parents, teachers – to get a direct sense of how education is being delivered on the ground. Their words together with some striking photographic evidence present a stark picture of the state of education for many in the country.

ABBREVIATIONS

ANC	African National Congress
ASIDI	Accelerated Schools Infrastructure Delivery Initiative
CAPS	Curriculum Assessment Policy Statements
CESCR	(UN) Committee on Economic, Social and Cultural Rights
CESR	Center for Economic and Social Rights
CRC	Convention on the Rights of the Child
ICESCR	International Covenant on Economic, Social and Cultural Rights
DBE	Department of Basic Education
DHET	Department of Higher Education and Training
EE	Equal Education (NGO)
EELC	Equal Education Law Centre
MEC	Member of the Executive Council (of a provincial department of education)
NAPTOSA	National Professional Teachers' Organisation of South Africa
NASGB	National Association of School Governing Bodies
NDP	National Development Plan
NEIMS	National Education Infrastructure Management System
OECD	Organization for Economic Co-operation and Development
PED	Provincial Education Department
PIRLS	Progress in International Reading Literacy Study
PSC	Public Service Commission
R	Rand, South African currency. R100 = US\$6.9 (as at 19/01/2020)
SAHCR	South African Human Rights Commission
SGB	School Governing Body
UNISA	University of South Africa, the main provider of distance learning for teachers

1. METHODOLOGY

Amnesty International carried out the research for this report between November 2017 and June 2019. Extensive desk research drew on reports by international and national NGOs, the UN, regional human rights bodies, academics and the media; and government data including in areas such as public spending on education and education outcomes disaggregated by region. Field research involved:

- May and November-December 2017 – scoping research in Gauteng, Eastern Cape and Western Cape provinces;
- August 2018 – core research in Gauteng and Eastern Cape;
- February 2019 – research in Gauteng and Eastern Cape that focused on learners;
- June 2019 – research and audio-visual work in Eastern Cape.

During these trips, Amnesty International visited 12 public schools in Gauteng and 26 public schools in Eastern Cape at both primary and secondary level, and interviewed 290 people in Gauteng, Eastern Cape and Western Cape (see Table 1).

Table 1: Interviews

	GAUTENG	EASTERN CAPE	WESTERN CAPE	TOTAL
Teachers	21	24	0	45
Learners (primary and secondary)	87	49	0	136
Parents and School Governing Body members	18	42	0	60
NGOs and trade unions	12	6	14	32
Experts	5	4	4	13
Government officials	2	2	0	4
				290

Amnesty International selected the provinces and schools studied to best assess key aspects of the education system that impact on students' right to education in poorer communities. Gauteng, the country's wealthiest province, struggles with demographic challenges such as a rapidly growing population due to inward and external migration, and wide inequality. It has some of the top schools in the country – both public and private – as well as schools that serve townships and poorer rural areas. Eastern Cape, one of the poorest provinces, suffers from particularly poor educational infrastructure, including schools that depend on pit toilets. We also carried out research in Western Cape focusing on interviews with teachers, trade unions, activists, NGOs and academics.

To assess the quality of education in poorer communities, Amnesty International focused its visits on no fee schools (quintiles 1-3)¹ that serve these communities in both urban and rural areas. Unable to charge fees, these schools have fewer resources and struggle to raise additional funds from the communities they serve. A range of partners facilitated the school visits, particularly the National Association of School Governing Bodies (NASGB). All of the schools we visited were composed of black pupils.

During visits, Amnesty International spoke with teachers, parents and pupils after obtaining the necessary consent. Interviews were conducted either one-to-one (mainly head teachers) or in focus groups involving teachers, parents and pupils. Questions focused on various aspects of education and the challenges faced, including the level of available resources; the quality of infrastructure, including sanitation; teaching challenges; class sizes; and safety and security while at school. The researchers also observed the state of buildings and gathered photographic evidence, some of which is reproduced in this report. Letters regarding our findings were sent to both National and Provincial Ministers for Education together with respective senior officials. A response from the National DBE Director General is attached at Annex C.

To strengthen our research Amnesty International undertook a joint survey with the NASGB in three provinces – Gauteng, Eastern Cape and Limpopo.² This involved 27 questions covering issues such as governance and the role of school governing bodies (SGBs); infrastructure; funding; teaching; safety and security; and transportation (see Annex A). The questionnaire was sent to 101 NASGB representatives covering schools in their respective local area in three provinces. The results are featured in relevant sections of this report; the complete set of results are in Annex B.

Table 2: NASGB survey respondents broken down by province

	EASTERN CAPE	GAUTENG	LIMPOPO	TOTAL
Number of survey respondents	35	30	36	101

A NOTE ON TERMINOLOGY

Amnesty International strives to use terminology that respects the wishes of the individuals concerned. However, when referring to studies and statistics compiled by other organizations, the categorization used by the studies must also be respected in order to ensure that the findings are conveyed accurately and without distortion. In addition, terminology used in South Africa itself often varies and may differ from that used internationally by those campaigning for human rights such as non-discrimination.

Throughout this report terms such as black, ethnic, racial and national minorities, white and coloured are used as descriptors of individuals or communities, as far as possible in accordance with the self-identification of the individuals concerned, while not compromising the accuracy of the studies quoted. Another factor guiding the choice of terminology in this report is the need to ensure it is as accessible as possible to diverse audiences both within South Africa and around the world. However, the choices made are in no way intended to minimize or ignore the complexity or diversity of ways in which people may identify in different contexts.

1. In 2005, in response to unequal access to quality public schooling, the government established a quintile system under which schools are categorized into five groups (quintiles) based on the relative wealth of their surrounding communities, with quintile 1 being the poorest and quintile 5 being the least poor.

2. It was agreed to extend the survey to Limpopo as together with Eastern Cape it is one of the poorest provinces which suffers from similar problems.

2. BACKGROUND

“South Africa today is the most unequal country in the world. The richest 10% of South Africans lay claim to 65% of national income and 90% of national wealth; the largest 90–10 gap in the world. These inequities are mirrored in the education system where we have 20% of schools that are broadly functional, and 80% that are mostly dysfunctional. Because of this, two decades after apartheid it is still the case that the life chances of the average South African child are determined not by their ability or the result of hard-work and determination, but instead by the colour of their skin, the province of their birth, and the wealth of their parents. These realities are so deterministic that before a child’s seventh birthday one can predict with some precision whether they will inherit a life of chronic poverty and sustained unemployment or a dignified life and meaningful work. The sheer magnitude of these inequities is incredible.”

Nic Spaull, Senior Researcher, University of Stellenbosch³

2.1 INEQUALITY AND EDUCATION

South Africa is one of the richest countries in Africa with an estimated GDP of over US\$368 billion⁴ based on a diversified economy of mining, agriculture, manufacturing, energy financial services, tourism and other sectors. It is the most industrialized country in Africa⁵ and has the second largest economy after Nigeria.⁶ The World Bank classifies South Africa as an upper middle-income country.⁷

Since the transition to democracy, South Africa has made considerable progress in lifting people’s income above the international poverty line of US\$1.90 per day. According to World Bank estimates, the percentage of people living below the poverty line in South Africa fell from 33.8% in 1996 to 18.8% in 2015 (although this subsequently rose to 18.9% by 2018).⁸

3. Nic Spaull; The stories we tell ourselves about inequality (24 October 2019) at <https://nicspaull.com/2019/10/24/the-stories-we-tell-ourselves-about-inequality/>

4. World Bank, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

5. Based on total size of industry sector. World Bank, World bank national accounts data and OECD National Accounts data files, https://data.worldbank.org/indicator/NV.IND.TOTL.CD?contextual=region&end=2018&locations=ZA-NG-EG&most_recent_value_desc=true&start=2002

6. World Economic Outlook Database at <https://www.imf.org/external/pubs/ft/weo/2016/02/weodata/weorept>

7. See: <https://data.worldbank.org/country/south-africa>

8. World Bank, South Africa Overview, <https://www.worldbank.org/en/country/southafrica/overview>. In 2011 the percentage of people below the poverty line was 16.8%. It went up to 18.8% in 2015, partly, according to the World Bank, due to structural challenges and weak growth since the global financial crisis of 2008, but also because of labour market developments that demand skills that the country’s poor currently lack. In July 2019, the food poverty line was raised to R561 (using April 2019 prices) per person per month. That is about R18.70 or \$1.20 a day: <https://www.dailymaverick.co.za/article/2019-08-06-stats-sa-poverty-surveys-derailed-by-cash-crunch/>



Kitchen at rural primary school, Eastern Cape. © Amnesty International

However, South Africa also has one of the highest rates of inequality in the world. The Gini coefficient,⁹ a measure of inequality, rose from 0.61 in 1996 to 0.63 in 2015, signalling an increase in inequality.¹⁰ According to World Bank estimates, in 2015 the richest 10% of the population held around 71% of net wealth while the bottom 60% held just 7%.¹¹ Intergenerational mobility remains low, so inequalities are passed down from generation to generation with little change in inequality over time.¹² There is a strong correlation between race and economic inequality with black South African households earning on average less than 20 per cent of white household average earnings.¹³

Education can play a positive role in reducing inequality. In the past two decades, South Africa has done well to expand access to education for black children at all levels, but this has not always meant good quality education for all. As a result, the education system continues to mirror the country's socio-economic inequalities. A recent survey of school principals across OECD countries reported that 71% of South African teachers work in schools with over 30% of socio-economically disadvantaged students, more than treble the OECD average of 20%.¹⁴ Another indicator of deprivation is that 77.3% of learners who attend public schools benefit from school feeding schemes.¹⁵

9. Gini coefficient is a measure of inequality where the higher the number, the greater the inequality. A Gini coefficient of 0.0 represents perfect equality.

10. World Bank, South Africa Overview, <https://www.worldbank.org/en/country/southafrica/overview>.

11. Ibid.

12. Ibid.

13. *Black South Africans lose out as economic divide bites* (FT 2 May 2019) <https://www.ft.com/content/42ef27d2-6c13-11e9-a9a5-351eeaf6d84>

14. South Africa - Country Note - TALIS 2018 Results p.2 at <http://www.oecd.org/education/talis/>. The OECD Teaching and Learning International Survey (TALIS) is an international, large-scale survey of teachers, school leaders and the learning environment in schools.

15. General Household survey released on 29 May 2019, <https://www.southafricanmi.com/education-statistics.html>

In terms of quality of education South Africa has one of the most unequal school systems in the world, with the widest gap between the test scores of the top 20% of schools and the rest.¹⁶ Furthermore, studies have also criticised the quality of South Africa's education system. A 2015 Organization for Economic Co-operation and Development (OECD) survey ranked South Africa 75th of 76 countries based on its overall education system.¹⁷ A 2017 international survey revealed that 97% of Grade 4 children (aged 8-9) in South Africa scored the lowest of the 50 participating countries in a reading and literacy test, with 78% of the students unable to read for meaning.¹⁸ In 2018 the top 200 high schools in the country (3% of schools) had more students achieving distinctions in Mathematics matric (80%+) than the remaining 6,600 combined (97%).¹⁹

2.2 THE LEGACY OF COLONIALISM AND APARTHEID

The history of education in South Africa continues to shape the current system – from the elite private schools that have their roots in the growth of religious institutions during the colonial period, to the schools developed under the policies of apartheid.

COLONIAL PERIOD: LATE 17TH CENTURY – EARLY 20TH CENTURY

Formal education in South Africa began in the late 17th century with the establishment of mission schools associated with the church. By the late 19th century, three types of state schools had been established: small rural schools generally employing one teacher; district schools providing primary education to several towns in an area; and a few secondary schools in larger cities. During this period some of the elite private schools that continue to this day were also established.

By the beginning of the 20th century all provinces had virtually abolished enrolment of black African children in government schools, leaving these children dependent on mission schools that received limited state support.²⁰

APARTHEID: 1948-1994

In 1948, English became the official language of instruction in schools. Mirroring the policy of apartheid, eight education departments were set up. These applied different curricula and thus offered different standards of education. They included nationwide departments for black people, so-called coloured (multi-ethnic) people and Indians; a department for independent schools; and provincial departments for white people. Some Bantustans²¹ (territories set aside for black Africans) had their own education departments.

16. "South Africa has one of the world's worst education systems", The Economist, 2017, at <https://www.economist.com/middle-east-and-africa/2017/01/07/south-africa-has-one-of-the-worlds-worst-education-systems>

17. OECD, *Universal Basic Skills: What Countries Stand to Gain*, 2015, <http://dx.doi.org/10.1787/9789264234833-en>

18. The Progress in International Reading Literacy Study (PIRLS) 2017 National Center for Educational Statistic, 2017. The PIRLS is a standardized regional survey based on testing 61,396 Grade 6 pupils from 2,779 schools on mathematics from across 15 southern African countries.

19. Nick Spaul; *The stories we tell ourselves about inequality* (24 October 2019) at <https://nicspaul.com/2019/10/24/the-stories-we-tell-ourselves-about-inequality/>

20. See: <http://countrystudies.us/south-africa/56.htm>

21. Bantustans were 10 territories established for black inhabitants of South Africa and South West Africa (now Namibia) under apartheid. The Bantu Homelands Citizenship Act of 1970 stripped black people of their South African citizenship.

A range of policies facilitated this discriminatory system, including the 1953 Bantu Education Act, which enforced racially segregated educational facilities, and the 1959 Extension of University Education Act, which banned universities from accepting black students unless special permission was obtained from a cabinet minister. Specific universities for black, coloured and Indian students were established, which meant that such students could only attend white universities when “their” universities were overcrowded. Education was compulsory for all racial groups, but at different ages and the law was enforced differently. White children were required to attend school between the ages of 7 and 16; black children from 7 to 16 or the equivalent of Grade 7. However, this law was not enforced effectively. For Indian and coloured children, education was only compulsory between the ages of 7 and 15.²²

By the 1970s per capita government spending on black education was a tenth of that for white education. As a result, black schools had inferior facilities, teachers and textbooks.²³ By 1978, only 20% of university students were black even though they comprised 70% of the population.²⁴ Teacher-pupil ratios varied significantly. In primary education they averaged 1:18 in white schools, 1:24 in Indian schools, 1:27 in coloured schools and 1:39 in black schools. Discrimination was compounded by differences in teacher qualifications. Unsurprisingly, this impacted outcomes. Pass rates for black pupils were less than half of those for white pupils.²⁵

A defining moment for education came on 16 June 1976 with the Soweto Uprising, a student-led protest against the regulation that half of secondary school classes must be taught in Afrikaans.²⁶ Police killed 575 people, including 134 students. Eight years later, the National Policy for General Affairs Act empowered the Minister of National Education to determine the general policy for syllabuses, examinations and certification qualifications in all institutions. This provided for some improvements in black education, but it was hard to administer since education was decentralized through racially segregated and homeland education departments.²⁷

In 1986, negotiations between President P.W. Botha and Nelson Mandela of the African National Congress (ANC) resulted in a narrowing of the gap in funding for education between racial groups. In 1993, President F.W. de Klerk established the National Education and Training Forum to formulate a policy framework for restructuring education. White schools were required to select one of four “models”: A, B, C or D that differed in the size of their state subsidies and the limits on the proportion of black students permitted.²⁸ Most white schools opted for the status quo, by 1993, but due to government policy, 96% of white public schools became “Model C” schools – semi-private with less funding from the state requiring them to raise additional funds from fees and donations and with greatly increased autonomy.²⁹

22. Claassen JC 1995. The Education System of South Africa. In: El Dekker & OJ van Schalkwyk (eds). *Modern Education Systems*. 2nd edn. Durban: Butterworths.

23. See: <https://www.groundup.org.za/article/whites-should-admit-they-gained-monstrous-system/>; and Section 27, *Basic Education Rights Handbook*, p. 38.

24. G., Netswera, Fufufhelo; Neo, Mathabe,. “A Pervasive Apartheid? An Analysis of Changing Higher Education in South Africa and its Relationship with the State”. *Journal of Educational Administration and History*.

25. T. Heaton et al, *Race Differences in Educational Attainment in Post-Apartheid South Africa* <https://paa2012.princeton.edu/papers/120293>

26. In 1974, the Minister of Bantu Education and Development issued a decree commonly known as the “Afrikaans medium decree” in which the use of both English and Afrikaans was made compulsory in black secondary schools.

27. The Department of Education and Training was responsible for black education outside the homelands. Each of the three houses of parliament – for whites, coloureds and Indians – had an education department. Each of the 10 homelands had its own education department. In addition, several other government departments managed specific aspects of education.

28. Model A schools became private schools and were able to admit black students; model B remained as state schools and could admit 50% black students; model D were an additional later option able to admit an unlimited number of black students. See Fiske and Ladd, *Elusive Equity: Education Reform in Post-apartheid South Africa* (2004); also Lemon, Anthony. “Education in Post-Apartheid South Africa: Some Lessons from Zimbabwe.” *Comparative Education*, vol. 31, no. 1, 1995, pp. 101–114. *JSTOR*, www.jstor.org/stable/3099767

29. See: <https://irr.org.za/reports/research-policy-brief/research-and-policy-brief-model-c-is-the-model-to-emulate-1-february-2011> Although the form of “Model C” was abolished by the post-apartheid government, the term is still commonly used to describe former whites-only government schools.

POST-APARTHEID: 1994-PRESENT DAY

“Post-apartheid, there were too many challenges. During the apartheid times, it wasn’t compulsory for black children to attend school. So one of the ANC’s key agendas was to ensure that every child went to school.”

Professor Eric Atmore, Director of the Centre for Early Childhood Development, UCT³⁰

The policy guidelines adopted at the ANC’s 1992 National Conference committed the ANC government-in-waiting to “equalizing the per capita expenditure between black and white education” ensuring that “resources are redistributed to the most disadvantaged sectors of our society, in particular, women, rural and adult students, and mentally or physically disabled children and adults.”³¹

Under the Interim Constitution, the ANC government restructured the basic and tertiary education departments, dividing responsibilities between nine newly formed provincial education departments and a single national education department. It also began to remove all racially offensive and outdated content and introduce continuous assessment in schools.³²

One of the key priorities was to ensure that every child could access education. This approach has continued, with the result that South Africa has a relatively good record on access to education. For example, the latest official statistics (based on data collected in 2018) show that nearly 85% of five-year-olds are enrolled in school.³³

In 1995, all government-run primary and secondary schools were officially racially integrated with compulsory schooling for all from the ages of 7 to 15. However, the government provided salaries for teachers only, and schools had to charge fees for equipment and supplies. All of South Africa’s 21 major universities, which were government-financed, were opened to students of all races.

Despite the positive developments, the legacy of apartheid continues to cast a long shadow resulting in continuing inequality. How to equalize resource allocation and ensure equal access to quality education has been at the centre of the debate on how to effectively overcome the legacies of the past and “open the doors of learning and culture to all”.³⁴ Above all, there is a sense that education, 25 years after the end of apartheid, is still not delivering for everybody, particularly for black children living in poverty.

2.3 THE RIGHT TO QUALITY EDUCATION

South Africa is obliged under both its Constitution and a range of international and regional human rights treaties to implement the right to quality education for all of its children (see Chapter 9).

The right to education includes a variety of key components and goes much beyond the provision of free and compulsory primary education to all. Inherent is the right to good quality education.³⁵ Further,

30. Interview with Eric Atmore 13 December 2017

31. Section27, *Basic Education Rights Handbook* (2017), p. 38 at <http://section27.org.za/basic-education-handbook/>

32. Continuous assessment is the evaluation of a pupil’s progress throughout a course of study, as distinct from by examination.

33. General Household survey released on 29 May 2019, <https://www.southafricanmi.com/education-statistics.html>

34. Department of Education. *White Paper on Education and Training*, March 1995, part 2, chapter 3, para. 1.

35. See: CESCR, General comment No. 13, para. 6(c).

as noted by the UN Special Rapporteur on the right to education, “poor quality of education constitutes a severe limitation on the fulfilment of the right to education.”³⁶

UNICEF, the UN Children’s Fund, is one of several international agencies that have articulated some of the key components of good quality education. In its framework for rights-based, child-friendly schools, it includes aspects such as:

- a healthy, hygienic and safe learning environment, with adequate water and sanitation facilities;
- healthy classrooms;
- healthy policies and practices, such as a school free of drugs, corporal punishment and harassment;
- health services such as nutritional supplements and counselling; and
- good quality teaching and learning processes with individualized instruction appropriate to each child’s developmental level, abilities and learning style.



Makhunya Mvulo primary school, Eastern Cape. © Amnesty International

36. Report of the Special Rapporteur on the right to education, A/HRC/20/21, 2 May 2012, pp. 20.

3. SOUTH AFRICA'S EDUCATION SYSTEM

3.1 LEGAL FRAMEWORK

Section 29(1) of the Constitution provides: “Everyone has the right – (a) to a basic education, including adult basic education; and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.” The Constitutional Court has affirmed that: “Unlike some of the other socio-economic rights, this right [to basic education] is immediately realizable. There is no internal limitation requiring that the right be ‘progressively realized’ within ‘available resources’ subject to ‘reasonable legislative measures’.”³⁷



Ebongweni primary school,
Kwasikele township, Port
Elizabeth.
© Amnesty International

37. *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* (CCT 29/10) [2011] ZACC 13; 2011 (8) BCLR 761 (CC) (11 April 2011) at <http://www.saflii.org/za/cases/ZACC/2011/13.html>. This precedent has been followed in several subsequent right to education cases. In *Minister of Basic Education and Others v Basic Education for All and Others*, the Supreme Court of Appeal, applying the immediate realization principle, held that every learner is entitled to a textbook in every subject at the beginning of the academic year. The immediate realization principle was further adopted in the case of *Madzodzo and Others v Minister of Basic Education and Others* (school furniture) and *Tripartite Steering Committee and Another v Minister of Basic Education and Others* (school transport). See also Table 2.1: A summary of the constitutional approach to basic education funding, see Section 27, *Basic Education Rights Handbook*, Chapter 2, p. 40 at <http://section27.org.za/basic-education-handbook/>

A number of key laws and regulations govern basic education. Following the adoption of the White Paper on Education and Training in 1995 by the then Department of Education, which provided a blueprint for the transition to a single, national, non-racial education system, various law reform measures were passed. These include the **National Education Policy Act 1996**,³⁸ the **South African Schools Act 1996**,³⁹ the **Education Laws Amendment Act 2005**,⁴⁰ the **Employment of Educators Act 1998**⁴¹ and the **Basic Education Laws Amendment Act 2017**.⁴² A draft Basic Education Laws Amendment Bill was introduced in 2017 proposing major changes that restrict the powers of School Governing Bodies.⁴³ At the time of writing this is still to become law.

3.2 POLICY, PLANS AND STRATEGY

The National Development Plan (NDP) which aims to eliminate poverty and reduce inequality by 2030, was adopted in 2012 after a public participation process that identified that two of the most pressing challenges were too few people in work and the poor quality of education outcomes.⁴⁴ Outcome 1 of the NDP,⁴⁵ namely “Quality Basic Education” should be aligned with the right to education but lacks any explicit language to that effect.

- Within the NDP framework, the current Education Action Plan 2019 – Towards the Realization of Schooling 2030 – has 27 schooling goals, many of which are relevant to the issues explored in this report.⁴⁶

38. The Act sets out the policies as well as the legislative and monitoring responsibilities of the Minister of Education, with respect to the planning, provision, financing, staffing, coordination, management, governance, monitoring, evaluation and well-being of the education system, together with the relationship between the national and provincial authorities. It also established the Council of Education Ministers - comprising the National Minister of Education and Deputy Minister together with all nine provincial members of the executive council (MECs) for education who meet regularly to discuss critical matters affecting the education sector – and the as well as the Heads of Education Departments Committee which consists of the Director-General of the DBE, the deputy directors-general of the Department and the heads of the PEDs. Its purpose is to coordinate implementation of laws and policies.

39. The Act recognizes that all learners have the right to quality education without discrimination, whilst making schooling compulsory for children aged 7 to 15 (or Grade 9, whichever occurs first). It also provides for both independent or private and public schools, the Act affirms the need to “provide an education of progressively high quality... [and] uphold the rights of all learners”. The Act also requires the state to “fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision” whilst setting out the principles concerning school fees. The Act also establishes School Governing Bodies (SGBs) and outlines their role in school funding (see Chapter 5).

40. Amended the Schools Act to authorize the Minister of Basic Education to declare schools in poorer areas to be no fee schools whilst still permitting the charging of fees in significant numbers of public schools.

41. Regulates the employment of teachers by the state.

42. The Act amends the South African Schools Act and changes school governance mechanisms focusing on reducing the authority of school governing bodies (SGBs) to manage school resources independently without approval from the Department of Basic Education.

43. The draft bill seeks to give the Head of the Provincial Education Department (PED) the final authority to admit a pupil to a public school. The SGB must submit the admission policy of the school, and any amendment to it, to the Head of the PED for approval. The bill also seeks to limit the powers of an SGB in regard to recommending candidates for appointment. The SGB can recommend to the Head of the PED the appointment of post-level 1 educators only, with the selection and appointment of educators on post-levels 2 to 4 being the sole responsibility of the Head of the PED. The draft bill will empower the Head of the PED to dissolve an SGB that has ceased to perform functions allocated to it, in terms of the Act, the Head has reasonable grounds to do so. Finally, the bill requires the SGB to seek the approval of the MEC to enter into lease agreements, for any purpose, including loans and overdrafts that are already provided for.

44. NDP, p. 488, at https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf

45. The NDP aims to eliminate poverty and reduce inequality by 2030 and will shape budget allocation over this period. See <https://www.gov.za/issues/national-development-plan-2030>

46. Some of the key goals in the context of the issues explored in this report include: (a) Ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and Goal 4 effective learning outcomes; (b) Ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education; (c) Eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations; (d) Ensure that all youth and a substantial proportion of adults, both men and women, are literate and numerate; (e) Ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development; (f) Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all; (g) Substantially increase the supply of qualified teachers, including through international cooperation for teacher training in developing countries, especially least developed countries and small island developing states.

The Education Action Plan sets out the same vision for schools that informed the 2011 Action Plan ensuring every young South African **receives quality schooling is an urgent need**. This requires that inter alia the following must be realized in every South African school (emphasis added to reflect many of the issues examined in this report):

- **Learners** attend school every day and are on time because they want to come to school, **the school is accessible** and because they know that if they miss school when they should not, some action will be taken. Learners understand the importance of doing their schoolwork, in school and at home, and **they know their school will do everything possible to get them to learn what they should**. Much learning happens through the use of computers and, from Grade 3 onwards, all learners are computer literate. Part of the reason why learners want to come to school is that they get to meet friends in **a safe and secure environment** where everyone is respected; they will get a good meal; they know they can depend on their teachers for advice and guidance; and they are able to participate in sporting and cultural activities organised at the school after school hours.
- **Teachers** who **received the training they require are continuously improving their capabilities and are confident in their profession**. Teachers understand the importance of their profession for the development of the nation and do their utmost to give their learners a good educational start in life. **They are, on the whole, satisfied with their jobs** because they feel their employer is sensitive to their personal and professional needs and that their pay and conditions of service in general are decent and similar to what one would find in other professions.
- **Learning and teaching materials** are in **abundance and of a high quality**. The national Minimum Schoolbag policy, which is widely understood, describes the minimum quantity and quality of materials that every learner must have access to. **Computers in the school are an important medium** through which learners and teachers access information.
- **School buildings and facilities are spacious, functional, safe and well maintained**. Learners, teachers and the school community as a whole look after their buildings and facilities because they take pride in their school.

The Plan is intended to be aligned to UN Sustainable Development Goal 4, which requires all States to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.⁴⁷ The Plan also notes the importance of “the education system [in] play[ing] a greater role in building an inclusive society, providing equal opportunities and helping all South Africans to realize their full potential, in particular those previously disadvantaged by apartheid policies, namely black people, women and people with disabilities.”⁴⁸

The National Norms and Standards for School Funding 2006 adopted in terms of Section 39(7) of the Schools Act, sets out the procedures to be adopted by provincial education departments (PEDs) in determining school resource allocations.

Another relevant policy is the National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment 2010, which aims to regulate and formalise the provision of school infrastructure and to provide guidelines towards an equitable provision of an enabling physical teaching and learning environment for all learners in South Africa, indicate clear roles and responsibilities of all role players and unify accountability in the provision of school infrastructure. Key aspects of the policy

47. Integrated Strategic Planning Framework for Teacher Education and Development in South Africa, 2011-2025 at: <http://www.dhet.gov.za/Teacher%20Education/Intergrated%20Strategic%20Planning%20Framework%20for%20Teacher%20Education%20and%20Development%20In%20South%20Africa,%2012%20April%202011.pdf>

48. NDP 2030, p. 296.

are (a) development of the minimum norms and standards for school infrastructure to ensure equity in the provisioning of school infrastructure and (b) the establishment of the nationally standardised criteria and procedures for the identification and prioritization of the teaching and learning environment.⁴⁹ Further relevant norms and standards on infrastructure are set out in chapter 5.

3.3 ORGANIZATIONAL STRUCTURE

Section 40(1) of the Constitution establishes that “government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated”. Basic education is managed, overseen and implemented at the national, provincial and district levels.⁵⁰

The Department of Basic Education (DBE) was established in 2009 when the former Department of Education was split into two departments: the DBE and the Department of Higher Education and Training (DHET). The DBE is responsible for governing South Africa’s primary and secondary school system, which includes 13 years of formal schooling from Grade R (ages 5-6) to Grade 12 (ages 17-19), while the DHET is responsible for post-school education and training. The rationale underpinning this change was the need to intensify and strengthen educational improvement initiatives at all levels, from the foundation phase to tertiary level.⁵¹



Pendla primary school, New Brighton, Eastern Cape. © Amnesty International

49. See: <https://www.gov.za/national-policy-equitable-provision-enabling-school-physical-teaching-and-learning-environment>

50. For further information, see Section 27, *Basic Education Rights Handbook*, pp. 42, 77 and 78 at <http://section27.org.za/basic-education-handbook/>

51. CESCR, *Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, South Africa*, 7 June 2017, UN doc E/C.12/ZAF/1, para. 141.

The DBE is responsible for governing schools at a national level and creating basic standards that all schools should meet in order to provide adequate education for everyone. Nine Provincial Education Departments (PEDs) in conjunction with SGBs are responsible for providing education and managing schools. There are great disparities between the nine PEDs, reflecting the socio-economic status of each. For instance, the PEDs with the most resources are in the wealthiest provinces of Gauteng and Western Cape.⁵²

Each province is divided into education districts, which are run by directors with some delegated powers.⁵³ Districts are themselves divided into education circuits whose main role is to link schools with district offices and PEDs.

AN EVOLVING SYSTEM: THE RISE OF A NEW PRIVATE SECTOR

Education is delivered through both public schools – a combination of no fee and fee-charging schools – and private schools. The private sector is still relatively small, accounting for 4-5% of provision. Recently, however, new providers have entered the education arena – so-called low-cost or fee schools. These corporate providers are often backed by other commercial actors such as multinational corporations, equity funds, domestic corporations and private investors.⁵⁴

In addition, so-called “ultra-low fee schools” have been springing up. These institutions, which are also known as “fly-by-night schools”, given their transitory nature, are largely of dubious quality but are attractive for users given their very low charges. Whilst some are registered, many go under the radar and are unregulated.⁵⁵

Another trend is the establishment of Public Private Partnerships which are being piloted in the Western Cape and Kwa Zulu Natal whereby private actors will play a key role in the governance and management of public schools. The project entitled “collaboration schools” permits private actors to operate in schools as donors and operating partners.⁵⁶ This would involve private actors being able to direct parts of the curriculum; hire and fire certain teachers as well as manage financial and other school affairs. Both the model and the way it is being rolled out in the Western Cape have been the subject of criticism. In particular it has been argued that the model runs contrary to South Africa’s laws which place the governance of a public school in the hands of a majority of parents and the school community itself and only permits third parties to be co-opted without voting rights.⁵⁷

Some of these developments are in response to the state’s inability to provide sufficient public schools, particularly in provinces that have experienced significant inward migration such as Gauteng. However, some of these new schools are not providing quality education according to one Provincial Education Department: “..by and large some independent schools do not cope well with the curriculum. The Department of Basic Education found that last year 32 of the 62 worst-

52. See: <https://www.worldatlas.com/articles/the-richest-and-poorest-provinces-of-south-africa.html>

53. For example, district offices can dissolve ineffective SGBs and can allocate or withdraw certain functions of the SGB, on reasonable grounds.

54. For example, Pearson Affordable Learning Fund (PALF) – of the world’s leading publishing and media multinational Pearson Corporation – was set up in 2012 to provide seed money to prospective “edu-preneurs” in emerging and developing countries. In 2014, Pearson invested R28 million (€2 million) in the SPARK, through PALF.

55. See: <http://www.hsrb.ac.za/en/research-outputs/view/1515>

56. Often called a blended model that involves philanthropic funding akin to the Academies of the UK and the Charter Schools of the US.

57. See: <https://mg.co.za/article/2018-07-06-00-western-cape-schools-plan-is-undemocratic>

performing schools are independent schools, with 24 of these performing under 40%”.⁵⁸ Despite these shortcomings, some people believe that new private actors provide an opportunity to deliver better education for learners. While others note the implications of increasing commodification of a public service.⁵⁹

The rise of low-fee schools is part of a trend across Africa and beyond. Evidence from other countries shows that such commercial chains can be deeply problematic.⁶⁰ As one commentator highlights: “Far from a miracle solution to the low quality of public education provided to poor children, these schools must be understood in the context of the rise of the middle class in the global south and its consumption patterns and redistributive preferences.”⁶¹

Although the private sector is beyond the scope of this report it is clearly an issue which is and should receive greater scrutiny as the sector expands and new actors enter the education space. The adoption in February 2019 of the Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education reflects the growing concern and attention to the impact on the right to education of inadequately regulated private actors.⁶²



Simzamile Secondary school, Ndevana, Eastern Cape. © Amnesty International

58. Phumla Sekhonyane, Gauteng education spokesperson, quoted in “The rise of the low fee school”, *Mail & Guardian*, 4 September 2015, at <https://mg.co.za/article/2015-09-03-the-rise-of-the-low-fee-private-school>

59. “Why education is expensive in South Africa”, *Inside Education*, 2 March 2018, at <https://www.insideeducation.org/featured/education-expensive-south-africa/>; “Corporate-backed private school chains for the poor: The South African experience”, Sonia Languille, *Global Labour Column*, at <http://column.global-labour-university.org/> Number 228, February 2016.

60. “What’s Wrong With Low-Cost Private Schools for the Poor?” *Worlds of Education*, 28 May 2013, at https://ei-ie.org/en/woe_homepage/woe_detail/4742/whats-wrong-with-low-cost-private-schools-for-the-poor/; <http://www.actionaid.org/liberia/publications/88-organisations-urge-investors-cess-support-bridge-international-academies/>; <http://www.actionaid.org/news/bridge-international-academies-must-respect-right-education-and-comply-ugandan-government-order/>; see also <https://www.prachisrivastava.com/low-fee-private-schooling.html>; “Questioning the global scaling-up of low-fee private schooling: the nexus between business, philanthropy and PPPs”, in A. Verger, C. Lubienski, & G. Steiner-Khamsi (Eds.), *World Yearbook of Education 2016: The global education industry*, New York: Routledge.

61. “Corporate-backed private school chains for the poor: The South African experience”, Sonia Languille, *Global Labour Column*, No. 228, February 2016. <http://column.global-labour-university.org/>

62. See: <https://www.abidjanprinciples.org/>

4. SOME KEY CHALLENGES FOR PUBLIC EDUCATION IN SOUTH AFRICA

4.1 POVERTY AND INEQUALITY

Since the end of apartheid there has been significant socio-economic progress. Between 1996 and 2018, access to electricity increased from 45% to 84.7% of the population,⁶³ whilst access to clean water improved from 57% in 1996 to 75% by 2011.⁶⁴ Infant mortality dropped from as high as 71 deaths per 1,000 live births in the early 1990s to 26 per 1000 by 2020.⁶⁵



Rural primary school, Eastern Cape.
© Amnesty International

63. See: <https://www.fin24.com/Economy/more-south-africans-have-access-to-electricity-but-theyre-less-happy-about-it-20190528>

64. Burger, R, van der Berg, S, van der Walt, S, and Yu, D, 2015, "The Long Walk: Considering the special and racial dimensions of deprivation two decades after the fall of apartheid," Stellenbosch working papers 17/15. See also Center for Economic and Social Rights, Institute for Economic Justice, Section27, "Joint Submission to the Committee on Economic, Social and Cultural Rights on the occasion of the review of South Africa's first period report at the 64th Session", October 2018, Submitted by the Center for Economic and Social Rights Institute for Economic Justice, Section27, 2018, paras 4-6 at <https://www.cesr.org/joint-submission-committee-economic-social-and-cultural-rights-south-africa%E2%80%99s-first-period-report>

65. See: <https://www.macrotrends.net/countries/ZAF/south-africa/infant-mortality-rate>. See also U.S. National Library of Medicine National Institutes of Health, 1998. "What is the infant mortality rate in South Africa? The need for improved data," at <https://www.ncbi.nlm.nih.gov/pubmed/9930256>. See also, Statistics South Africa, 2015, "Mid-year population estimates," Statistical Release P0302.

However, despite South Africa's wealth and progress, widespread poverty, high unemployment and systemic inequality persist.⁶⁶ This is characterized by sharp disparities in enjoyment of economic and social rights such as those relating to health, housing, food and education amongst different racial groups.⁶⁷ Even though there has been a small shift towards skilled and semi-skilled jobs since 1994, black employment is still characterized by low paid jobs in sectors such as mining and agriculture.⁶⁸ Corruption is a major problem impacting on both available resources and confidence in government, culminating in the Zondo Commission on State Capture and Corruption established in August 2018 and still ongoing at the time of writing.⁶⁹ Some estimates have placed the loss of public funds to corruption to be as high as R700 billion (US\$ 48.6 billion) – a sum that can be compared to the entire basic education budget of R792bn (US\$ 55.1 billion) – although this is difficult to verify given the nature of the phenomenon.⁷⁰

The government's own poverty statistics note that although the percentage of those living below the poverty line of \$US1.90 fell from 25% in 2005 to 16.5% in 2010, the figure rose again to 18.9% in 2018.⁷¹ Similarly, whilst the proportion of people who fell below the national upper-bound poverty line⁷² (R992 – around US\$69 – per person per month) declined from 66.6% in 2006 to 53.2% in 2011, it had risen to 55.5% by 2018.⁷³ Unpacking these overall figures reveals stark differences between rural and urban areas⁷⁴ and different racial groups, with nearly half of black South Africans considered to be below the poverty line compared to less than 1% of the white population.⁷⁵

According to some observers, whilst post-apartheid economic policy has generally been more inclusive, the ANC government has prioritized certain objectives, such as macroeconomic stability and GDP growth, over a more redistributive agenda aimed at addressing socio-economic inequality.⁷⁶ Clearly, economic growth is a necessary precondition to increase available resources, but it does not necessarily lead to progressive realization of rights without sufficient accompanying policies targeting poverty reduction, employment creation and investment in public services. Recent austerity measures have worsened the situation for the poorest and most disadvantaged.⁷⁷

66. According to the World Bank, the Gini coefficient increased from 0.59 in 1993 to 0.63 in 2015 World Bank, GINI index (World Bank estimate), https://data.worldbank.org/indicator/SI.POV.GINI?locations=ZA&most_recent_value_desc=true

67. See: The UN Committee on Economic, Social and Cultural Rights Concluding observations on the initial report of South Africa 2018 E/C.12/ZAF/CO/1 (29 November 2018) at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/ZAF/CO/1&Lang=En

68. See: https://www.statssa.gov.za/presentation/Stats%20SA%20presentation%20on%20skills%20and%20unemployment_16%20September.pdf

69. See International Monetary Fund, *South Africa 2018 Article IV Consultation – Press Release; Staff Report*; <https://www.sastatecapture.org.za/>. and *Statement by the Executive Director for South Africa*, www.imf.org/en/publications/cr/issues/2018/07/30/south-africa-2018-article-iv-consultation-press-release-staff-report-and-statement-by-the-46132, p. 49.

70. See: <https://africacheck.org/reports/has-sa-lost-r700-billion-to-corruption-since-1994-why-the-calculation-is-wrong/>

71. See: www.statssa.gov.za/publications/P031012019

72. This refers to the food poverty line (the amount of money that an individual needs to afford the minimum required daily energy intake – also commonly referred to as the “extreme” poverty line) plus the average amount derived from non-food items of households whose food expenditure is equal to the food poverty line. See <http://www.statssa.gov.za/publications/P03101/P031012018.pdf>

73. Economic and Social Council, *List of issues in relation to the initial report of South Africa – Addendum: Replies of South Africa to the list of issues*, 21 September 2018, UN doc E/C.12/ZAF/Q/1/Add.1, para. 4.1.

74. Inequality between urban and rural areas is changing: while rural poverty rates remain substantially higher than those in urban areas, urban poverty rates are rising and rural rates seem to be falling. *Statistics South Africa, Poverty Trends in South Africa: An Examination of Absolute Poverty between 2006 and 2015*, <https://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf>

75. <https://qz.com/africa/1061461/post-apartheid-south-africa-is-failing-the-very-people-it-liberated/>

76. See: Faulkner, D. and Leowald, C., *Policy change and Economic Growth: A Case Study of South Africa*, 2008, at p. 12. <https://bit.ly/2MFKKtl>

77. Austerity measures have included significant budget cuts in the health, education and social security sectors whilst increasing VAT from 14% to 15%, disproportionately hitting the poorest hardest- see Section 27 and the Center for Economic and Social Rights parallel report to the UN Committee on Economic, Social and Cultural Rights, para 37.

It is within this context that some of the challenges faced by the education system must be seen. In its 2017 State party report to the UN Committee on Economic, Social and Cultural Rights (CESCR), the government acknowledged this:

***“Structural obstacles to the achievement of the right to education do exist. Research has consistently shown that the strongest determinant of educational outcomes in South Africa is socio-economic status. Given the history of South Africa, there is an overlap of poverty, race and historical disadvantage. Although education and economic policies are designed to be pro-poor the negative effect of home background factors cannot be completely eradicated. The pace of social and economic development in the country is therefore a long-term obstacle to full realization of the right to education.”*⁷⁸**

The question is whether the government, beyond acknowledging this fact, is taking the appropriate remedial measures and rapidly enough to address the problems effectively.

4.2 POOR EDUCATIONAL OUTCOMES

“After four years of full-time schooling the vast majority of our kids cannot understand what they read, if they can decode the words at all. Simple questions, workbook exercises, even the most basic story book. These are meaningless to them. And if we don't teach our kids how to read we've failed them before they've even started.”

Nick Spaull and David Care⁷⁹

Since the end of apartheid South Africa has spent a relatively large proportion of GDP (6%) on education, more than most other BRICS countries.⁸⁰ However, austerity measures introduced since 2012 have meant that spending on education and other public services has stayed flat (see chapter on funding).

By some measures South Africa has made great strides in education. Educational participation among five-year-olds increased from about 40% in 2002 to 85% in 2018.⁸¹ Primary and secondary school completion rates increased considerably, especially among black Africans (although see figures on drop-out rates below). The percentage of individuals aged 20 years and older who do not have any education decreased from 11.4% in 2002 to 4.5% in 2018, while those with at least a grade 12 qualification increased from 30.5% to 45.2% over the same period.⁸² The number of matric passes was reported to have increased from 191,000 in 1994 to more than 401,000 in 2017.⁸³ Overall

78. Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, South Africa, 7 June 2017, UN doc E/C.12/ZAF/1, para. 156.

79. “Open letter to the next president: We need a grand plan for literacy”, Nic Spaull and David Carel, 6 December 2017, at <https://www.news24.com/Columnists/GuestColumn/open-letter-to-the-next-president-we-need-a-grand-plan-for-reading-20171206> in response to the PIRLS survey.

80. The BRICS countries are Brazil, Russia, India, China and South Africa. According to the most recent figures presented by the World Bank: Brazil spent 6% of its GDP in 2015, India 3.8% in 2013 and China 1.9% in 1999. See <https://data.worldbank.org/indicator/SE.XPD.TOTL.GD.ZS>.

81. See General Household survey released on 29 May 2019, <https://www.southafricanmi.com/education-statistics.html>

82. Ibid.

83. “Education analysis misses the mark”, *Mail & Guardian*, 7 December 2018.

functional illiteracy⁸⁴ fell from 35.8% of all South Africans in 2006 to 14.6% in 2016, although there has been caution expressed about the reliability of the figures.⁸⁵

It should also be noted that, starting from a very low base, South Africa has been the fastest improving country in the Trends in International Mathematics and Science Study (TIMSS)⁸⁶: Grade 9 mathematics and science assessments between the surveys of 2002, 2011 and 2015. Indeed, the country has registered improvements in all three international assessments of education quality in which it participates – TIMSS, the Southern and East Africa Consortium for Measuring Educational Quality (SEACMEQ) and the Progress in International Reading and Literacy Study (PIRLS). However, its overall comparative ratings remain poor.⁸⁷ A 2015 OECD survey of education systems ranked South Africa 75th out of 76.⁸⁸

More recently, the PIRLS revealed in 2017 that 97% of Grade 4 children in South Africa scored the lowest of the 50 countries participating in a reading and literacy test, with 78% of Grade 4 students unable to read for meaning. Rural provinces performed worst: 91% of Grade 4 children in Limpopo could not read for meaning, with similarly high percentages in the Eastern Cape (85%) and Mpumalanga (83%). In Gauteng, the result was 69% and in the Western Cape 55%. Disparities were particularly noticeable for mother-tongue language: 93% of Grade 4 students tested in Sepedi could not read for meaning, with similarly large percentages for Setswana (90%), Tshivenda (89%), isiXhosa (88%), Xitsonga (88%), isiZulu (87%) and isiNdebele (87%).⁸⁹ As a result of the PIRLS interviews with school principals, it also appeared that 62% of South African primary schools do not have school libraries. Another standardized regional survey based on testing 61,396 Grade 6 pupils from 2,779 schools on mathematics and literacy across 15 southern African countries placed South Africa 8th for mathematics and 10th for reading.⁹⁰

Some have questioned the validity of these tests, arguing that the methodology is insufficiently contextual or not grounded enough in actual classroom practices. The result is often widely divergent results.⁹¹ However, even more authoritative national-led research, such as that conducted by the University of Stellenbosch over a decade, has consistently shown that South Africa is underperforming with approximately 20% of South African children doing very well in a range of tests in literacy, language and mathematics with the remaining 80% doing very badly. According to Nic Spaull, Director of Reading for Meaning and Senior Researcher at the Department of Economics at the University

84. Statistics South Africa defines “functional illiteracy” as the “percentage of persons aged 20 years and older with no formal education or highest level of education less than Grade 7”. Inter-generational functional literacy has also decreased markedly. While 57,8% of South Africans over the age of 60 years did not at least complete a grade 7 qualification, this figure dropped to only 4,4% for those aged 20 to 39 years of age. Less than six per cent (5,5%) of adults over the age of 20 years were considered illiterate (see General Household survey released on 29 May 2019, <https://www.southafricanmi.com/education-statistics>)

85. See: <https://www.polity.org.za/article/sas-secret-ballot-debate-6-anc-achievements-scrutinised-2017-08-18>

86. The TIMSS provides reliable and timely international comparative data on the mathematics and science achievement of students. TIMSS data have been collected from students at Grades 4 and 8 since 1995 every four years. See <https://nces.ed.gov/timss/identimss/>

87. See most recently an IMF report published in March 2019 although this has been subject to some criticism as based on the views of corporate actors. See <https://www.imf.org/en/Publications/WP/Issues/2019/03/01/Struggling-to-Make-the-Grade-A-Review-of-the-Causes-and-Consequences-of-the-Weak-Outcomes-of-46644>

88. The OECD's PISA 2015 survey tested around 540,000 15-year-old students in 72 countries and economies on science, reading, maths and collaborative problem-solving. The main focus was on science, an increasingly important part of today's economy and society. <https://www.oecd.org/pisa/>

89. The PIRLS 2017 National Center for Educational Statistics, 2017.

90. Only 10 of the countries included in the third SEACMEQ research project, among them South Africa, had reliable and recent data on school attendance. Taking enrolment into account, South Africa still performs badly. Only 71.2% of children that should be in Grade 6 are literate. South Africa is ranked 6th out of the 10 countries. Only about 58.6% of South African children that should be in Grade 6 are numerate. In this regard, South Africa is ranked fifth out of the 10.

91. For example, well above 90% for the general population in UN data, compared to 58% of children being unable to “read for meaning” in PIRLS 2011 and then 78% in 2016. See “The PIRLS debacle – literacy, language and standards in schools in South Africa”, Daily Maverick, 23 March 2018.

of Stellenbosch who conducted the research the disparity has a strong correlation between socio-economic status, elite and sub-elite schooling, and between children who attend schools who have English as a first language and those for whom English is a second language.⁹²

In its parallel report to the CESC in 2017, the South African Human Rights Commission (SAHRC) noted that despite the country's high rates of school enrolment, the quality of education received remains of great concern. Using the Annual National Assessment for 2013 (while noting its limitations), statistics indicate that only a third of Grade 6 learners reached 50% (adequacy threshold) for mathematics in 2014 while 77% and 42% of Grade 6 learners reached 50% or higher on home language and first additional language examinations respectively. Only 3% of Grade 9 reached the 50% mathematics threshold, while only 48% reached 50% on the home language examination threshold. South Africa's performance in the SEACMEQ tests and the TIMSS assessments were also reportedly poor.⁹³

South African parents seem to have a low opinion of the education system. A Global Parents' Survey, commissioned in December 2017, found that almost three-quarters (72%) of South African parents think standards of education have fallen in the past 10 years. This was more than any other country surveyed. The survey also found that South African parents had the highest proportion (50%) of those who thought education had become a lot worse in the past 10 years.⁹⁴

Some 82% of parents whose children study at no fee schools believe they would be fairly likely or very likely to send their child to a fee-paying school if they could afford it and if there was an appropriate place available. This was the second highest of any country surveyed after India (85%). More than half (54%) of South African parents rate no fee schools as fairly poor or very poor – higher than any other country surveyed apart from Uganda. Another survey of students found that less than half felt prepared for the transition from school to higher education institutions.⁹⁵

Despite high access numbers, it should be noted that drop-out rates are high particularly beyond Grade 6. Of 100 learners that start school, 50-60 will make it to matric, 40-50 will pass matric, and only 14 will go to university.⁹⁶ Specifically, only 36.4% of those who began Grade 1 in 2002 matriculated in 2014, and statistics from the DBE in 2015 revealed that 1.2 million learners registered for Grade 1 compared to only 790,000 learners in Grade 12. This is also a serious problem at tertiary level. A DHET report in 2015 indicated that 47.9% of university students did not complete their degrees, with black students having the highest drop-out rate. Up to 32.1% of enrolled students left in their first year.⁹⁷

The General Household survey for 2017 identified the main reasons for dropping out as a lack of money (21,8%) followed by poor academic performance (18,9%) and then family commitments (i.e. getting married, minding children and pregnancy) (9,7%) – a much larger percentage of females than males offered this as a reason (18,5% compared to 0,4%).⁹⁸

92. Nic Spaull, "Poverty & privilege: Primary school inequality in South Africa", *International Journal of Educational Development*, Vol. 3, Issue 5, September 2013, pp. 436-447, www.ekon.sun.ac.za/wpapers/2012/wp132012/wp-13-2012.pdf

93. The South African Human Rights Commission's parallel report to CESC 2017, para. 69 at https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ZAF/INT_CESCR_IFL_ZAF_28910_E.pdf

94. The research, conducted by Ipsos Mori on behalf of the Varkey Foundation, interviewed 27,380 parents in 29 countries using an online survey between 8 December 2018 and 15 January 2019.

95. "SA students are not equipped to handle higher education: Study", *Timeslive*, 7 August 2017, <https://www.businesslive.co.za/bd/national/education/2017-08-07-sa-students-not-prepared-for-tertiary-education-says-study/>

96. Nic Spaull "Priorities for Education Reform (Background Note for Minister of Finance)" 19/01/2019. Available at: <https://nicspaull.com/2019/01/19/priorities-for-education-reform-background-note-for-minister-of-finance-19-01-2019>.

97. See: <http://www.dhet.gov.za/Commissions%20Reports/DHET%20Annual%20Report%202014-2015.pdf>

98. General Household Survey 2017 Statistics SA 21 June 2018 at <http://www.statssa.gov.za/publications/P0318/P03182017.pdf>



Pendla primary school New Brighton, Eastern Cape. © Amnesty International

4.3 MULTIPLE LANGUAGES

“The problem is that our poor children in many cases are just not able to understand what is going on in class. There is inhumanity in making kids go through a system where they struggle to understand the language of instruction... In a school that I looked into in Khayelitsha, at the end of Grade 3, the learners were not being taught in English at all as they were not being tested in English. When they went to Grade 4, all the instruction was in English. And now they have to give the same assessments as children who have English as the first language... In many cases, the texts available in African languages are archaic. It’s like expecting a Grade 3 child to read Shakespeare for leisure.”

Carolyn McKinney, School of Education, University of Cape Town⁹⁹

“The language taught in the foundation phase is the home language, but are there sufficient resources in these languages? There is a lot of scope for improvement. You can’t get jobs if you learn only your home language so parents want their children to learn in English.”

Professor Eric Atmore, Director of the Centre for Early Childhood Development, UCT¹⁰⁰

99. Ibid.

100. Interview with Eric Atmore 13 December 2017

The inability to comprehend the language in which you are being taught is a clear impediment on the enjoyment of the right to quality education.¹⁰¹ In this regard, South Africa's rich language heritage, with 11 official languages, nine of which are indigenous,¹⁰² presents multiple challenges.¹⁰³ For example, 60% of teachers work in schools with more than 10% of students whose first language is not the language of instruction, compared to an OECD average of 21%.¹⁰⁴

Under Section 29(2) of the current Constitution, every learner has the right to receive a basic education in the language of his or her choice, where this is reasonably practicable.¹⁰⁵ Generally, children learn in their mother tongue for the first three years (Grades 1-3) then switch to either English or Afrikaans in Grade 4 and continue with that language for the rest of their schooling.¹⁰⁶

Several experts as well as teachers told Amnesty International that one of the key barriers to effective learning is comprehension. Yet, according to Caroline McKinney, a linguistics expert, this is precisely what happens in many schools as learners struggle to understand because of language barriers. Issues raised include lack of teachers able to teach in English; lack of quality textbooks in languages beyond English and Afrikaans and the fact that the latter is still the first additional language at secondary school level beyond indigenous languages.¹⁰⁷

101. See: <https://unesdoc.unesco.org/ark:/48223/pf0000243713>

102. English, Afrikaans, Ndebele, Northern Sotho, Sotho, SiSwati, Tsonga, Tswana, Venda, Xhosa and Zulu. Sections 6, 9, 29, 30, 31 and 35 of the Constitution describe language rights in the public domain. Section 6(1) affords official status to 11 languages, 9 of which are indigenous African languages. In Section 6(2), the state is ordered to "take practical and positive measures to elevate the status and advance the use of these languages" – Constitution of the Republic of South Africa 1996.

103. S. Taylor and M. von Fintel, "Estimating the impact of language of instruction in South African primary schools: A fixed effects approach", *Economics of Education Review*, Vol. 50, February 2016, pp. 75-89, <https://www.sciencedirect.com/science/article/abs/pii/S027277571630022X>

104. South Africa - Country Note - TALIS 2018 Results p.2 at <http://www.oecd.org/education/talis/>. The OECD Teaching and Learning International Survey (TALIS) is an international, large-scale survey of teachers, school leaders and the learning environment in schools.

105. Section 29(2) states: "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."

106. Megan Doidge (2014), "Factors influencing Grade 7 teachers' implementation of outcomes-based approaches in the National Curriculum when teaching "Human Reproduction" (PDF). Doctor's Thesis, University of the Witwatersrand. Many wealthy parents choose to send their children to straight-for-English schools from day one.

107. Interview with Carolyn McKinney School of Education University of Cape Town 12 December 2017

5. POOR INFRASTRUCTURE

“If only our school buildings could be fixed and we get new and nice class[rooms] I would enjoy school”.

Mhaga, pupil, Imiqhayi Senior Secondary School, King Williams Town, Eastern Cape¹⁰⁸

“The school buildings are collapsing.”

James, pupil, Moletsane Secondary School, Soweto¹⁰⁹



Imiqhayi school, Mount Coke, King Williams Town, Eastern Cape – classroom destroyed by tornado in 2014 and still not repaired.
© Amnesty International

108. Interviews with pupils 26 February 2019

109. Interviews with pupils 22 February 2019



Simzamile Secondary school, Ndevana, Eastern Cape - classroom. © Amnesty International

Amnesty International's research in Gauteng and Eastern Cape found numerous examples of schools with poor infrastructure and lacking basic facilities in breach of both the government's own national minimum regulation standards and its international human rights obligations. These included:

- badly maintained buildings that had never been renovated, many of them dating back to the apartheid era;
- hazardous buildings;
- poor maintenance, in some cases putting the safety and security of learners at risk;
- unhygienic, poorly maintained and unsafe sanitation, with some schools only having pit toilets;
- overcrowded classrooms without basic equipment and materials such as furniture and textbooks; and
- lack of security exacerbating the problems of vandalism and burglary.

INTERNATIONAL AND NATIONAL STANDARDS

The CESCR in its General Comment 13 on the right to education has made clear that part of a State's obligation to implement the right to education is to ensure that “[f]unctioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology”.¹¹⁰

Education must be provided within safe physical reach, either by attendance at some reasonably convenient geographic location (for example, a neighbourhood school) or via modern technology (such as a “distance learning” programme).¹¹¹

The government's own **Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure** (hereafter “**Minimum Norms and Standards**”) require that all schools made entirely of inappropriate materials such as mud, asbestos, metal or wood must be replaced by November 2016, and likewise all schools must be provided with access to water, electricity and sanitation by the same date. The availability of classrooms, electricity, water, sanitation, electronic connectivity and perimeter security must be prioritised and implemented by November 2020.¹¹²

The link between school infrastructure conditions and their effect on learning outcomes has been well documented.¹¹³ In South Africa, the DBE's policy on school infrastructure, the National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment, highlights the negative effects of a poor schooling environment on learners. These include irregular attendance and higher drop-out rates. Importantly, the policy also recognizes the detrimental effects of inadequate school infrastructure on teachers, citing high rates of turnover and teacher absenteeism due to having to work in such a challenging environment.¹¹⁴

5.1 STRUGGLING TO OVERCOME APARTHEID'S LEGACY

Under apartheid, 10 times as much money was allocated to white schools than black schools, entrenching inequality throughout the education system.¹¹⁵ This legacy continues to this day. Stories

110.CESCR General Comments 13, para. 6(a).

111.CESCR General Comments 13, para. 6(b).

112.South African Schools Act 84 of 1996: Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure (Government Gazette Notice No. 37081 published on 29 November 2013) Regulation 4(1)(b)(i). <https://www.gov.za/regulations-relating-minimum-uniform-norms-and-standards-public-school-infrastructure>

113.For example, a 1979 review concluded that there was a link between improved educational outcomes and – among other infrastructural factors – the age and condition of school facilities, lighting, ambient temperature and air quality (see Section27, *Basic Education Rights Handbook*, p. 238 at <http://section27.org.za/basic-education-handbook/>). See also <https://blogs.worldbank.org/education/why-education-infrastructure-matters-learning>; https://www.researchgate.net/publication/329402892_The_Impact_of_School_Infrastructure_on_Learning_A_Synthesis_of_the_Evidence; <http://erepository.uonbi.ac.ke/handle/11295/7161>

114.See Section27, *Basic Education Rights Handbook*, p. 238 at <http://section27.org.za/basic-education-handbook/> .

115. “Whites should admit they gained from a monstrous system,” *GroundUp*, 19 May 2016.

about poor school infrastructure routinely appear in South African media.¹¹⁶ By the beginning of 2019 nearly 4,000 schools were still using pit latrines,¹¹⁷ which are essentially single pits covered with a wooden or concrete slab with a drop hole with a structure around it for shelter and privacy.¹¹⁸ These largely continue to exist in schools serving poorer black communities in rural areas particularly in the provinces of Eastern Cape and KZN.¹¹⁹

Despite some limited improvements, the condition of infrastructure in many schools is still appalling and delays in infrastructure improvements remain a major obstacle to the realization of the right to education for millions of learners. According to government statistics for 2018, out of 23,471 public schools:

- 20,071 had no laboratory
- 18,019 had no library
- 16,897 had no internet
- 9,956 had no sports facilities
- 4,358 had only illegal plain pit latrines for sanitation¹²⁰
- 1,027 had no perimeter fencing, essential for teacher and pupil safety
- 269 had no electricity
- 37 had no sanitation facilities at all.¹²¹

The worst school infrastructure conditions are largely in areas formerly set aside for black South Africans.¹²² For instance, about 94% of Limpopo schools do not have a library or laboratory facilities, a far higher percentage than the national average and disproportionately impacting black learners.¹²³

An international survey conducted by the OECD of school principals saw 56% of South African heads report that a shortage of physical infrastructure (compared to an OECD average 26%) hindering their school's capacity to provide quality instruction.¹²⁴ 70% reported a shortage of library materials compared to an OECD average of 16%.¹²⁵

Many of the shortcomings identified above are also in breach of South Africa's Minimum Norms and Standards for educational facilities. In 2013, the government enacted these binding regulations requiring the government to ensure that:

- all schools have access to water, sanitation and electricity;
- all plain (unimproved and unventilated) pit latrines are replaced with safe and adequate sanitation; and

116. "As the third term begins, the crisis of broken schools remains unresolved", *Daily Maverick*, 17 July 2018, <https://www.dailymaverick.co.za/article/2018-07-17-as-third-term-begins-the-crisis-of-broken-schools-remains-unresolved/>; "We are 52 students in one container", *news24*, 3 July 2018, <https://www.news24.com/southafrica/news/we-are-52-students-in-one-container-20180307>; "Meet the Eastern Cape schools the province desperately tries to forget", *Business Live*, 16 January 2018, <https://www.businesslive.co.za/bd/national/education/2018-01-16-meet-the-eastern-cape-schools-the-province-desperately-tries-to-forget/>

117. See: <https://www.news24.com/SouthAfrica/News/almost-4000-pit-latrines-in-sas-schools-zero-target-set-within-the-next-3-years-20190311>

118. See: https://www.who.int/water_sanitation_health/hygiene/emergencies/fs3_4.pdf

119. See: <https://mg.co.za/article/2018-07-13-00-south-african-schools-toilet-facilities-a-shame-and-a-disgrace>

120. Plain pit latrines lacking any ventilation and safe covering were outlawed in 2013.

121. DBE, 2018. National Education Infrastructure Management System at <https://bit.ly/2MJn5bq>

122. See: <https://www.unicef.org/esa/sites/unicef.org/esa/files/2018-12/UNICEF-South-Africa-2018-Education-Budget-Brief.pdf>

123. Section27, *Basic Education Rights Handbook*, p. 238 at <http://section27.org.za/basic-education-handbook/>

124. South Africa - Country Note - TALIS 2018 Results p.2 at <http://www.oecd.org/education/talis/>. The OECD Teaching and Learning International Survey (TALIS) is an international, large-scale survey of teachers, school leaders and the learning environment in schools.

125. Ibid.

- schools built from inappropriate materials (such as mud and asbestos) are replaced by November 2016.¹²⁶

As detailed above, the government's own statistics show that it has not met these targets. This was also reinforced by the South African Human Rights Commission in its parallel report to CESC, when it stated that the government had failed to achieve its objective of eradicating all schools built of inappropriate materials and supplying all schools with water, sanitation and electricity by November 2016.¹²⁷

In addition to not meeting these basic infrastructure goals the government is also not on track to achieve its stated aim under the Norms and Standards of ensuring that all schools are brought into compliance with the norms regarding perimeter fencing, classrooms, electricity connectivity, sanitation and water by 29 November 2020 and to have a laboratory and library by 29 November 2023.¹²⁸

A loophole in the original Minimum Norms and Standards was that the guidelines must be followed in co-operation with other relevant departments. Amnesty International spoke with experts on education in South Africa who explained their belief that this has allowed the DBE to indefinitely delay service delivery to schools based on the lack of capacity of other departments such as Public Works.¹²⁹

“Equal Education has campaigned for improved school infrastructure and got a law passed. The law is not without its flaws and has some regulatory defects. It allows for passing the buck to other departments or implementing agents”.

Carolyn McKinney, School of Education, University of Cape Town¹³⁰

5.2 CONTINUED USE OF POOR AND DANGEROUS INFRASTRUCTURE

In addition to observing the state of the infrastructure in the schools we visited, Amnesty International's interviews with students in those highlighted that poor infrastructure was a major issue impacting on their right to education – 47 out of 87 in Gauteng and 45 out of 49 in Eastern Cape.¹³¹ Other key findings included (sanitation is covered further below):

- 74 out of 87 students in Gauteng said that their classes exceeded the stipulated numbers for classroom sizes¹³² as did 29 out of 49 in Eastern Cape.
- 59 students in Gauteng and 49 students in Eastern Cape identified lack of facilities as an issue, including (combined totals) sports fields (61) followed by libraries (53) and computer or science laboratories (25).

126. Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, *Government Gazette*, No. R.920, 29 November 2013, at <https://bit.ly/2wy6koT>

127. The South African Human Rights Commission's parallel report to CESC 2017 para. 67 at https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ZAF/INT_CESCR_IFL_ZAF_28910_E.pdf

128. Section 27, *Basic Education Rights Handbook* (2017), p. 242 at <http://section27.org.za/wp-content/uploads/2017/02/Chapter-13.pdf>

129. At the time of writing, the government is appealing a judgment from the Bhisho High Court compelling it to improve the Minimum Norms and Standards. President Cyril Ramaphosa has indicated that he wishes to harness private finance, via the Sanitation Appropriate for Education initiative, to meet core sanitation infrastructure requirements.

130. Interview with Daniel Linde 12 December 2017

131. Interviews and questionnaires carried out between 20 and 28 February 2019 in Gauteng and Eastern Cape.

132. The stipulated classroom sizes are 1:35 at primary level and 1:27 at secondary level

Students said that the lack of adequate facilities impacted negatively on their education, such as having to cope with the smell of toilets and trying to concentrate in overcrowded classrooms.

“Class overcrowding is disturbing because of the uncontrollable noise.”

Nethi, pupil, Phillip Mtywaku Senior Secondary School, Eastern Cape¹³³

“[There are] many learners and too [big a] crowd. It is difficult to learn because they make noise and other wrong things.”

Lathithaa, pupil, Simzamile Senior Secondary School, Eastern Cape¹³⁴

“And the toilets are filthy and repulsive, so the smell of urine comes into the classroom and it’s not nice. And then we block our noses, we breathe through our mouth. And that affects our learning.”

Pupil, Port Elizabeth, Eastern Cape¹³⁵

DATED AND POTENTIALLY DANGEROUS INFRASTRUCTURE



July High school, nr Peddie, Eastern Cape – classroom in use. © Amnesty International

133. Interviews with pupils 25 February 2019

134. Interview with pupils 26 February 2019

135. Interviews with pupils 28 February 2019 conducted off site



Fezeka primary school, nr Peddie, Eastern Cape – rubble in school grounds. © Amnesty International

Amnesty International also interviewed several teachers who explained how the schools they taught in, which had been built in the apartheid years, had not been upgraded in some cases for decades. The problem is compounded by the original use of poor quality materials such as mud and asbestos that have never been replaced, despite the commitments to do so in the Minimum Norms and Standards. The use of materials like asbestos also pose serious health risks for learners and teachers.

“It’s an old school. There is no library. There is no sport field. Ever since the school was built [in 1986], it has not been renovated.”

Zingisa Mbatyoti, parent, Lungisa High School, Kwadwesi, Eastern Cape¹³⁶

“Our school was opened in 1988 and since then there was nothing that’s ever been done to the school... The only thing that we are trying now to fix is this year, we fixed the windows because the school had no windows. The building is falling... it’s a mess.”

Vuyolwethu, pupil, Sivuyiseni Primary School, Khayetlisha, Eastern Cape¹³⁷

“The school building looks old and sometimes I wish I had money to renovate it.”

Neo, pupil, Moletsane Secondary School, Soweto, Gauteng¹³⁸

136. Interviews with parents 28 February 2019

137. Interviews with pupils 28 February 2019 conducted off site

138. Interviews with pupils 22 February 2019

Amnesty International visited a number of schools where researchers were told that urgent renovation was necessary. Schools visited by Amnesty International that had never had major renovation by the state included schools built in 1932,¹³⁹ 1941,¹⁴⁰ the 1950s,¹⁴¹ 1970,¹⁴² 1972,¹⁴³ and 1981.¹⁴⁴ They included:

- a mud school built in 1932 had buildings that were basically the same since construction;¹⁴⁵
- a school that was meant to be temporary when built in 1970 of board and asbestos but still has the same infrastructure;¹⁴⁶
- a school built in the 1950s by parents has walls with serious cracks, asbestos roofs and since 2014 a missing roof;¹⁴⁷
- a school built in 1989 that had its last major renovation in 1995, with walls, ceilings and floors in a dangerous condition;¹⁴⁸ and
- a school built by the PED as a temporary school in 1994 that was never finished. As a result, students said the school was “too hot in the summer and too cold in the winter because the walls are thin”.¹⁴⁹

Amnesty International researchers witnessed the poor infrastructure in many schools, including buildings with broken windows and classrooms with insufficient desks and chairs so that pupils had to share desks/chairs, or in some cases sit on the floor or stand. In one school, there were only 30 chairs for 55 learners.¹⁵⁰

“The building ain't perfect for the children. There are broken windows, the school is built with shacks... [There are] over 80 [pupils in my class]. The place is overcrowded. There is a lack of chairs and desks... [There is no] library and [no] sport field.”

Kholeka, pupil, Iqonce High School, King Williams Town, Eastern Cape¹⁵¹

“We don't have many things that we need... There are no ceilings, windows and some doors don't have lock[s]... The toilets are bad because some don't have doors and they are not safe and we don't have toilet seats... We don't have soccer fields, library and scientific equipment that are needed.”

Rabe; pupil, Simzamile Senior Secondary School, Eastern Cape¹⁵²

139. Dangile Primary School near Peddie, Eastern Cape. Built as a mud school in 1932, the buildings are basically the same since construction.

140. Pendla Primary School New Brighton, Eastern Cape.

141. Imiqhayi Senior Secondary School, Eastern Cape.

142. Pefferville Primary School, Mdatsane, Eastern Cape.

143. Moletsane High School, Soweto, Gauteng. Parents volunteer to do some limited renovation such as painting.

144. Makhunya Mvulo Primary School, Eastern Cape. The asbestos roof needs to be replaced but there is no renovation budget.

145. Dangile Primary School near Peddie, Eastern Cape.

146. Pefferville Primary School, Mdatsane, Eastern Cape.

147. Imiqhayi Senior Secondary School, Eastern Cape.

148. July High School near Peddie, Eastern Cape.

149. Interviews with students at Simzamile Senior Secondary School, Ndevana, Eastern Cape.

150. Tipfuxeni Secondary School, Stinkwater, Gauteng.

151. Interviews with pupils 26 February 2019

152. Interviews with pupils 26 February 2019

“When you come to school you must go look for a chair or a table.”

Kgobokwane, pupil, Realogile High School, Alexandria, Gauteng¹⁵³

“There is no furniture for the learners to sit on. They have to share three or four learners in one desk. They don’t have chairs.”

Teacher, July Secondary School, nr. Peddie Eastern Cape¹⁵⁴

In many cases, school buildings do not protect students and teachers from adverse weather conditions, which also impact on learning. This can range from rainwater leaking into classrooms, to buildings being unable to deal with extremes of temperature.

“My school is destroyed by weather conditions. [Water leaks into some classrooms] when raining.”

Njokweni, pupil, Imiqhayi Senior Secondary School, Eastern Cape¹⁵⁵

“When it’s cold, we get cold. And when it’s hot, it’s hot inside the classroom, because of the windows, we have lots of broken windows.”

Hopolang, pupil, Moletsane Secondary School, Soweto, Gauteng¹⁵⁶

“In other classes there [are] no windows [or] doors, so if it’s cold [pupils] will get sick.”

Blam, pupil, Simzamide Senior Secondary School, Eastern Cape¹⁵⁷



Bulelani primary school, Hanover, Bhishu, Eastern Cape – assembly hall. © Amnesty International

153. Interviews with pupils 23 February 2019

154. Interviews with pupils 27 February 2019

155. Interviews with pupils 26 February 2019

156. Interviews with pupils 22 February 2019

157. Interviews with pupils 26 February 2019

In some cases, the infrastructure is so bad that it puts children in danger.

“It is not safe for us because one day, the roof can just fall down on us. The floors have holes.”

Solinda, pupil, Imiqhayi Senior Secondary School, Eastern Cape¹⁵⁸

“The buildings are not in a good condition. The buildings of my school can fall down at any time. What's sad about that is [that] they may fall down whilst we are inside the class, and when that happens, our parents won't [be able to] afford proper medical care.”

Oulube, pupil, Booysen Park Secondary School, Nelson Mandela Bay, Eastern Cape¹⁵⁹

OVERCROWDED CLASSROOMS



Simzamile Secondary school, Ndevana, Eastern Cape. © Amnesty International

In some schools, classroom shortages impact on learning as more and more students are put into already overcrowded spaces. In one school, a school head told us that a shortage of classrooms meant that two years – Grades 1 and 2 – had to be taught together but only received 2.5 hours tuition per day owing to lack of available staff.¹⁶⁰ In another, there are 16 classrooms for 978 pupils, leading in some cases to a teacher to pupil ratio of 1:70 double the stipulated ratio of 1:35. Requests for new classrooms since 2014 have gone unheeded: a delivery of four pre-fab classrooms only enabled the school to accommodate new learners and did not do anything to alleviate existing overcrowding.¹⁶¹ Overcrowding due to lack of staff is also explored in the next chapter.

158. Interviews with pupils 26 February 2019

159. Interviews with pupils 28 February 2019 conducted off site

160. Interview with Principal, Bulelani Primary School, Hanover, Bhishu, Eastern Cape 25 February 2019

161. Fanti Gaga Primary School, Mdatsane, Easter Cape.

“My class is crowded. It makes it difficult to learn because we cannot count each other.”

Aganda, pupil, East Bank High School, Alexandria, Gauteng¹⁶²

LACK OF FACILITIES ESSENTIAL TO LEARNING

Many schools visited by Amnesty International lacked facilities that are key to a decent education, such as sports fields and equipment,¹⁶³ libraries¹⁶⁴ and laboratories.¹⁶⁵ Some schools lacked any of these essential facilities despite this being a policy requirement.¹⁶⁶

“There is no language lab... no library... no science lab... no computer lab... the kitchen is a tin shack... the cooks have to cook in very hot and basic conditions – the government promised to take action but there has been nothing for three years.”

Leita, Head of Department, Tipfuxeni Secondary School, Stinkwater, nr. Pretoria, Gauteng¹⁶⁷

Amnesty International saw school kitchens in metal containers or shacks, making it extremely uncomfortable for staff to cook food.¹⁶⁸



←
Kaukela High School,
Eastern Cape - kitchen.
© Amnesty International

162. Interviews with pupils 28 February 2019

163. Hans Kekana High School, Temba, Gauteng; Emfundweni Senior Secondary School, Qeto, Eastern Cape; Kaukela High School, Eastern Cape; Fezeka Primary School near Peddie, Eastern Cape; Simzamile Senior Secondary School, Ndevana, Eastern Cape; Imiqhayi Senior Secondary School, Mount Coke, King Williams Town, Eastern Cape; Ebongweni Primary School, Kwasikele township, Port Elizabeth, Eastern Cape.

164. Tipfuxeni Secondary School, Stinkwater, Eastern Cape; Fanti Gaqa Primary School, Mdatsane, Eastern Cape; Emfundweni Senior Secondary School, Qeto, Eastern Cape; Kaukela High School, Eastern Cape; Fezeka Primary School near Peddie, Eastern Cape; Bulelani Primary School, Hanover, Bhishu, Eastern Cape; Simzamile Senior Secondary School, Ndevana, Eastern Cape; Imiqhayi Senior Secondary School, Mount Coke, King Williams Town, Eastern Cape; July High School near Peddie, Eastern Cape.

165. Tipfuxeni Secondary School, Stinkwater, Gauteng; Emfundweni Senior Secondary School, Qeto, Eastern Cape; Kaukela High School, Eastern Cape; Bulelani Primary School, Hanover, Bhishu, Eastern Cape; Simzamile Senior Secondary School, Ndevana, Eastern Cape; Imiqhayi Senior Secondary School, Mount Coke, Kings Williams Town, Eastern Cape; July High School near Peddie, Eastern Cape.

166. See *National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment 2010* (DBE) at <https://www.education.gov.za/Portals/0/Documents/Policies/SystemPlanning/NatPol%20EquitableProvision.pdf?ver=2010-08-06-135050-120>

167. Interviews with pupils 20 February 2019

168. Kaukela High School, Eastern Cape.

In one case, six staff were preparing food for up to 1200 pupils in a tin shack with very basic equipment.



Tipfuxeni secondary school, Stinkwater, Gauteng – kitchen for 1200 pupils. © Amnesty International

They had been promised action by government to construct a new kitchen facility for over three years yet nothing had happened.¹⁶⁹ In another case, meals were being prepared in classrooms in the absence of adequate kitchen facilities.¹⁷⁰ In one school, a classroom had to be converted into a kitchen, reducing learning space.¹⁷¹

“We don’t have a proper canteen – no place for food storage and preparation. Some companies want to donate breakfast to us but they want to see the place where students can sit and eat and we don’t have it. We need a canteen for learners where they can sit and eat and food is stored and prepared.”

Mpho Motsoane, Head of Mastediso Primary School, Gauteng¹⁷²

Amnesty International’s field research findings were confirmed by a survey jointly conducted with the NASGB which found:

- Only 17% of respondents indicated that either all or most school buildings in their area had been renovated in the last 20 years.
- 37% said that in their areas at least some schools do not have enough classrooms, including 11% who said that none of the schools in their area do.
- 24% responded that none of the schools in their areas has any sports facilities.
- 38% said that none of the schools in their areas has a library.

169. Tipfuxeni Secondary School, Stinkwater, Gauteng.

170. Luvuyo special school, Eastern Cape.

171. Makhunya Mvulo Primary School, Eastern Cape.

172. Interview with Mpho Motsoane 6 December 2017

5.3 GAUTENG: FAILINGS IN SOUTH AFRICA'S WEALTHIEST PROVINCE



Tipfuxeni secondary school, Stinkwater, Gauteng - kitchen. © Amnesty International

“There is no aircon in the mobile classrooms – it is impossible to teach in summer... There is constant theft and vandalism... even the window frames have been stolen... The budget doesn’t take into account the constant thefts.”

Leita, Head of Department, Tipfuxeni Secondary School, Stinkwater, Pretoria¹⁷³

As outlined above Amnesty International found many examples of infrastructure failings affecting the learning experience of pupils in South Africa’s wealthiest province.

The survey Amnesty International conducted with the NASGB confirmed these findings in Gauteng:

- Some 48% stated that no schools had been renovated and 41% said that only a few or some had been.
- Only three SGBs (10%) said that all schools in their areas had sufficient classrooms, while 28% indicated that most schools did have enough. Some 48% said that few or none had a sufficient number of classrooms.
- 21 out of 28 (75%) of SGBs indicated that few or no schools had their own sports facilities with only 11% stating that most did.
- Half of respondents said that either few or no schools in their area had a library.

Many Gauteng schools suffer from lack of space due to a rapidly growing population, partly owing to inward migration, with no corresponding enhancement of infrastructure to meet these demands.

173. Interviews with teaching staff 20 February 2019

REACHING BREAKING POINT: ONE SCHOOL'S STORY

The biggest issue is space and land. We need a separate play area for the grade R (before Grade 1)... We need funding for extra-curricular activities... We have no sporting facilities. We rent from the local council and local soccer club. It costs us R300 per game and we have no control over the timings.

One of our challenges is that the Department [of Education] does not maintain schools or buildings. The original building was from the older pre-primary school. As the school grew, we kept fighting with the department for a bigger property. We have expanded and also took over the library. We have been using mobile classrooms. But even for mobile classrooms, you need space. There is no help from the department. So what comes in, goes out. Property-wise we are totally dependent on the department. 80% of our classrooms are mobile.

The number of students is only increasing. The surrounding area is being revamped for low cost housing. They are planning to build 250 housing units. Even if we take one child per family, we are going to have 250 new students.

The demographic is also changing. Earlier it was all Afrikaans; now about 50% are Afrikaans.

We started with 60 learners and now we have more than 1,000.

The department is also pushing us to have Grade R (before grade 1) classes. But the department does not supply classrooms... But the Grade R learners are not included in the school numbers. We currently have 60 students in Grade R classes. Ideally we would like to have five Grade R classes who will automatically go into Grade 1 but we don't have the space.

"There is no place to build new classrooms unless we acquire land from the neighbouring areas... The pressure is also growing because of the number of migrants coming in."

Koos Pretorius, Head of Galway Primary School, Gauteng¹⁷⁴

Amnesty International's interviewees also said that safety and security was a major problem impacting on infrastructure. At a school that suffered repeated vandalism and theft, all the computers meant for students had been stolen.¹⁷⁵ At another, where there is no CCTV, burglaries are frequent as the school cannot afford continuous security patrols.¹⁷⁶ At a rural school where fencing only covers some of the grounds, theft and vandalism are frequent: computers are regularly stolen, all eight smartboards have been stolen, and even the window frames have been taken.¹⁷⁷ A Soweto township school suffers from insufficient patrols – the funds from the PED allow the SGB to pay for only two guards which is insufficient to provide the level of security needed. The school has had two major break-ins since 2017 when computers were stolen and the administration office was vandalized.¹⁷⁸

The Gauteng's PED's own latest available report on progress being made on infrastructure revealed that 29 schools are still entirely made of asbestos and that, of those, the final ten will be rebuilt only after 2023 – seven years later than the government deadline of 2016. In the same report the PED

174. Interview with Koos Pretorius 5 December 2017

175. Ruta-sechaba Secondary School, Evaton North.

176. Hans Kekana High School, Temba Rural.

177. Tipfuxeni Secondary School, Stinkwater, Pretoria.

178. Moletsane High School, Soweto.

admitted that it would not be able to meet the 2020 Norms and Standards' deadline to provide an adequate supply of classrooms given that 2963 classrooms would need to be built.¹⁷⁹

5.4 EASTERN CAPE: DIFFICULTIES IN OVERCOMING THE TOXIC LEGACY OF APARTHEID



July High school, nr Peddie, Eastern Cape. © Amnesty International

Amnesty International's research confirmed that poor infrastructure continues to be a major problem in Eastern Cape. The team saw first-hand schools that were literally falling apart. They noted that some schools:

- had never been renovated since their construction decades earlier;
- had collapsing and visibly unsafe buildings;
- had extremely overcrowded classrooms – up to 60-70 students in some cases;
- had students sharing textbooks because of lack of sufficient textbooks;
- lacked decent sanitation with the continued use of pit toilets;
- lacked essential amenities such as libraries, laboratories and sports facilities; and
- lacked sufficient desks and chairs in classrooms for pupils to sit on.

179. See: <https://www.education.gov.za/Portals/0/Documents/Reports/2017%20Infrastructure%20Reports/2017%20Norms%20and%20Standards%20Report%20GP.pdf?ver=2018-08-03-150813-890>

Head teachers told Amnesty International of the constant struggle to maintain rundown and dangerous buildings with inadequate funds. Many schools built decades ago have not had dangerous material such as asbestos replaced, in breach of the national minimum standards, with the resulting potential serious risk to health.¹⁸⁰



Simzamile Secondary school, Ndevana, Eastern Cape. © Amnesty International

“The school was built in the 1950s by parents and has never been renovated... you can see the cracks in the walls... We have asbestos roofs... One classroom had its roof blown away by a tornado in 2014 and has never been replaced.”

Luvyo Bakami, Head of Imiqhayi Senior Secondary School, Kings William Town, Eastern Cape¹⁸¹

“The school has never been renovated since being built in 1941, including toilet blocks.”

Head of Pendla Primary School, New Brighton, E Cape¹⁸²

“The buildings were meant to be temporary when built in 1970 – board and asbestos – but we still have the same infrastructure... The maintenance budget of R400,000 is not enough for major renovations – we need bricks and mortar.”

Head of Pefferville Primary School, Mdatsane, E Cape¹⁸³

180. See: https://www.who.int/ipcs/assessment/public_health/asbestos/en/

181. Interview 26 February 2019

182. Interview 23 August 2018

183. Interview 28 August 2018

“We need to replace the asbestos roof but the renovation budget is not enough.”

Head of Makhunya Mvulo Primary School, E Cape¹⁸⁴

“The buildings are cracked, the condition[s] of the class[rooms] inside are bad. The floors are bad, there’s dust everywhere. In B block and A block, there are classrooms that are not used because of those conditions. Because, if a building falls, then the learners may end up in hospital.”

Liya, pupil, Port Elizabeth¹⁸⁵

Amnesty International visited schools that lacked even basic equipment such as adequate numbers of chairs and desks, or facilities such as a library or sports facilities, and did not conform with the Minimum Norms and Standards.

“The truth is the furniture is not good... You get in the classroom. You see broken furniture. Can you imagine how do you learn if your brain is focusing on the chair trying to squeeze you down or you fall and it’s uncomfortable?”

Warren, parent, East Bank High School, Alexandria, Gauteng¹⁸⁶

“Every day, they have to fight for the chairs. Some of the learners end up standing cause there is no chair or sitting on the desk and they are bullied every day.”

Sarah, pupil, East Bank High School¹⁸⁷

“The buildings are either too hot or too cold... they are faced with one row of bricks instead of two... the pit toilets are dangerous – one of the walls fell down... there is no library... no lab... no sports facilities.”

Parents, Simzamile Senior Secondary School, Ndevana, E Cape¹⁸⁸

Like in Gauteng, people explained how safety and security are also major problems. Among the examples that Amnesty International came across were:

- a school that had been burgled six times in the last year but still depends on volunteers to provide security instead of paid staff;¹⁸⁹
- a school whose repeated calls for better security to the PED have gone unheeded, despite suffering an average of one break-in per month;¹⁹⁰
- a school that had been burgled more than 10 times in a year still had no security guard, relying instead on a voluntary school patrol;¹⁹¹
- a school where kitchen equipment had been stolen and not replaced;¹⁹²

184. Interview 28 August 2018

185. Interviews with pupils 28 February 2018

186. Interviews with parents 23 February 2019

187. Interviews with pupils 23 February 2019

188. Interviews with parents 26 February 2019

189. Ebongweni Primary School, quintile 3, Kwasikele township, Port Elizabeth; also Simzamile Senior Secondary School, Ndevana.

190. Pendla Primary School. New Brighton.

191. Imiqhayi Senior Secondary School, Mount Coke, Eastern Cape.

192. Fezeka Primary School near Peddie, Eastern Cape.

- schools that lacked any form of border fencing or walls;¹⁹³ and
- schools where pupil safety is threatened by waste material on site such as building rubble.¹⁹⁴

“My school fence is bad. I won't even say there's a fence at my school. You kick it, it will just break. And that's how they get inside... And the principal and the teachers don't do anything about it, because if they try to do something about it, the gangster will just take out [their] guns, and the teachers will just go back to class.”

Liya, pupil, Port Elizabeth¹⁹⁵

Amnesty International's interviews and observations were again reinforced by the NASGB survey:

- Out of 34 SGBs in Eastern Cape that responded, 62% indicated that few or no schools had been renovated in the last 20 years compared to only 12% indicating that all or most had been.
- 47% that stated few or no schools in their area had enough classrooms with only 29% responding that either all or most schools in their area had sufficient.
- 13% replied that either all or most schools had their own sports facilities compared to 56% that said either few or none did.
- Similarly, only 9% stated that all or most schools had a library compared to 74% that indicated that few or none did.

The research confirmed the serious problems widely documented by the media¹⁹⁶ and NGOs, including Equal Education (EE).¹⁹⁷ At an event in November 2018 marking its 10th anniversary, EE noted that of the 5,000 schools in Eastern Cape, 197 have no water, 53 have no toilets, 2,127 (over 42%) only have pit toilets and 245 have no electricity.¹⁹⁸

EE documented rotting floorboards (through which pupils had fallen), inadequate toilets, classrooms with gaping holes, kitchens in converted classrooms, and schools built out of plywood and asbestos decades ago that have never been rebuilt.¹⁹⁹ Of the 60 schools in the Eastern Cape that EE surveyed in 2016, it found 17 schools breached the government's own Minimum Norms and Standards deadline, with 13 having entirely or substantially inappropriate infrastructure, including lack of access to water, electricity or sanitation. Of these, 41% did not appear on any list for infrastructure upgrades. They were almost all mud schools, with some having to use zinc shacks. Some 46 of the 60 schools visited had at least one inappropriate structure; 44 schools reported that they only had access to water some of the time.²⁰⁰

Four schools had no electricity whatsoever. Of the 56 schools EE visited that had a grid connection, 14% did not have regular access to electricity. More than a third of schools with access to electricity

193. Luvuyo Special School; Kaukela High School, Eastern Cape; Fezeka Primary School near Peddie, Eastern Cape; July High School near Peddie.

194. Fezeka Primary School near Peddie.

195. Interviews with pupils 28 February 2019

196. For example, see “Meet the Eastern Cape schools the province desperately tries to forget”, Business Live, 16 January 2018, at <https://www.businesslive.co.za/bd/national/education/2018-01-16-meet-the-eastern-cape-schools-the-province-desperately-tries-to-forget/>

197. EE, *Planning to Fail* (2017) <https://equaleducation.org.za/wp-content/uploads/2016/07/PLANNING-TO-FAIL-SUMMARY-OF-FINDINGS.pdf>

198. “Over 2,000 schools without toilets, says Equal Education”, News24, 17 November 2018, at <https://www.news24.com/SouthAfrica/News/over-2-000-schools-without-toilets-says-equal-education-20181117>

199. “Meet the Eastern Cape schools the province desperately tries to forget”, *Business Day*, 16 January 2018, at <https://www.businesslive.co.za/bd/national/education/2018-01-16-meet-the-eastern-cape-schools-the-province-desperately-tries-to-forget/>

200. 42 schools had access to water through rainwater harvesting alone and only 18 had access to water supplied by the municipality.

did not have electricity throughout the school, with 11 of these only having power in the administration block and not in any classrooms.²⁰¹ In some cases, the government had not upgraded schools where every building was made of inappropriate materials, save for one structure.²⁰²

The courts have recognized that the current situation is unconstitutional. In July 2018, the Bhisho High Court ruled that parts of the government's Minimum Norms and Standards regulations were contrary to s29 of the Constitution.²⁰³ In so doing, the court found that classrooms in the Eastern Cape substantially built from mud as well as asbestos, wood or metal should be replaced with buildings that meet the National Building Regulations. In addition, it held that the regulations compel the government to provide water, power and sanitation in schools and that progress reports on schools meeting norms and standards must also be made available to the public. The court also found that schools with no access to water, electricity and sanitation have to be prioritized.²⁰⁴

“Avoiding responsibility has become an art form in the plush corridors of the Eastern Cape government. A request is rarely refused. That would be tantamount to taking a decision. Instead promises are made... somebody will do something, sometime in the future.”

Equal Education²⁰⁵

The current crisis should be seen in the context of a history of deliberate underdevelopment of the province during apartheid and the subsequent merger of former homeland education departments.²⁰⁶ The Eastern Cape is predominantly rural and includes two former homelands, Transkei and Ciskei.²⁰⁷ As a result, the consolidated province inherited many small and farm schools, frequently with very poor school infrastructure.

Despite these historic challenges the Provincial Education Department has also been criticized for poor management and planning.²⁰⁸ Poor implementation by non-state actors commissioned by the Eastern Cape Department of Education and the department's failure to hold them to account for project delays and contract cancellations had contributed significantly to poor service delivery.²⁰⁹ Bad planning includes not building enough new schools in areas with population growth whilst new schools in other areas may not be utilized due to migration as people move away looking for work.²¹⁰ In 2017, only six schools were built in the entire province. The PED publicly acknowledged that it was failing to meet its own deadlines.²¹¹

201. EE, *Planning to Fail* (2017) <https://equaleducation.org.za/wp-content/uploads/2016/07/PLANNING-TO-FAIL-SUMMARY-OF-FINDINGS.pdf>

202. Ibid.

203. The court order said that where the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure 2013 refer to “schools built entirely out of” mud, wood, asbestos or zinc, the wording must be replaced with “classrooms built entirely or substantially out of” these materials. The case was brought by EE against the Minister of Basic Education Angie Motshekga.

204. See: <http://www1.saflii.org/za/cases/ZAECBHC/2018/6.html>

205. Equal Education quoted in <https://www.businesslive.co.za/bd/national/education/2018-01-16-meet-the-eastern-cape-schools-the-province-desperately-tries-to-forget/>

206. EE, *Planning to Fail* (2017) <https://equaleducation.org.za/wp-content/uploads/2016/07/PLANNING-TO-FAIL-SUMMARY-OF-FINDINGS.pdf>

207. Homelands or Bantustans were territories set aside for black inhabitants of South Africa and South West Africa. The Bantu Homelands Citizenship Act 1970 stripped blacks of their South African citizenship, thus depriving them of their few remaining political and civil rights, and made them citizens of their designated homelands

208. See *Withholding keys to education, literally!* 7 June 2017 (EE) <https://equaleducation.org.za/2017/06/07/withholding-keys-to-education-literally/>

209. See Equal Education and EELC parallel report to CESC August 2018 at <https://equaleducation.org.za/wp-content/uploads/2018/09/EE-and-EELC-Joint-Parallel-Report-to-the-Committee-on-Economic-Social-and-Cultural-Rights-31.08.2018.pdf>

210. Interview with Prof. Ann Skelton 3 December 2017

211. http://www.education.gov.za/Newsroom/Speeches/tabid/950/ct/Details/mid/3816/ItemID/4171/D_efault.aspx

A rationalization process that began in 2015 has compounded the problems. The process aimed to close or merge 1,902 schools by 2019 as part of a “transformation plan” to improve education across the province.²¹² In so doing the government argued that “rationalization” would decrease the number of small and unviable schools, many in rural areas, and consolidate learners into larger schools, thereby saving money.²¹³ The process also aimed to improve outcomes given that classes in smaller schools often comprise multiple grades sharing the same space and teacher.

However, despite the ostensible benefits that rationalization could bring, the process has had serious consequences for targeted schools, including greater transport costs for pupils suddenly having to travel much further with no plans to provide transport for them.²¹⁴ The roll-out has also been problematic, with letters issued to affected schools and communities without consultation or public hearings as promised.²¹⁵ According to Section 33 of the Schools Act, which outlines the legal steps the Member of the Executive Council (MEC) of the provincial department of education must take to close a school, each SGB has 30 days from when they receive their letter to contest the closure. Then, public hearings are held where the SGB can make representations as to why the school ought to stay open. If a school fails to respond in 30 days, it is assumed the school agrees with the decision. Backlogs of hearings mean that many schools remain in limbo.

Crucially, the rationalization process has resulted in much-needed school infrastructure not happening as the PED refuses to invest in schools it plans to close, even if the process drags on. The “rationalization” programme has been extended to last for 10 years.

5.5 SANITATION: UNACCEPTABLE AND DANGEROUS



*Imiqhayi school, Mount
Coke, King Williams Town,
Eastern Cape
© Amnesty International*

212. See: <https://www.goexpress.co.za/2017/07/06/good-bad-ugly-ec-school-closure/>

213. The National Education Policy Act Guidelines stipulate a minimum school size of 135 learners at primary level, and 200 learners at secondary school level. If a school has fewer learners, the PED may make the case for closing it. These guidelines are not legally binding, meaning that even though the Member of the Executive Council (MEC) of the Eastern Cape Department of Education has the power to close schools, there can be instances where it can be decided necessary to keep a small school open.

214. The need for additional transport is calculated by measuring the distance between the closing and receiving school. EE highlights that this transport needs to be calculated from where learners begin walking from home. Apart from creating a sound transport plan there must also be a plan to improve the provision of hostel accommodation for learners who will have to travel extremely long distances, and an assessment of the capacity of the receiving schools. As of now, no such plans exist. See: EE, “The good, bad and ugly of EC school closure,” 7 June 2017, <https://equaleducation.org.za/2017/07/06/the-good-bad-and-ugly-of-ec-school-closure/>

215. Ibid.

“The toilets it’s watery inside – and also they are always dirty. It has a flood of water inside. Broken windows. Other toilets do not work properly. And the sinks are also broken, and the taps sometime... I don’t go, or rather go to my house.”

Sakhisizwe, pupil, Limekhaya High School, Uitenhage, Eastern Cape²¹⁶

“The girl toilets are very stinky. We live like we are inhuman. The pip[e]s are broken, we cannot go to the bathroom.”

Sophy, pupil, East Bank High School, Alexandria, Gauteng²¹⁷



Ermfundweni Senior Secondary School, Qeto, Eastern Cape. © Amnesty International

Lack of access to sanitation can have serious negative impacts on the enjoyment of the right to education. Globally, 443 million school days are lost annually due to sickness caused by poor water and sanitation conditions. The consequent diseases also affect students’ ability to learn. Lack of sanitation facilities may deter attendance. Similarly, global research suggests that where toilets are not segregated by gender, girls often drop out, notably at the age of menstruation.²¹⁸ A study in South Africa shows that at least 2.6 million girls are regularly missing school due to lack of sanitary products.²¹⁹

216. Interviews with pupils 28 February 2019

217. Interviews with pupils 23 February 2019

218. Report on the issue of human rights obligations related to access to safe drinking water and sanitation, 1 July 2009, A/HRC/12/24, para. 30, at <https://digitallibrary.un.org/record/685823?ln=en>

219. See: <https://africacheck.org/reports/do-7-million-sa-girls-miss-school-every-month-due-to-lack-of-sanitary-pads/>

Amnesty International found numerous examples of poor sanitation, with badly maintained, broken or unsanitary toilets, including pit toilets, which impacted on students' rights to education, water and sanitation. This is despite the fact that a key requirement of the 2013 Minimum Norms and Standards is that plain pit toilets are eradicated.²²⁰

Others potentially impacted rights to health, dignity and even, tragically, life in some cases. Of the students Amnesty International interviewed, 67 out of 87 who identified toilets as an issue in Gauteng said the toilets were dirty and/or unhealthy; 32 out of 45 did so in Eastern Cape.

In the joint survey carried out with the NASGB, 47% of respondents indicated that schools in their area had pit toilets, including 21% where either all or most schools had them. Eastern Cape scored the worst, with 63% of respondents indicating that at least some schools still had pit toilets, with 25% stating that all or most schools still had them. In Limpopo, 59% still had schools with at least some pit toilets. In Gauteng, 14% still had at least some pit toilets.

INTERNATIONAL STANDARDS

States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.²²¹ In this content states must take steps, applying the maximum of available resources, to the progressive realization of economic, social and cultural rights as they relate to sanitation. States must move as expeditiously and effectively as possible towards ensuring access to safe, affordable and acceptable sanitation for all, which provides privacy and dignity. This requires deliberate, concrete and targeted steps towards full realization, in particular with a view to creating an enabling environment for people to realize their rights related to sanitation. Hygiene promotion and education is a critical part of this obligation.²²²

There must be a sufficient number of sanitation facilities (with associated services) within, or in the immediate vicinity, of each educational institution. Sanitation facilities must be hygienically safe to use, which means that they must effectively prevent human, animal and insect contact with human excreta. Sanitation facilities must further ensure access to safe water for hand washing as well as menstrual hygiene, and anal and genital cleansing, as well as mechanisms for the hygienic disposal of menstrual products. Regular cleaning, emptying of pits or other places that collect human excreta, and maintenance are essential for ensuring the sustainability of sanitation facilities and continued access. Sanitation facilities must also be technically safe to use, which means that the superstructure is stable and the floor is designed in a way that reduces the risk of accidents (for example, by slipping). Special attention should be paid to the safety needs of children. Maintenance is crucial to guarantee technical safety.²²³

220. Ventilated, improved pit latrines are permitted by the Minimum Norms and Standards. They differ from plain pit toilets in that they have a ventilation pipe and a screen fitted to the top outlet of the pipe. The toilet normally has brick walls.

221. *Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation* (2009) A/HRC/12/24, para. 63.

222. *Ibid.*, para. 64.

223. *Ibid.*, paras. 72 and 73.



Bulelani primary school, Hanover, Bhishu, Eastern Cape. © Amnesty International



Kaukela High School, Eastern Cape. © Amnesty International

Beyond the survey data issues of particular concern that Amnesty International witnessed or was told about during field research included:

- dangerous sanitation infrastructure²²⁴
- continued use of pit toilets²²⁵
- lack of sufficient toilets for the number of pupils in line with the learner to toilet ratio of the Minimum Norms and Standards for School Infrastructure of 1:30²²⁶
- lack of an adequate²²⁷ and/or reliable water supply,²²⁸ often requiring use of a borehole²²⁹
- poor hygiene with associated health problems among learners²³⁰
- leaking septic tanks²³¹
- broken sanitation infrastructure that could not be repaired owing to lack of funds²³²
- inability to remedy vandalism or theft in sanitation facilities²³³



←
Simzamile Secondary
school, Ndevana, Eastern
Cape – repeatedly
vandalised standpipe
which has to supply all
the water for school
© Amnesty International

224. Simzamile Senior Secondary School, Ndevana, Eastern Cape – collapsed wall in pit toilets.

225. Emfundweni Senior Secondary School, Qeto, Eastern Cape; Kaukela High School, Eastern Cape; Fezeka Primary School near Peddie, Eastern Cape [new]; Simzamile Senior Secondary School, Ndevana, Eastern Cape; Imiqhayi Senior Secondary School, Mount Coke, King Williams Town, Eastern Cape; July High School near Peddie, Eastern Cape.

226. Fanti Gaqa Primary School, Mdatsane, Eastern Cape; Ruta-sechaba Secondary School, Evaton North, Gauteng.

227. Imiqhayi Senior Secondary School, Mount Coke, King Williams Town, Eastern Cape – water supply consists of two taps serving 228 pupils

228. Emfundweni Senior Secondary School, Qeto, Eastern Cape; Simzamile Senior Secondary School, Ndevana, Eastern Cape; July High School near Peddie, Eastern Cape – no water sometimes for up to a week – and problems with maintenance of tanks; Ruta-sechaba Secondary School.

229. Hans Kekana High School, Temba, Gauteng – funding needed for water tanks and pressure pumps.

230. Moletsane High School, Soweto, Gauteng – poor hygiene has resulted in frequent health problems for girls.

231. Makhunya Mvulo Primary School, Eastern Cape.

232. Moletsane High School, Soweto, Gauteng – broken toilet seats and problems with water pipes that they cannot repair.

233. Simzamile Senior Secondary School, Ndevana, Eastern Cape – tap of standpipe destroyed and brass stolen is affecting the water supply.

Additionally, the lack of adequate sanitation can cause embarrassment and shame among pupils impacting upon their rights to privacy and dignity:

“[The toilets] are not in good conditions. Sometimes, we feel ashamed to say that [we are] learners [at] Imiqhayi.”

Pupil, Imiqhayi Senior Secondary School, Eastern Cape²³⁴

“Our school is cool but the[re] is one thing that is bothering us as school children we don't have chairs and tables [in] the class[room] [and] our toilets are dirty... When it comes to go to our toilets it is embarrassing because it's not safe and they are dirty and broken... Our taps are broken and it's difficult to drink water and [to go] to the toilet. Our toilet doors are broken you don't know what was happening.”

Ayanda, pupil, East Bank High School, Alexandria, Gauteng²³⁵

In one school we visited the use of old toilets led to frequent blockages, which schools could not afford to repair. Consequently, the area around the toilets was constantly damp, resulting in unhygienic conditions and a prevalence of mosquitoes.

“The toilets are very bad... because of the old pipes. They are flushing toilets. Sometimes the toilets get blocked and you can't get someone to fix it. Where they have [assembly], there is water there that comes out from there so that place is damp, so it causes rashes... There is a pipe, I don't know where the pipe comes from but the place is damp and it causes rash and mosquitoes.”

Zingisa Mbatyoti, volunteer community worker, Lungisa High School, Kwadwesi, Eastern Cape²³⁶

Our research builds on the work of others in civil society. In Eastern Cape, Equal Education found that of 60 schools visited, five had no working toilets at all and only 15% had flush toilets. 65% of schools had more than 30 learners per working toilet exceeding the learner to toilet ratio of the Minimum Norms and Standards for School Infrastructure. Toilets were filthy. Shortages of toilets and broken toilets frequently meant entire schools depended on two or three pit latrines. At one school, the ratio of learners to working toilets was 294:1.²³⁷

A survey by the Water Research Commission in 2018 on rural school sanitation produced a number of disturbing findings, consistent with Amnesty International's findings. These included:²³⁸

- although 41% of schools surveyed employed cleaners, only 25% of the cleaners reported that they cleaned the toilets at least once a day and 57% revealed that they used the same cloths to clean the kitchen and toilets;²³⁹
- some of the 130 schools surveyed in the Eastern Cape,²⁴⁰ Limpopo and KwaZulu-Natal²⁴¹ had

234. Interviews with pupils 26 February 2019

235. Interviews with pupils 28 February 2019

236. Ibid.

237. See: <https://www.groundup.org.za/article/eastern-cape-learners-tackle-mec-over-lack-toilets-schools/>

238. Water Research Commission, Rural School Sanitation; why is it failing 2018? July 2018.

239. “South African schools’ toilet facilities: A shame and a disgrace”, *Mail & Guardian*, 13 July 2018, at <https://mg.co.za/article/2018-07-13-00-south-african-schools-toilet-facilities-a-shame-and-a-disgrace>

240. At an event in November 2018 marking its 10th anniversary, EE noted that of the 5,000 schools in Eastern Cape, 197 have no water, 53 have no toilets, 2,127 only have pit toilets and 245 have no electricity: <https://www.timeslive.co.za/news/south-africa/2018-11-17-over-2000-schools-without-toilets-says-equal-education/>

241. Interviews were conducted with pupils, principals and cleaners. Toilets were also inspected.

many toilet cubicles without locks, and 9% of the pit latrines did not have pit covers, allowing pests to infiltrate and spread contamination;

- only 18% of the pupils consulted thought the toilets were sufficiently private; and
- only 35% of schools had basins for handwashing and only half of the basins were functioning.

“The research found conditions that no human being should be exposed to, conditions that infringed on basic human rights.”

Water Research Commission²⁴²

NGOs have pointed out that the government is failing to monitor the problem accurately. For example, the DBE’s National Education Infrastructure Management System (NEIMS) report included boreholes and mobile tankers as constituting access to a water supply, but did not indicate the reliability of the supply or the regularity of access to clean water.²⁴³ Provincial department of education reports also indicate insufficient water supply, for example to 3,010 schools in KwaZulu-Natal.²⁴⁴ In some cases, school have to shut regularly because of a complete lack of water.²⁴⁵

Most seriously, pit latrines have caused the death of learners. Following two recent tragic cases of Michael Komape and Lumka Mketwa, who fell into and drowned in dilapidated school pit toilets²⁴⁶ President Ramaphosa in March 2018 ordered the Minister of Basic Education to conduct a full audit of school facilities with unsafe structures including sanitation within one month and to present a plan within three months to rectify the challenges as an interim emergency measure prior to rolling out proper infrastructure.²⁴⁷ In December 2019 the Appeals Court awarded Michael Komape’s family R1million damages to be paid by the DBE for emotional shock.²⁴⁸

In another case before the Limpopo High Court in Polokwane, the Limpopo Education Department indicated that, as at July 2018, 1,658 schools had sanitation needs, with 1,489 of them having pit toilets on site, comprising 17,144 seats. The Limpopo Education Department added that, with its current budget, it would take an estimated 14 years to replace all pit toilets in the province’s public schools.²⁴⁹

The government’s own evidence shows that it continues to fail to meet the 2013 targets with thousands of schools still impacted. According to the DBE’s own National Education Infrastructure Management System (NEIMS) report published in January 2018, there were still 37 schools lacking any sanitation facilities. Despite the 2013 Minimum Norms and Standards requiring that plain pit latrines are eradicated²⁵⁰ they continue to be widespread. Indeed, the NEIMS January 2018 report stated that

242. Water Research Commission, *Rural School Sanitation; why is it failing 2018?* July 2018.

243. See EE and EELC parallel report to CESCR (August 2018) para. 15 at <https://equaleducation.org.za/wp-content/uploads/2018/09/EE-and-EELC-Joint-Parallel-Report-to-the-Committee-on-Economic-Social-and-Cultural-Rights-31.08.2018.pdf>

244. Ibid. The Minister has said in rural provinces such as Eastern Cape, KwaZulu-Natal and Limpopo, the installation of flushing toilets was not a viable option because of the lack of bulk water supply.

245. “Schools struggle to get water: Learners forced to use pit toilets, sent home as taps run dry”, *News24*, 29 July 2018, at <https://www.news24.com/SouthAfrica/News/schools-struggle-to-get-water-learners-forced-to-use-pit-toilets-sent-home-as-taps-run-dry-20180729>

246. “Another child dies in pit latrine”, *Mail & Guardian*, 16 March 2018, at <https://mg.co.za/article/2018-03-16-00-another-child-dies-in-a-pit-latrine>; and “Six year old dies in school pit toilet”, *IOL*, 21 January 2014, at <https://www.iol.co.za/news/six-year-old-dies-in-school-pit-toilet-1634700>.

247. See: <https://www.sanews.gov.za/south-africa/president-orders-audit-unsafe-school-structures>

248. South African court grants damages over boy’s latrine death - <https://www.bbc.com/news/world-africa-50835296>

249. See: <https://mg.co.za/article/2019-07-26-00-limpopos-number-of-pit-toilets-dont-add-up>

250. Ventilated, improved pit latrines are permitted by the Minimum Norms and Standards. They differ from plain pit toilets in that they have a ventilation pipe and a screen fitted to the top outlet of the pipe. The toilet normally has brick walls.

up to 8,702 out of a total 23,471 (37%) schools were still using them.²⁵¹ The government admitted in its report to the CESC in 2017 that 4,358 schools (19%) still have only illegal plain pit toilets for sanitation. However, official figures vary widely although it is clear that thousands of toilets do need to be replaced. In April 2018, the DBE itself confirmed that there were 3,532 pit toilets in schools across the country and about R7.8 billion (US\$ 542 million) was needed to address the sanitation backlog.²⁵² A subsequent audit put the figure at 3,898 for schools where pit toilets were the only form of sanitation, and another 3,040 where they remained alongside other forms of sanitation. As detailed in the table below, Eastern Cape and KZN are by far the worst affected:

Table 3: Number of schools with pit toilets in South Africa

PROVINCE	SCHOOLS WITH ONLY PIT LATRINES	SCHOOLS WITH PROPER SANITATION BUT PITS REMAIN
Eastern Cape	1,598	323
Free State	156	42
Gauteng	0	5
KwaZulu Natal	1,365	1,477
Limpopo	507	853
Mpumalanga	127	278
North West	145	47
Northern Cape	0	15
Western Cape	0	0
Total	3,898	3,040

Source: South African government sanitation audit (May and June 2018)

In another interview, the DBE Minister stated: "We have to re-prioritize the infrastructure budget of R7 billion (US\$ 487 million) per annum in order to deal with sanitation problems. For instance, Limpopo province alone needs about R3 billion (US\$ 209 million) to deal with sanitation problems. However, our infrastructure budget has been cut by R3.5 billion (US\$ 243 million)."²⁵³

5.6 GOVERNMENT RESPONSE: RESOURCES FAILING TO MEET NEED

Despite the serious and continuing failure to meet its own binding regulations and associated targets and deadlines as well as its international human rights obligations, the government has been actually cutting spending on infrastructure.

251. See: <https://passmark.org.za/section27sources/2018%20NEIMS%20Report%20%2020172018.pdf>

252. "There are more than 3,000 'deadly' toilets at SA schools: DA", *eNCA*, Tuesday 24 April 2018, at <https://www.enca.com/south-africa/there-are-more-than-3000-deadly-toilets-at-sa-schools-da>

253. "Billions needed to fix school toilets", *pressreader*, 23 March 2018 at <https://www.pressreader.com/south-africa/sowetan/20180323/281487866889245>. NGOs questioned whether the DBE had carried out the promised audit given the contradictions with data from NEIMS. In August 2018, the government finally responded to the sanitation crisis by announcing it had secured private funding to support a two-year sanitation improvement plan.

According to the 2013 Minimum Norms and Standards, all schools that do not have water, electricity and sanitation should have been provided with these by 29 November 2016. The norms also set 7-, 10- and 17-year target dates. By 29 November 2020, all schools must be brought into compliance with the norms regarding perimeter fencing, classrooms, electronic connectivity, sanitation, water and electricity.²⁵⁴

In line with these regulations, on 29 November 2014, a year after their publication, the provincial Education Ministers were required by law to hand over to the national Basic Education Minister their action plans on how they intended to implement the norms in their provinces.²⁵⁵ The latest reports that have been made available are from 2017 and have been subject to criticism as both demonstrating lack of sufficient progress as well as in some cases the incomplete nature of the data.²⁵⁶

As of July 2016, 170 schools had been replaced under the Accelerated Schools Infrastructure Delivery Initiative (ASIDI) programme. This started in 2011 with the aim of replacing unsafe and “inappropriate” school structures.²⁵⁷ However, the programme is far behind schedule. Initially, 496 schools across the country were identified as “inappropriate” structures. Of these, 50 were meant to be replaced in 2011/12; 100 in 2012/13; and 346 by 2013/14. To meet the infrastructure regulations, the government in 2011/12 increased school infrastructure spending through two new grants: the indirect School Infrastructure Backlogs Grant (implemented by non-governmental implementing agents, monitored by government); and the direct Education Infrastructure Grant (disbursed to and implemented by PEDs).²⁵⁸ However, during the 2015/16 financial year, there was severe under-spending of the ASIDI despite the critical need for infrastructure development. Consequently, budget allocations were decreased and the DBE failed to meet any of its ASIDI targets.²⁵⁹

In a recent scrutiny of the government’s mid-year 2019/20 report by a Parliamentary Committee, politicians expressed concern about underperforming implementing agents and provinces and the need for good consequence management. In particular, they noted that Education Infrastructure Grant expenditure at 30 September 2019 was 41% of allocated budget and some provinces were underspending. Targets for new and replacement schools showed 43% progress for mid-year with maintenance mid-year spending at 32% of the maintenance budget.²⁶⁰

Despite these continuing challenges, in its 2017 report to the CESCR the government stated that it was committed to eradicating mud schools and providing water, sanitation and electricity through the ASIDI programme and the provincial infrastructure programme.²⁶¹ The government even claimed that “good

254. In addition, libraries and laboratories are required by 29 November 2023. All other norms and standards, including adherence to the principles of universal design to accommodate learners with disabilities, must be met by 31 December 2030. By this final deadline, all special needs schools must be fully accessible.

255. Section 27, *Basic Education Rights Handbook*, p. 240 at <http://section27.org.za/basic-education-handbook/>

256. See: <https://equaleducation.org.za/2019/03/27/statement-provincial-school-infrastructure-reports-reveal-education-departments-cant-properly-plan-meanwhile-the-2018-reports-are-still-owed/>

257. See: <https://www.education.gov.za/Programmes/ASIDI.aspx>

258. In 2016/17, the government met only half of its targets for the Education Infrastructure Grant. See Standing Committee on Public Accounts (SCOPA), 2018. “Department of Basic Education irregular, fruitless & wasteful expenditure; infrastructure; scholar transport” Hearing with Minister, February 17 2018 at <https://bit.ly/2wv64rd>

259. See SAHRC and CESR and Section 27 parallel reports to CESCR at https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ZAF/INT_CESCR_IFL_ZAF_28910_E.pdf and <https://www.cesr.org/joint-submission-committee-economic-social-and-cultural-rights-south-africa%E2%80%99s-first-period-report>

260. National Assembly Committee on Basic Education at <https://pmg.org.za/committee-meeting/29168>

261. The complementary Provincial Schools Build Programme is implemented by provinces and targets the provision of basic services, new schools, additions to existing schools, new and upgrading of services and maintenance. ASIDI is a programme driven by the DBE to address infrastructure backlog in all schools that do not meet the basic safety norms and standards. Its purpose is to eradicate schools made entirely of inappropriate structures and provide basic levels of water, sanitation and electricity to schools. Through ASIDI, 173 inappropriate structures have been eradicated, 615 schools have been provided with water, 425 with sanitation and 307 with electricity. The two programmes are jointly responsible for improved infrastructure, which has resulted in a higher proportion of younger children accessing schoolroom facilities.

progress has been achieved in providing basic services (water, sanitation and power supply), new schools and the maintaining of existing schools.”²⁶²

In a subsequent response to CESC’s questions concerning lack of sufficient progress on infrastructure, the government identified a number of factors hindering implementation of the ASIDI that it claimed was outside its control. These included poor performance by contractors, community protests, and the processes of school mergers and rationalizations. The main way the government planned to address under-spending on ASIDI was through more frequent and new means of monitoring including the deployment of ASIDI Provincial Co-ordinators to do site inspections on selected projects.²⁶³

Yet the 2018/19 budget allocated fewer resources to basic education infrastructure than in the previous year, whilst also announcing that the funding available for school infrastructure would be reduced by a total of R7.2 billion (US\$ 500 million) over the next three years.²⁶⁴ Observers have pointed out that these cuts are discriminatory, disproportionately impacting poorer schools with greater infrastructure backlogs.²⁶⁵ Yet it is also in line with the decade-long trend of reduced per capita public spending on education which saw funding per learner decline by 10% between 2010 and 2019 as expenditure failed to increase in line with the birth rate.²⁶⁶

In its parallel report, the SAHRC acknowledged steps taken to improve school infrastructure, but stated that serious challenges remained with the implementation of Minimum Norms and Standards for school infrastructure. These included, among other things:

- the slow rollout of the ASIDI programme;
- the existence of mud schools;
- a lack of access to learning and teaching support materials.²⁶⁷

In December 2019 the National Treasury announced that it was allocating R3.4 billion (US\$ 236 million) for the next three years to eradicate pit latrines at schools.²⁶⁸

262.State party report to CESC 2017, para. 154 at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fZAF%2f1&Lang=en

263.State party response to the list of issues E/C.12/ZAF/Q/1/Add.1 (21 September 2018) para 29.11 at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fZAF%2fQ%2f1%2fAdd.1&Lang=en

264.See CESR, Institute for Economic Justice, Section27, “Joint Submission to the Committee on Economic, Social and Cultural Rights on the occasion of the review of South Africa’s first period report at the 64th Session”, October 2018, Submitted by the Center for Economic and Social Rights Institute for Economic Justice, Section27, 2018, para. 73 at <https://www.cesr.org/joint-submission-committee-economic-social-and-cultural-rights-south-africa%E2%80%99s-first-period-report>

265.For example, millions of learners, particularly in rural provinces, continue to walk several kilometres to school every day. In a case brought by EE, the DBE argued that it had insufficient funds to transport these learners and could not even make a plan for transporting them in the near future. EE parallel report to CESC (August 2018) paras.71 and 103 at <https://equealeducation.org.za/wp-content/uploads/2018/09/EE-and-EELC-Joint-Parallel-Report-to-the-Committee-on-Economic-Social-and-Cultural-Rights-31.08.2018.pdf>

266.See: <http://section27.org.za/wp-content/uploads/2019/06/S27-IEJ-FUNDING-BASIC-EDUCATION-FACT-SHEET-FINAL.pdf>

267.SAHRC parallel report para. 67 at https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ZAF/INT_CESCR_IFL_ZAF_28910_E.pdf

268.See: <https://www.iol.co.za/news/politics/treasury-allocates-r34bn-to-rid-schools-of-pit-toilets-38798863>

5.7 CONCLUSIONS

The government's record on infrastructure at both national and provincial levels remains poor, placing it in breach of its own regulations as well as its international and regional human rights obligations. Specifically, South Africa is failing to fulfil its obligation to provide for education by, among other things, actively developing a system of schools, including building sufficient numbers of classrooms.²⁶⁹ Furthermore, South Africa is not ensuring that that secondary education is distributed throughout the country so that it is available on the same basis to all in line with both Article 13(2)(b) of the Constitution and international law.²⁷⁰ Among other things:

- Lack of adequate and functioning educational institutions compromise the quality of education available for learners;
- not all institutions and programmes have adequate buildings or other protection from the elements;
- there are inadequate sanitation facilities for pupils; and
- many schools lack facilities such as a library, computer facilities and information technology.

In addition to the right to education South Africa is also failing in its obligations with respect to the right to sanitation. The UN Special Rapporteur on the human rights to safe drinking water and sanitation has highlighted that particular failings can amount to violations of the right to sanitation. These include the failure to provide adequate services in public facilities and institutions such as schools.²⁷¹ In this context, the Special Rapporteur noted the decision of the Indian Supreme Court that there had been a violation by failing to provide adequate toilet facilities in schools.²⁷² There is a clear failure to ensure minimum essential levels of sanitation for everybody without discrimination. Other impacted rights include privacy, dignity and life.

The problems Amnesty International documented regarding lack of adequate infrastructure in South African schools undermine one of the essential features of the right to education as elaborated under Article 13 of the ICESCR – that “functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party”, which includes “buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water ... facilities such as a library, computer facilities and information technology.”²⁷³ Moreover, the ongoing failure to take “deliberate, concrete and targeted” measures towards the progressive realization of secondary education in accordance with Article 13(2)(b) of the ICESCR amounts to a clear violation of the Covenant, as made clear by the CESCR.²⁷⁴ The lack of decent infrastructure is clearly disproportionately impacting schools serving poorer predominantly black communities.

269.CESCR General Comment 13, para. 50.

270.CESCR General Comment 13, para. 13.

271.*Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Catarina de Albuquerque, A/HRC/27/55*, 30 June 2014, para. 52.

272.*Environment & Consumer Protection Foundation v. Delhi Administration*, 2012 STPL(Web) 543 SC

273.CESCR General Comment 13, para. 6(a).

274.CESCR General Comment 13, para. 59.

6. OTHER BARRIERS TO THE RIGHT TO EDUCATION



Fanti Gaqa primary school, Mdatsane, Eastern Cape. © Amnesty International

Amnesty International's research revealed several other barriers that South African pupils experience which adversely impact on their right to education. These include:

- pupils having to walk significant distances – in some cases several kms each way - to school owing to lack of transport;
- serious problems with safety and security;
- overcrowded classrooms owing in some cases to insufficient numbers of teachers; and
- lack of sufficient teaching capacity.

These issues were confirmed by both Amnesty International's field research and the joint survey with the NASGB, which revealed:

- 48% of respondents indicated that the average class size was more than the official stipulated figure of 1:35 in all or most schools in their areas;
- 41% responded that either no or few schools in their areas had sufficient numbers of teachers;
- 21% stated that it was hard to recruit new teachers; and
- 32% responded that schools in their area have a problem with teacher absenteeism.

When these findings are broken down by province, some of the different results are striking.

Average class size: In Gauteng, 41% of respondents indicated that either all or most schools had average class sizes of more than 1:35, compared to 42% in Eastern Cape and 61% in Limpopo.

Number of teachers: In Gauteng, 46% responded that either few or no schools had sufficient numbers of teachers, compared to 18% in Eastern Cape and 22% in Limpopo.

Recruitment of new teachers: In Gauteng, 64% stated that it was hard to recruit new teachers for at least some schools. In Limpopo, 29% said that all or most schools have problems recruiting whereas in Eastern Cape it was 30%.

Teacher absenteeism: In Gauteng, 38% thought that teacher absenteeism is a problem, compared to 21% in Eastern Cape and 39% in Limpopo.

INTERNATIONAL AND REGIONAL STANDARDS

Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party, including physical accessibility – education has to be within safe physical reach.²⁷⁵

Article 13(2)(e) of the ICESCR recognizes that for States to achieve the full realization of the right to education they must actively develop a system of schools at all levels, including continuously improving the material conditions of teaching staff. The CESCR has built on this general requirement by making it clear that a deterioration in conditions is not only inconsistent with Article 13(2)(e) but is also a major obstacle to the full realization of students' right to education.²⁷⁶

The CESCR has also elaborated that the content of the right to education includes trained teachers receiving domestically competitive salaries. With respect to teaching, the CESCR has emphasized that acceptable education is one that relates to the form and substance of education, including curricula and teaching methods that are relevant, culturally appropriate and of good quality to students.²⁷⁷

The CESCR has noted the relationship between Articles 13(2)(e), 2(2), 3 and 6-8 of the Covenant, including the right of teachers to organize and bargain collectively. It has drawn the attention of States parties to the joint UNESCO-ILO Recommendation Concerning the Status of Teachers (1966) and the UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997). It urges States parties to report on measures they are taking to ensure that all teaching staff enjoy the conditions and status commensurate with their role.²⁷⁸

275. CESCR General Comment 13, para. 6(b).

276. Ibid. para. 21.

277. Ibid. paras. 6(a) and 6(c).

278. Ibid. para. 27.

6.1 INADEQUATE SCHOOL TRANSPORT TO AND FROM SCHOOL

The right to education is meaningless without teachers to teach, administrators to keep schools running, desks and other furniture to allow scholars to do their work, text books from which to learn, and transport to and from school at State expense in appropriate cases. And: [I]n instances where scholars' access to schools is hindered by distance and an inability to afford the costs of transport, the State is obliged to provide transport to them in order to meet its obligations, in terms of Section 7(2) of the Constitution, to promote and fulfil the right to basic education.²⁷⁹

A landmark court case concerning the lack of scholar transport in the Eastern Cape made it clear that the right to a basic education contains the right to state-funded scholar transport for learners who live a certain distance away from school.²⁸⁰

Yet learners in many schools do not have access to transport for the long journeys they often need to take to make it there and back. The negative impacts of this include:

- risks to personal safety;
- fatigue;
- damage to books and school equipment;
- inability to attend school during adverse weather.

On 23 October 2015, the Department of Transport promulgated the National Learner Transport Policy. Developed in collaboration with the DBE and other stakeholders, the policy aims to address the challenges of accessibility and the safety of learners whilst recognizing the need to have a uniform approach to meet the constitutional mandate of the Department to provide a safe and efficient transport system. Specifically, the policy was seen as necessary to set minimum norms and standards for the creation of transport for learners and the facilitation of access for a large number of learners, particularly in rural areas. However, it has been criticized for a lack of clarity and guidance on roles and responsibilities and what should be in provincial plans.²⁸¹ Provinces policies often contain an arbitrary distance requirement of a minimum number of kilometres that learners must have to walk to qualify for scholar transport which insufficiently recognises the particular challenges on the ground such as weather, terrain and safety.

The segregated history of communities in South Africa means that some areas have historically seen greater infrastructure investment than others with many poor communities often served by inadequate infrastructure. Amnesty International's researchers came across numerous examples of pupils having to walk long distances to school – in some cases several kilometres – because of the lack of scholar transport.²⁸² In some cases, the difficult terrain and adverse weather resulting in flooding mean pupils

279. Tripartite Steering Committee and Anor v Minister of Basic Education & Ors 2015 (5) SA 107 (ECG); 2015 ZAECHGHC 67

280. Ibid.

281. Section 27, *Basic Education Rights Handbook*, p.6 at <http://section27.org.za/wp-content/uploads/2017/02/Chapter-16.pdf> p6. For example, the criteria state that beneficiaries must be 'needy' learners from grade R to 12 'as prescribed', but it does not define who a 'needy' learner is.

282. Up to 8 km each way to July School, Peddie; up to 6km each way to Imiqhayi school, Mount Coke, KWT; up to 5km each way to Dangile primary nr. Peddie.

are often unable to attend school.²⁸³ Many pupils highlighted the impact on their personal safety and security with in some cases learners as young as Grade 1 having to walk along busy roads.²⁸⁴

“School is very far and we happen[ed] to be robbed on our way to and from school.”

Yonela, pupil, Phillip Mtywaku Senior Secondary School, Eastern Cape, who lives 11km from school²⁸⁵

“I do not feel safe because it's a long distance I travel when I'm going to school, sometimes I walk alone.”

Yonela, pupil, Phillip Mtywaku Senior Secondary School²⁸⁶

“I don't feel safe at school and travelling also because I have to walk, there is no mode of transport.”

Majaza, pupil, Imiqhayi Senior Secondary School, Eastern Cape²⁸⁷

“[The school] is too distant. Then I am afraid of crime, maybe it happen to me coz it does happen sometimes.”

Ntsomi, pupil, Phillip Mtywaku Senior Secondary School²⁸⁸

“Sometimes I don't feel safe when going to school, especially when we have a morning class because we stay far and the way that I use is dangerous.”

Justice, pupil, Thaba Jabula Senior Secondary School, Gauteng²⁸⁹



Pupils walking home from school, Eastern Cape. © Amnesty International

283. For example to get to July School Peddie pupils need to cross a riverbed which when it rains often becomes impassable for several days.

284. Interview with Head at Dangile Primary school nr. Peddie 27 February 2019

285. Interviews with pupils 25 February 2019

286. Interviews with pupils 25 February 2019

287. Interviews with pupils 26 February 2019

288. Interviews with pupils 25 February 2019

289. Interviews with pupils 23 February 2019

Teachers described some of the challenges facing pupils with long journeys to school. They also described the impact of the lack of scholar transport on learners' ability to participate in extracurricular activities or to complete homework because of fatigue and lack of time.

“Yes we have a catchment area of 5km radius but we have learners coming from very far. I don't know the exact distance but it takes them an hour to reach. Parents have to arrange transport for the children. Learners also bring their own lunch. Getting homework done is a challenge.”

Audrey Arends, Acting Deputy Principal Crestview Primary School, Gauteng²⁹⁰

“Many of our schools have a bussed-in population – that is out of the catchment area. With this situation, it becomes very difficult for parents and learners to participate in afternoon and evening functions, after school activities. With the train system in this city falling apart, this is an even bigger challenge.”

National Professional Teachers' Organisation of South Africa W Cape²⁹¹

The problems with transport were confirmed by the NASGB survey:

- 26% of respondents said that either all or most learners have to travel more than 2km to school, 45% said that some have to, and only 10% indicated that no pupils have to;
- 54% said no transport is provided by the Provincial Education Department for pupils who need it;
- 60% thought that lack of transport affects pupil attendance.

When broken down by province, again some differences are notable:

Walking: In Eastern Cape 76% stated that all or most learners have to walk more than 2km to school compared to 58% in Limpopo and 27% in Gauteng.

Transport: In Limpopo 59% said no transport was provided for pupils who need it compared to 51% in Eastern Cape and 37% in Gauteng.

Impact of lack of transport: 59% in Eastern Cape thought that lack of transport affects pupil attendance, compared to 52% in Gauteng and 39% in Limpopo.

Looking at the bigger picture, according to the 2013 National Household Travel Survey, published by Statistics South Africa, of the 17.4 million learners who attended educational institutions, about 11 million walk to school. Of these 22% or more than 2.4 million children walk for between 30 minutes and an hour to get to their educational institution meaning it is likely to be more than 3km.²⁹² This is despite the fact that the Department of Transport, in collaboration with the DBE, is required to ensure that transport is provided to grades R to 12 pupils who live more than 3km from the nearest school.²⁹³ Children in the lowest income groups are also more likely to walk to school than those in the highest income group.²⁹⁴ In KwaZulu-Natal alone, where more learners walk to school than in any other province, more than 210,000 pupils walk for more than an hour each way, and 659,000 walk for between 30 minutes and an hour each way.²⁹⁵

290. Interview with Audrey Arends 8 December 2017

291. Interview with NAPTOSA W Cape reps 11 December 2017

292. See: <https://mg.co.za/data/2014-07-22-how-do-south-africas-children-travel-to-school>

293. See National Household Travel Survey 2013 (Statistics South Africa) at <http://www.statssa.gov.za/publications/P0320/P03202013.pdf>

294. Ibid.

295. See Section 27, Basic Education Rights Handbook, Chapter 16, p. 2, at <http://section27.org.za/wp-content/uploads/2017/02/Chapter-16.pdf>

A study in Gauteng found that over a third of pupils travel more than 5km to school. Unsurprisingly, the province's peripheral areas had the highest percentage of children who travel long distances. Using 2016 data from the Gauteng Department of Education, the authors mapped the percentage of pupils at each public school (primary and secondary) in Gauteng who travel more than 5km to their school. The authors showed that the default feeder zones of a 5km radius around each school, which is meant to determine admissions based on both residence and place of work, continues to replicate the geography of apartheid. The result is that parents may send their children further from home to receive a better education.²⁹⁶

6.2 UNSAFE LEARNING ENVIRONMENTS

A safe and secure learning environment is critical to ensuring enjoyment of the right to quality education and this is also reflected in Target 4.a of Sustainable Development Goal 4.²⁹⁷ Yet in South Africa safety and security around and in schools remain serious problems, with the media regularly carrying stories of violence, burglary and vandalism.²⁹⁸ In a recent international survey of OECD economies South Africa reported the most frequent number of school safety incidents and under several different forms, according to school principals. 34% of principals report that acts of intimidation or bullying among their students occur at least weekly in their school, more than double the OECD average of 14%. In addition, 27% of principals report weekly incidents with respect to the use or possession of drugs and/or alcohol at school (compared to an OECD average of 1%) and 21% vandalism and theft (OECD average 3%).²⁹⁹

At the majority of schools visited by Amnesty International, this was reflected in interviews with teachers, parents and learners. Significant problems include weapons brought into school and violent attacks while travelling to and from school.

"I feel scared sometimes cause there [are] people who come with knives [at school] and that scared me."

Tshinyelo, pupil, Realogile High School, Alexandria, Gauteng³⁰⁰

"At school sometimes kids bring guns and knives."

Rasivhenge, pupil, Realogile High School³⁰¹

"They attacked me when I was going back home. It was after school. They [took] all my money and... a guy slap me."

Kagiso, pupil, Moletsane Secondary School, Soweto³⁰²

296. *The Long And Short Of South African School Commutes: A Case Study* by Alexandra Parker, Researcher of Urban & Cultural Studies, Gauteng City-Region Observatory, and Julia de Kadt, Senior Researcher, University of the Witwatersrand (2016).

297. See: <https://en.unesco.org/themes/school-violence-and-bullying/sdg4aprogress>. Target 4.a is to "provide safe, non-violent, inclusive and effective learning environments for all".

298. "South Africa: Police Condemn the Continuous Violent Crimes in Schools", *AllAfrica*, 3 July 2018, at <https://allafrica.com/stories/201807030717.html>; "Education department calls in cavalry to deal with school violence. But is it too late?" *Times Live*, 15 October 2018, at <https://www.timeslive.co.za/news/south-africa/2018-10-15-education-department-calls-in-cavalry-to-deal-with-school-violence/>; "27 Cape schools burgled and vandalised during latest school holiday", *The South African*, 24 July 2018, at <https://www.thesouthafrican.com/news/27-cape-schools-burgled-vandalised/>

299. South Africa - Country Note - TALIS 2018 Results p.2 at <http://www.oecd.org/education/talis/>. The OECD Teaching and Learning International Survey (TALIS) is an international, large-scale survey of teachers, school leaders and the learning environment in schools.

300. Interviews with pupils 23 February 2019

301. Interviews with pupils 23 February 2019

302. Interviews with pupils 22 February 2019

“My school is situated in an area that is not safe. There are gangsters and weekly there are incidents that occur when learners are robbed by these gangsters.”

Oulube, pupil, Booyens Park Secondary School, Eastern Cape³⁰³

The lack of sufficient or any trained security staff and protective infrastructure such as fencing (see previous chapter) exacerbates the problem of repeated thefts and vandalism in schools.

“There are not enough patrols – lack of ground staff... We have had two major break-ins since 2017 – PCs stolen; admin office vandalized... The Department is not paying enough for security... the SGB has to pay for two security guards.”

Parents, Moletsane High School, Soweto, Gauteng³⁰⁴

“I am not feeling safe at school because there is an open yard. It is easy to be kidnapped while walking alone.”

Mavata, pupil, July Senior Secondary School, Eastern Cape³⁰⁵

In total, 22 out of 87 pupils interviewed in Gauteng and 22 out of 45 in Eastern Cape indicated that they felt unsafe at school or travelling there; 62 in Gauteng said that bullying or violence are problems at their school as did 14 in Eastern Cape. Some 18 pupils said they had been bullied or mistreated in Gauteng as did 6 in Eastern Cape.

The NASGB survey reflected these findings:

- 54% of respondents that learners and teachers are not safe in schools in their area;
- Only 18% thought that parents provide enough support on safety and security;
- 26% said that there had been attacks on learners and/or teachers in either all or most schools in their areas; and
- 56% indicated that either all or most schools in their areas had suffered theft and/or vandalism.

Broken down by province, safety seems to be more of an issue in Gauteng and Eastern Cape with also higher scores on frequency of attacks. However, they score better than Limpopo on parental support. Eastern Cape scores particularly badly on vandalism and burglary followed by Gauteng.

Safety of learners and teachers: In Gauteng, only 18% agreed (none strongly) that learners and teachers feel safe in schools compared to 57% that either disagreed or strongly disagreed. In Eastern Cape, only 14% strongly agreed or agreed that learners and teachers feel safe, compared to 66% who disagreed or strongly disagreed. In Limpopo, 33% strongly agreed or agreed that learners and teachers feel safe compared to 42% who disagreed or strongly disagreed.

Parental support on safety: In Gauteng, 43% strongly disagreed or disagreed that parents provide enough support on safety and security, with none agreeing that they did so. In Eastern Cape, 26% agreed (none strongly) that parents provide enough support with 37% who strongly disagreed or disagreed. In Limpopo, 47% strongly disagreed or disagreed that parents provide enough support compared to 25% that did not.

303. Interviews with pupils 28 February 2019

304. Interviews with parents 22 February 2019

305. Interviews with pupils 27 February 2019

Attacks on learners and teachers: In Gauteng, 30% of respondents said learners and teachers had been attacked in all or most schools in their area, compared to 31% in Eastern Cape and 17% in Limpopo.

Burglaries and vandalism: In Gauteng, 53% of respondents said that all or most schools in their area had suffered burglary or vandalism, compared to 79% in Eastern Cape and 34% in Limpopo.

6.3 OVERCROWDED CLASSES

Insufficient numbers of teachers, as well as the lack of enough buildings highlighted in the previous chapter, results in overcrowded classes. Such conditions undermine the ability of teachers to teach – smaller classes allow for greater flexibility and innovation in the classroom, improved teacher morale and job satisfaction - and of learners to learn as the needs of individual students can be better addressed and disruption time reduced.³⁰⁶

The DBE stated that as of March 2018 the national average LER (Learner-Educator Ratio) for government schools was one teacher per 35.2 primary level students and 27.7 at secondary level.³⁰⁷ However, class sizes vary significantly both between and within provinces:³⁰⁸

Table 4: Average class sizes broken down by province

PROVINCE	PRIMARY SCHOOLS (AVERAGE LER)	SECONDARY SCHOOLS (AVERAGE LER)
Eastern Cape	38	31
Free State	37	26
Gauteng	38	27
KwaZulu Natal	33	27
Limpopo	35	26
Mpumalanga	35	27
North West	32	26
Northern Cape	32	25
Western Cape	38	33
National average	35	28

Inequality in class sizes is demonstrated by one study where it was calculated that among the poorest 60% of learners, class sizes experienced by the average learner increased from 41 to 48 learners per class between 2011 and 2016 whereas during the same period for the wealthiest 10% of learners, class sizes only increased from 33 to 35 learners.³⁰⁹

306. See <http://www.oecd.org/education/skills-beyond-school/48631144.pdf>, at p. 392.

307. See: <https://businesstech.co.za/news/government/259185/class-sizes-in-public-vs-private-schools-in-south-africa/>

308. Ibid.

309. Nic Spaull "Priorities for Education Reform (Input document for Treasury's Economic Colloquium" 19/01/2019 p.6 at <https://nicspaull.files.wordpress.com/2019/01/v2-spaull-priorities-for-educ-reform-treasury-19-jan-2019.pdf>

At all the schools visited by Amnesty International, class sizes exceeded the stipulated norms of 1:35 and 1:27 for primary and secondary schools respectively. In some cases this was because of infrastructure problems. In others it was down to the lack of teaching staff. In others it was due to a combination of both.³¹⁰

“... as much as we’ve got overcrowding, I don’t think it’s a matter of classrooms, it’s a matter of teachers. In a class you get plus-minus 40 children in one class, and it’s not because there’s no classes, it’s because there’s no teachers.”

Vuyolwethu, former pupil, Sivuyiseni Primary School, Kwamagxaki, Eastern Cape³¹¹

“The teacher to student ratio is 1:40. We need more classrooms for Grade 3. This is the year where they appear for external exams and we had more than 50 in a class. So we squashed Grade 2s in one less classroom and took it for the Grade 3s.”

Mpho Motsoane, Head Teacher, Mastediso Primary School, Gauteng³¹²

“We have 1,000 learners – roughly 45 children per class. Next year the numbers will be increasing. There are only three primary schools in the area and one high school.”

Audrey Arends, Acting Deputy Principal Crestview Primary School, Gauteng³¹³

In some cases, class sizes were extreme. In one school the ratio was 1:70.³¹⁴ In another, it was 1:64 (Grade 6) with 13 staff and 4 support staff for 540 learners.³¹⁵ Of the 87 students interviewed by Amnesty International in Gauteng, 74 said that their classes exceeded the stipulated ratio, of which 16 said they were overcrowded. In Eastern Cape, 29 out of 49 said that their classes also exceeded the stipulated numbers.

Teachers spoke of the impact of overcrowded classes on their ability to teach and learners of their ability to learn:

“It’s not easy doing combined classes. Sometimes the numbers are big, 76 in a class, you can’t reach each and every learner there. I so wish if you could just go and see what’s happening in that hall. You can’t even move around. In my case, Grade 5 is always lacking. It’s not easy to control, even discipline in these cases.”

Teacher C, Bulelani primary school, Bisho, Eastern Cape³¹⁶

“Yes we had overcrowding. Least number of learners in a class I had is 55. Average size in our class; in my school 1:29; so we are expected to have 29 kids in one class. We had 55. It’s quite a huge number. There’s a new tendency now, learner behaviour now, it’s starting to change, because we had a surprisingly huge number this year, more than 400 learners, an increase of that size. I think we were not ready for that increase and we tend to lose that element of discipline in the learners, so we could not control them specifically this year. It’s haunting me. It’s making my life very difficult.”

Anele, mathematics teacher, Kwamagxaki High School, Port Elizabeth, Eastern Cape³¹⁷

310. We were also told this was a major issue for their members by SADTU during an interview conducted with their staff at their National HQ 17 August 2018.

311. Interviews with pupils 28 February 2019

312. Interview with Mpho Motsoane 6 December 2017

313. Interview with Audrey Arends 8 December 2017

314. Fezeka Primary School near Peddie; and Fanti Gaqa Primary School, Mdatsane.

315. Pendla Primary School, New Brighton, Eastern Cape.

316. Interviews with teachers 25 February 2019

317. Interviews with teachers 28 February 2019

“There are 50 learners in the classroom, it's not easy to learn in that kind of class because we are crowded. Sometimes they are making noise, you can't hear the teacher. Some teachers can't talk loud. Some subjects I can't understand them because of that.”

Thabo, pupil, Moletsane Secondary School, Soweto³¹⁸

In Amnesty International's joint survey with the NASGB, 48% of respondents indicated that the average class size was more than 1:35 in all or most schools in their areas (41% in Gauteng, 42% in Eastern Cape and 61% in Limpopo). In Gauteng, 19% said that no schools exceeded the limit, compared to none in Eastern Cape and 20% in Limpopo.

During a typical lesson, teachers spend 66% of classroom time on actual teaching and learning, on average in South Africa compared to an OECD average of 78%. Actual teaching and learning time is lower in schools with high concentrations of students from socio-economically disadvantaged homes compared to schools with low concentrations - an equivalent of more than 3 minutes of actual teaching and learning per 60-minute lesson. Unsurprisingly, classroom management practices are also more common in South Africa, with 84% of teachers reporting frequently calming students who are disruptive (compared to an OECD average 65%).³¹⁹

6.4 TEACHER SHORTAGES

During Amnesty International's research, several people noted that teacher recruitment and retention is a significant problem. Issues range from teachers leaving to go to private schools either in South Africa or abroad,³²⁰ early retirement, or changing professions owing to poor pay and conditions³²¹ (including lack of professional development and overwork).³²² As a result, many schools struggle to fill vacancies.³²³ Specific problems raised by those interviewed included:

- too few teachers to cover short absences;³²⁴
- cuts to teaching posts through redeployment to other locations;³²⁵
- new teachers struggling and quitting;³²⁶
- difficulty in attracting maths and science graduates because of relatively low salaries;³²⁷
- acute shortages of primary school teachers;³²⁸

318. Interviews with pupils 22 February 2019

319. South Africa - Country Note - TALIS 2018 Results p.3 at <http://www.oecd.org/education/talis/>. The OECD Teaching and Learning International Survey (TALIS) is an international, large-scale survey of teachers, school leaders and the learning environment in schools.

320. Interviews with NAPTOSA officials, Cape Town 11 December 2017

321. Interviews with Shine and NAPTOSA, Cape Town 11 December 2017

322. Interviews with NAPTOSA, Cape Town, 11 December Dec 2017 and SADTU, National HQ, Johannesburg 17 August 2018

323. Examples include Makhunya Mvulo Primary School, Eastern Cape; Tipfuxeni Secondary School, Stinkwater, Gauteng; Ebongweni Primary School, Kwasikele township, Port Elizabeth, Eastern Cape; Ndzodenlo Secondary School, Zwide, Eastern Cape; Bulelani Primary School, Hanover, Bhishu, Eastern Cape; July High School, Peddie, Eastern Cape; Dangile Primary School near Peddie.

324. Hans Kekana High School, Temba Rural, Gauteng.

325. Hans Kekana High School, Temba Rural, Gauteng.

326. Tipfuxeni Secondary School, Stinkwater, Gauteng.

327. Tipfuxeni Secondary School, Stinkwater, Gauteng.

328. Ebongweni Primary School, Kwasikele township, Port Elizabeth, Eastern Cape.

- persistent teacher post vacancies;³²⁹
- a lack of professional development;³³⁰ and
- a lack of qualified support staff for students with special needs.³³¹

The problem of teacher numbers is borne out by the NASGB survey:

- 41% responded that either no or few schools in their areas had sufficient numbers of teachers (46% in Gauteng, 48% in Eastern Cape and 22% in Limpopo); and
- 54% stated that they faced problems recruiting new teachers (64% in Gauteng, 70% in Eastern Cape and 29% in Limpopo).

Vacancies continue to be a major problem, with serious consequences for the ability of learners to access quality education. There are some 420,000 teacher posts, and vacancies have recently been as high as 15,888.³³² Again, it tends to be the poorer provinces that have the most vacancies – Limpopo, Eastern Cape and Mpumalanga. The 2017 figures revealed that Limpopo had almost 5,000 teacher vacancies, followed by the Eastern Cape with 2,182 and Mpumalanga with more than 2,000. The government has admitted that shortages are resulting in the recruitment of insufficiently qualified and competent teachers, citing KwaZulu-Natal as the worst example.³³³ It has been estimated that the country will need 456,000 teachers by 2025 to meet demand.³³⁴

In a recent international survey in OECD countries only 49% of South African teachers indicated that teaching was their first-choice career – the lowest amongst all countries participating and compared to an OECD average of 67%.³³⁵

The government has attempted to address the problem through lowering selection criteria. However, the system is still producing too few teachers, especially in areas where they are most needed, such as teaching literacy in early grades. The Department of Higher Education and Training (DHET) has estimated that universities need to produce 4,300 African mother-tongue-speaking foundation-phase teachers every year just to replace those leaving the profession. In 2012, only 1,219 such teachers graduated.³³⁶

The lack of teachers is compounded by the large number of teachers leaving the profession. For example, in a survey in Northern Cape province in 2017, 36.7% of teachers indicated that they intended to leave the profession. Just over 28% of these gave workload as the main reason for wanting to leave, nearly 25% said it was down to problems with discipline and the behaviour of pupils, and 23% blamed low salaries.³³⁷

329. Ndzodenlo Secondary School, Zwide, Eastern Cape.

330. Emfundweni Senior Secondary School, Qeto, Eastern Cape.

331. Luvuyo Special School, Eastern Cape – no occupational therapist, and no psychologist in 20 years since it opened as a special school despite repeated promises by the PED.

332. The Basic Education Minister revealed in a reply to a parliamentary question that South Africa had 15,888 teacher vacancies as of June 2017 - <https://www.businesslive.co.za/bd/national/education/2017-09-20-lack-of-qualified-teachers-scuppers-efforts-to-improve-quality-of-sas-education/>

333. Angie Motshekga, Minister of Basic Education, said that on average about 60% of all unqualified and underqualified educators were appointed in KwaZulu-Natal's rural districts such as Zululand, uThukela and uThungulu - <https://www.pressreader.com/south-africa/business-day/20170523/281530815963333>

334. See: <https://www.cde.org.za/wp-content/uploads/2018/07/Teacher-Supply-and-Demand-2013-2025-Full-Report-March2015-CDE.pdf>

335. South Africa - Country Note - TALIS 2018 Results p.1 at <http://www.oecd.org/education/talis/>. The OECD Teaching and Learning International Survey (TALIS) is an international, large-scale survey of teachers, school leaders and the learning environment in schools.

336. "Bad education: It starts with how we train teachers", *Daily Maverick*, 4 April 2018, at <https://www.dailymaverick.co.za/opinionista/2018-04-04-bad-education-it-starts-with-how-we-train-teachers/>

337. "Northern Cape teachers are literally sick and tired", *IOL*, 20 June 2017, at <https://www.iol.co.za/news/south-africa/northern-cape/northern-cape-teachers-are-literally-sick-and-tired-9886170>

Those teachers with better subject knowledge in mathematics and reading are more likely to want to work in urban and better-resourced schools compounding inequality of staff resources. Indeed, a multi-country survey found that the average reading score of a teacher at a school serving the wealthiest quartile of students in South Africa was the highest in southern and eastern Africa, other than Kenya. By contrast, subject knowledge of South African teachers serving students in the poorest quartile was the worst in the region.³³⁸

6.5 EXCESSIVE TEACHER WORKLOADS

Excessive workload is a key issue for teachers.³³⁹ Specific issues described to Amnesty International included:

- increasing paperwork;³⁴⁰
- too content-heavy curriculum;³⁴¹
- multiple school-based assessments;³⁴²
- head teachers overstretched, having to teach and manage;³⁴³ and
- long average working days beginning at 8am and finishing at 10pm.³⁴⁴



Parents Simzamil Secondary school, Ndevana, E Cape. © Amnesty International

338. See SEACMEQ survey at EFA GMR 2013-14, p. 250, at <http://unesdoc.unesco.org/images/0022/002256/225660e.pdf>

339. Interviews with heads and teachers in Tipfuxeni Secondary School, Stinkwater; Ebongweni Primary School, Kwasikele township, Port Elizabeth; Ndzodenlo Secondary School, Zwide; Fanti Gaqa Primary School, Mdatsane; Kaukela High School, Eastern Cape; Fezeka Primary School near Peddie; Bulelani Primary School, Hanover, Bhishu; Imiqhayi Senior Secondary School, Eastern Cape; Dangile Primary School near Peddie; July High School near Peddie.

340. Ebongweni Primary School, Kwasikele township, Port Elizabeth.

341. Ebongweni Primary School, Kwasikele township, Port Elizabeth; Ndzodenlo Secondary School, Zwide; Fanti Gaqa Primary School, Mdatsane; Imiqhayi Senior Secondary School, Eastern Cape.

342. Ndzodenlo Secondary School, Zwide.

343. Bulelani Primary School, Hanover, Bhishu; Fezeka Primary School near Peddie; Dangile Primary School near Peddie.

344. Imiqhayi Senior Secondary School, Eastern Cape.

Since the end of apartheid the curriculum has undergone four major changes – in 1997, 2002, 2007 and 2012.³⁴⁵ Each time teachers and learners had to adjust to major changes including the need to address 66 critical outcomes under eight learning areas.³⁴⁶

Teachers who spoke to Amnesty International expressed concern about the multiple changes to the curriculum. They were also concerned about the trend towards more content with consequently less time for preparation and creative pedagogical input.³⁴⁷ They added that the increasing complexity has meant teachers have become facilitators rather than educators. At the same time, they reported, support for teachers is often lacking, with insufficient professional development and engagement from curriculum subject advisors.³⁴⁸ For many teachers, this has resulted in increasing stress.³⁴⁹

“Every five years the curriculum is changed. Teachers find it difficult to keep up. The syllabus is also becoming harder. What was earlier taught in colleges is not being taught in the higher classes. Many teachers themselves have not studied this. So we need to teach educators and learners at the same time. We have to teach, evaluate and take remedial action. The problem is that there is no time for remedial action and teaching time is squeezed.”

Aubrey Makhubedu, Head of Mabopane secondary school, Gauteng³⁵⁰

“The curriculum is too packed. There isn’t enough time for reinforcing concepts. You just have to go from one chapter to another. Our learners are not doing as well as they could. We have assessment after assessment – earlier there used to be just one exam... With all this, we end up doing a lot of paperwork but we don’t get enough back for it. Morale is a big challenge and teachers are looking to leave the system. Teaching is getting to be too much paperwork. Training for teachers is also a challenge. For many it is a second career. Many teachers are not up to the mark and it is very difficult to get rid of underperforming teachers.”

Audrey Arends, Acting Deputy Principal Crestview Primary School, Gauteng³⁵¹

“In the new system the syllabus is more straightforward but the programme is too full. This is because there is a difference in understanding between planners and implementers. The planners plan for a 10-week period without taking into consideration that in a 10-week term, teaching only takes place over six weeks. The other four weeks are taken up by exams and other supporting activities. So the teachers have to teach a 10-week course in six weeks. They have to complete a set number of activities in very short time. I tell them that they should move away from text book teaching to teaching concepts but then evaluators or subject advisors from the district office come and check if they have completed all the activities. The lessons are planned for 30 minutes of teaching time. Teachers don’t always get this as moving from class to class takes time, settling in take time. etc.”

Koos Pretorius, Head of Galway Primary School, Gauteng³⁵²

345. Curriculum 2005 (C2005) introduced in 2000, the Revised National Curriculum Statement implemented in 2002, the National Curriculum Statement of 2007, and the Curriculum Assessment and Policy Statement in 2012. For further details see N. Ngibe, “Continuous Change in Curriculum: South African Teacher’s Perceptions”, *Mediterranean Journal of Social Sciences* Vol 5, No 23 (2014).

346. The outcomes were introduced under C2005. The eight areas are language, literacy and communication; mathematical literacy and mathematics; natural sciences; technology; arts and culture; human and social sciences; life orientation; economic and management science. See Coleman et al (ed.) *Managing the Curriculum in South African Schools* (2003)

347. Interviews with teachers at Imiqhayi school, Mount Coke, KWT, E Cape; Kaukela High school, E Cape and SADTU 17 August 2018. Fanti Gaqa primary school, Mdatsane; E Cape

348. Interviews with Fezeka primary, nr Peddie and Equal Education. See also Govender, “South African teachers’ perspectives on support received in implementing curriculum changes” *South African Journal of Education*, Volume 38, Supplement 2, December 2018 pp 1-12. Curriculum advisors are supposed to visit schools to offer support and advice on delivering particular subjects.

349. N. Ngibe, “Continuous Change in Curriculum: South African Teacher’s Perceptions”, *Mediterranean Journal of Social Sciences* Vol 5, No 23 (2014). Also, <https://www.insideeducation.org/featured/curriculum-dynamics-continues-fail-teachers-learners-south-africa/>

350. Interview with Aubrey Makhubedu 7 December 2017

351. Interview with Audrey Arends 8 December 2017

352. Interview with Koos Pretorius 5 December 2017

“Teachers have a lot of paper work to do. Testing is again like a sledge hammer. Teachers are exhausted with all the assessments and tests... We have more school days than other countries. We have 200 school days in a year. The problem is that lessons and plans are getting more and more scripted. Top schools are trying to get around this but the bottom schools are slavishly following the curriculum... The problem is that the curriculum is too packed. They are adding more and more subjects... and therefore spreading the butter too thin. There is no time for consolidation and re-teaching.”

NAPTOSA, W Cape³⁵³

A report on teacher retention in the Northern Cape noted that, with respect to the issue of workload, “the current findings are contrary to the view that workload has been alleviated with the introduction of the [2012] Curriculum Assessment Policy Statement, which reduced administrative duties so that teachers could focus on teaching and learning.”³⁵⁴ NAPTOSA, the country’s second largest teaching union, in responding to the Northern Cape survey results, said that while absenteeism among teachers was a long-term concern, what was most worrying was the fact that they were overworked, with many teachers often booked off due to burn-out.³⁵⁵ SADTU confirmed to us that drop outs from the profession continues to be a major problem.³⁵⁶

6.6 TEACHER CAPACITY AND TRAINING



July High school, nr Peddie Eastern Cape. © Amnesty International

353. Interview with NAPTOSA reps 11 December 2017

354. Human Sciences Research Council, *The Health of Educators of Public Schools in South Africa* at http://www.hsrb.ac.za/uploads/pageContent/8248/Health%20of%20Educators_2017.pdf. See also “Northern Cape teachers are literally sick and tired”, *IOL*, 20 June 2017, at <https://www.iol.co.za/news/south-africa/northern-cape/northern-cape-teachers-are-literally-sick-and-tired-9886170>

355. “Northern Cape teachers are literally sick and tired”, *IOL*, 20 June 2017, at <https://www.iol.co.za/news/south-africa/northern-cape/northern-cape-teachers-are-literally-sick-and-tired-9886170>

356. Interview with SADTU National HQ, 17 August 2018

Clearly, teachers must not only be available in sufficient numbers but also adequately qualified and trained. Ideally, training should be to a uniform, high standard that ensures that all trainees have equal access to both content and the practical skills they need to carry out their future jobs effectively.³⁵⁷ This will also ensure that all learners can fully enjoy their right to education.

A range of interviewees – school heads,³⁵⁸ education experts³⁵⁹ and union officials³⁶⁰ – told Amnesty International that the current South African teacher training system is not fit for purpose. As a result, new teachers are insufficiently equipped when they start work, and then have insufficient support for professional development when they are in post.³⁶¹

A key problem is too much focus on subject content and not enough on practical, pedagogical skills. School heads told us that new teachers required a great deal of on-the-job training.

“Getting trained teachers is a struggle. Now they come from universities but don’t have practical training so we have to start from scratch.”

Nthabiseng Moleko, Head, Thuthuzekani Primary School, Gauteng³⁶²

“New teachers don’t have practical training. We have to train them when they come. It would be helpful if they went for six months’ training before they took jobs. They can’t handle the class discipline. Teachers who come through the university system don’t learn how to teach handwriting.”

Mpho Motsoane, Head of Mastediso Primary School, Gauteng³⁶³

“Teacher training is a big issue. The foundation phase is not given sufficient support. The department does not allocate anything for teacher development so you can’t implement the personal growth plan. If we want funds we have to apply to the district because they have some funds under educator development plans. The number one gap is teacher ability and this is a legacy of apartheid era policies... There are too few subject advisers in districts and school-based professional development is very limited. Imagine being a first-year teacher expected to teach a class of 50-plus students how to read with the preparation described above? It is a miracle we have any teachers surviving the profession at all...The number one gap is teacher ability and this is a legacy of apartheid era policies.”

Aubrey Makhubedu, Head of Mabopane secondary school, Gauteng³⁶⁴

Under apartheid, teachers were trained in 80 specialist teacher training colleges. Teaching was one of the few professions open to black students, and for many, these colleges were not particularly effective as they gave insufficient attention to subject content.³⁶⁵ In 1994, the ANC government disbanded them, relocating all teacher training to 23 universities.

357. Sonia Guerriero, UNESCO Section for Teacher Development and Inês da Silva, International Task Force on Teachers for Education 2030 *The right to education means the right to a qualified teacher* at <https://www.globalpartnership.org/blog/right-education-means-right-qualified-teacher>

358. Interviews with Heads of Thuthuzekani and Mastediso Primary Schools; Tipfuxeni and Mabopane secondary schools, Gauteng; Ebongweni Primary School, Kwasikele township, Port Elizabeth and Fanti Gaqa Primary School, Mdatsane, E Cape

359. Interview with Maurita Weissenberg, Shine 11 December 2017

360. Interviews with NAPTOSA Western Cape 11 December 2017 and SADTU 17 August 2018. SADTU told us that the union provides its own professional development for members in lieu of government provision.

361. “Bad education: It starts with how we train teachers”, *Daily Maverick*, 4 April 2018, at <https://www.dailymaverick.co.za/opinionista/2018-04-04-bad-education-it-starts-with-how-we-train-teachers/>

362. Interview with Nthabiseng Moleko 6 December 2017

363. Interview with Mpho Motsoane 6 December 2017

364. Interview with Aubrey Makhubedu 7 December 2017

365. Interview with Gail Weldon 13 December 2017

However, the current system has been criticized for the opposite reason – for not equipping prospective teachers with the pedagogic skills they need by focusing too much on content. A study by the Initial Teacher Education Research Project³⁶⁶ reviewed the programmes of five of South Africa’s universities. Its 2016 report stated that they “lack a strong underlying logic and coherence” and vary widely in their quality and focus on content knowledge and teaching practice. At one of South Africa’s most prominent universities, the study found that only 6% of the learning credits for students were allocated to literacy in the Foundation Phase B.Ed programme. Indeed, very few of South Africa’s education faculties have a dedicated course focused on how to teach reading.

It should also be noted that although teachers’ typical educational attainment is higher than that of the general adult population it is lower than in any other country or economy participating in an OECD educationalists survey. 24% of teachers in South Africa have not completed any tertiary education compared to an OECD average of 2%.³⁶⁷ The result is that South Africa is not producing enough teachers with the range of knowledge and skills needed to enter the classroom.

“The question is – who goes into teaching? ... They did a study in 2007 where 70% of the class 7 teachers could not get more than 60% in the maths exams that their students were appearing for... The bursaries system is there to encourage people to get into teaching but the government is not good at placing these teachers in the right places. We need teachers for maths and African languages.”

Nic Spaull, Senior Researcher, University of Stellenbosch³⁶⁸

In this context it is not surprising that South Africa faces major challenges in the level of teacher skills and ability, particularly in specialist areas such as mathematics and science, with thousands being either unqualified or under-qualified.³⁶⁹ A study in March 2018 found that South African teachers could not pass simple mathematics and English tests, with some scoring as low as 10% for English first additional language and 5% for mathematics.³⁷⁰ Another study by Stellenbosch University found that Grade 4 to 7 (Intermediate Phase) mathematics teachers in under-resourced schools in the Eastern Cape are not proficient in English, the language in which they are supposed to teach, and that they lacked knowledge of mathematics. The study also found that only 1 of the 10 sampled teacher educator institutions provided modules that focus on the use of English as a language of instruction. In addition, the modules are provided at Master’s level, which the majority of teachers in under-resourced schools would not have attained when they are deployed to schools.³⁷¹

“But as a result of more and more learners opting for mathematics literacy, we have less people specialized in mathematics. We also have less maths teachers. Those who are good at the subject go to other professions like engineering.”

Faith Tshabalala, Chief Education Specialist, Research Coordination, Gauteng PED³⁷²

366. See: <https://www.jet.org.za/resources/deacon-iterp-final-composite-report.pdf>

367. South Africa - Country Note - TALIS 2018 Results p.4 at <http://www.oecd.org/education/talis/>. The OECD Teaching and Learning International Survey (TALIS) is an international, large-scale survey of teachers, school leaders and the learning environment in schools.

368. Interview with Nic Spaull 12 December 2017

369. In 2016 it was revealed that there were 5,139 teachers who were either unqualified or under-qualified, 2,875 of them in KwaZulu-Natal and 400 in the Northern Cape. See “South African schools have 5,139 teachers who are unqualified or under-qualified”, *Times Live*, 6 June 2017.

370. See: <https://mybroadband.co.za/news/technology/251847-south-african-teachers-fail-simple-maths-and-english-tests.html>

371. See <https://www.timeslive.co.za/news/south-africa/2018-03-27-eastern-cape-teachers-struggle-with-mathematics-language-of-tuition/>

372. Interview with Faith Tshabalala, 7 December 2017

“We also have a problem with maths and science teaching. We are taking people who didn’t do matriculation maths but are teaching senior classes.”

NAPTOSA W Cape³⁷³

Research found that an increase of about 100 points in a South African teacher’s score in the respective subject knowledge increased the student score by 38 points.³⁷²

The government announced in July 2018 that mathematics and science graduates from state-funded universities could be forced to undergo mandatory community service by teaching these subjects at government schools that are facing particular skills shortages.³⁷³ However, it is questionable whether this is an appropriate or sustainable long-term solution.

6.7 CONCLUSIONS

This chapter has highlighted some of the additional barriers that children in South Africa face to access a quality education. Pupils experience a lack of sufficient transport, which often impacts on their ability to access education and may put their safety at risk. The obligation to ensure that education is physically accessible requires the government to take urgent steps to address this concern.³⁷⁶

As part of its obligation to ensure that all children can access a quality education, South Africa is also obliged to ensure a sufficient number of trained teachers to deliver education,³⁷⁷ while the material conditions of teaching staff are continuously improved.³⁷⁸ There is clear evidence that teachers are not receiving adequate training. Once in the classroom they must teach in overcrowded classes with an increasing workload, while the government struggles to address teacher retention and recruitment, which further undermine children’s right to education in South Africa.

373. Interview with four NAPTOSA officials, W Cape 11 December 2017

374. Altinok, N (2013). The impact of teacher knowledge on student achievement in 14 sub-Saharan countries. *Paper commissioned for the EFA Global Monitoring Report 2013/4, Teaching and learning: Equality for all*. UNESCO. Available here: <http://unesdoc.unesco.org/images/0022/002258/225832e.pdf>

375. “Government’s bold plan to improve maths and science at schools”, *BusinessTech*, 15 July 2018, at <https://businesstech.co.za/news/government/258533/governments-bold-plan-to-improve-maths-and-science-at-schools/>

376. CESCR General Comment 13, para. 6(b)(ii). Physical accessibility – education has to be within safe physical reach... by attendance at some reasonably convenient geographic location (for example, a neighbourhood school).

377. CESCR General Comment 13, para. 6(a). See also CESCR General Comment 13, para. 50.

378. Article 13(2)(e). The CESCR notes that a failure to do so can amount to a major obstacle to the full realization of students’ right to education, CESCR General Comment 13, para. 27.

7. FUNDING FOR EDUCATION

The problem is that the budget is not in line with the needs... We need more devolved budgeting. The amount of money you get is determined by your location. If you want to change the quintile you are in, you need to apply to the district, which will then apply to the department which will then investigate. It is a long process..."

Koos Pretorius, Head of Galway Primary School, Gauteng³⁷⁹



Kaukela High School, Eastern Cape - kitchen. © Amnesty International

379. Interview with Koos Pretorius 5 December 2017

Schools serving poorer communities often lack adequate resources to provide the level of quality education to which children are entitled under the Constitution. In practice, this means they are unable to maintain school buildings, provide basic facilities and even guarantee the safety and security of pupils and staff. As further explained below the situation is further compounded by the application of funding formulae that risk deepening inequality between poorer and wealthier schools and provinces rather than reducing it.

Schools in each province are classified into five groups from the most poor to the least poor. For example, Quintile 1 is a group of schools in each province catering for the poorest 20% of schools. Quintile 2 caters for the next poorest 20% of schools while Quintile 5 schools represent the least poor. Schools receive money from government according to Quintiles. Quintile 1 schools receive the highest allocation per learner, while Quintile 5 receives the lowest.³⁸⁰

Schools in quintiles 1-3 that cannot charge fees and are therefore mainly reliant on government funding can in theory raise additional funds from other sources, including parents and local businesses. However, it is precisely because they serve poorer communities that they are often unable to raise additional funds from the communities where they are located. Many of the learners that go to no fee schools are from communities that experience high levels of unemployment and may be part of families living in poverty or households headed by a single parent or even another child. Such communities struggle to provide enough food for their children let alone have spare money to support the local school.

Amnesty International visited numerous schools that had insufficient resources to address even basic needs. Issues included:

- budgets not taking constant thefts into account;³⁸¹
- budgets that are not needs-driven;³⁸²
- insufficient additional funding from the DBE to compensate for the lack of school fees;³⁸³
- insufficient allocation of funds provided by the DBE for maintenance;³⁸⁴ and
- delayed payments due to a lack of planning by the PED,³⁸⁵ resulting in money running out for activities later in the year.³⁸⁶

At the same time, Amnesty International found many schools struggling to fundraise from their communities.³⁸⁷ In one school, 300 out of 1,100 pupils are not able to pay the R2 requested on periodic non-uniform days.³⁸⁸ In one township, up to 90% of parents do not pay the R150 voluntary donation to provide some extra funding.³⁸⁹

380. See: <https://www.schoolguide.co.za/for-parents/school-review-guidelines/1036-education-guide/10975-school-fees-quintiles.html>

381. Tipfuxeni Secondary School, Stinkwater, Gauteng.

382. Ebongweni Primary School, quintile 3, Kwasikele township, Port Elizabeth, Eastern Cape.

383. Pefferville Primary School, East London, Eastern Cape.

384. For instance, Imiqhayi Senior Secondary School, Eastern Cape, only received 10% of funding for maintenance in its first tranche of funding; and Bulelani Primary School, Hanover, Bishu, needed at least 20% more for maintenance.

385. Fanti Gaqa Primary School, Mdantsane, Eastern Cape; Bulelani Primary School, Hanover, Bishu.

386. For example, Bulelani Primary School told Amnesty International that the first tranche of money due in January arrives in May, and the second tranche due in June arrives in November.

387. Ndzodenlo Secondary School, quintile 3, Zwile, Eastern Cape, Pendla Primary School, New Brighton; Luvuyo Special School; Fezeka Primary School near Peddie, Eastern Cape; July High School near Peddie.

388. Tipfuxeni Secondary School, Stinkwater, Gauteng.

389. Moletsane High School, Soweto, Gauteng.

“Only 0.1% of parents help out.”

Head of Bulelani Primary School, Hanover, Bhishu³⁹⁰

The result, as detailed in chapter five, is badly maintained, dangerous buildings with poor sanitation and missing essential facilities. In many cases school buildings have never been renovated since construction. One school we visited could not even meet basic maintenance needs and struggled simply to pay high water and electricity bills whilst only 30% of the school's parents could provide the request of an additional R500 per year.³⁹¹ Some schools cannot put on activities such as sports³⁹² or school trips.³⁹³ Lack of resources also impacts on staffing levels, both teachers and support staff such as cleaners. This must be seen in the context of the high levels of poverty and socio-economic inequality detailed in chapter four.³⁹⁴

The survey Amnesty International conducted with the NASGB confirmed some of the problems with the level of funding and how it is allocated:

- 30% of respondents indicated that either all or most schools in their area have sufficient funding with considerable provincial differences (18% in Gauteng; 17% in Eastern Cape and 44% in Limpopo)
- 31% responded that either none or few schools in their area receive funding on time again with some significant difference across provinces (29% in Gauteng; 54% in Eastern Cape and 31% in Limpopo)
- 40% thought that the funding formula is fair, with the same proportion thinking that the quintile system is unfair – note again some quite stark provincial differences (32% and 43% respectively in Gauteng; 14% and 66% respectively in Eastern Cape; 66% and 31% respectively in Limpopo)



July High school, nr Peddie
Eastern Cape - classroom.
© Amnesty International

390. Interview 25 February 2017

391. Hans Kekana High School, Temba, Gauteng.

392. Ndzodenlo Secondary School, quintile 3, Zwile, Eastern Cape.

393. Hans Kekana High School, Temba, Gauteng.

394. Note also that as of June 2019 the minimum wage is R20 an hour for the average worker, R18 an hour for farmworkers, R15 an hour for domestic workers and R11 an hour for expanded public works programme workers meaning that the monthly income of a domestic worker working 40 hours per week is approximately R2580. <https://www.fin24.com/Economy/everything-you-need-to-know-about-the-national-minimum-wage-20190101>

INTERNATIONAL AND REGIONAL STANDARDS

Article 2(1) of the ICESCR requires States parties to take steps, individually and through international assistance and co-operation, especially economic and technical, *to the maximum of its available resources*, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means. The CESCR has underlined that even where available resources are inadequate for the realization of economic and social rights, the obligation remains for a State party to strive to ensure the widest possible enjoyment of those rights under the prevailing circumstances, to monitor the extent of their realization, and to devise strategies and programmes for their promotion.³⁹⁵

In his 2011 report on the funding of education, the UN Special Rapporteur on the Right to Education emphasized that the provision of adequate financial resources is essential to the realization of the right to education and that Article 26 of the Universal Declaration of Human Rights recognizes that education shall be free, at least in the elementary and fundamental stages.³⁹⁶ In so doing the Special Rapporteur also emphasized that providing the necessary resources for the enjoyment of the right to education is all the more important, given that its enjoyment is essential for the exercise of all other human rights. Consequently, it deserves high priority in public investment.³⁹⁷ In order to overcome resource constraints on the Education for All agenda, the High-level Group on Education for All has advocated for ensuring that a minimum proportion of national budgets (15-20%) or share of GDP (4-6%) is dedicated to education.³⁹⁸

The Special Rapporteur has also emphasized that core principles of equality and non-discrimination must underpin the effectiveness of financial management in the area of education. In this respect, prevailing socio-economic disparities must be taken into account. Where schools are funded through subnational budgets, it is necessary to ensure that differences in revenues collected locally do not result in inequalities between regions.³⁹⁹

7.1 LEVELS OF FUNDING: KEEPING PACE WITH NEEDS?

The education budget is a significant proportion of government expenditure – 16.7% in 2019-20. However, this represents a decline from 17.7% in 2016/17.⁴⁰⁰ Basic education's share (excluding tertiary education) of the consolidated government budget is expected to decline to 14.2 per cent by 2021.⁴⁰¹ Expenditure on basic education has struggled to keep pace with inflation with a real average annual growth rate of only 1.2%.⁴⁰²

395. CESCR General Comments 3, para. 11.

396. UN Special Rapporteur's report (2011) A/66/269, para. 4.

397. Ibid. para. 7.

398. Ibid. para. 43. For more information on the Agenda and the work of the High Level Group, see <https://en.unesco.org/gem-report/report/2015/education-all-2000-2015-achievements-and-challenges>

399. Ibid. para. 46.

400. See: https://www.unicef.org/esaro/UNICEF_South_Africa_-_2017_-_Education_Budget_Brief.pdf

401. UNICEF Basic Education Brief South Africa 2019/20 p9 at https://www.unicef.org/southafrica/SAF_resources_educationbudgetbrief2019.pdf

402. Ibid. p10

Education spending as a percentage of GDP hit a high of 6.37% in 2012 (compared to a low of 4.85% in 1989 in the last 30 years).⁴⁰³ This is comparatively high.⁴⁰⁴ However, from 2012 onwards, spending began to plateau and in 2016, with the introduction of austerity measures,⁴⁰⁵ non-interest expenditure⁴⁰⁶ has failed to keep up with population growth. This has resulted in declining per capita expenditure⁴⁰⁷ across a range of social and economic programmes, including education. South Africa was spending 6% of GDP on education in 2018⁴⁰⁸ but this is predicted to fall to 4.8% by 2021.⁴⁰⁹ However, some have questioned whether this is a useful measure since it is dependent on the relative size of a country's economy.⁴¹⁰

Regardless, these macro figures also mask a more concerning picture. The National Treasury's analysis admits that real basic education spending per learner has plateaued since 2011/12.⁴¹¹ However, additional analysis by one expert concluded that per learner spending has actually declined by 10% since 2010, once other factors are accounted for such as increases in birth rates, public school enrolments, and above-inflation increases in teacher salaries. According to this estimate, as a result, real annual per learner spending fell from R17,822 (US\$ 1239) in 2010 to R16,435 (US\$ 1142) in 2017. On current budget estimates, it will have dropped to R15,963 (US\$ 1109) in 2019.⁴¹²

The government acknowledged the impact of these cuts when it stated in its 2018 Budget Review: "The reductions discussed above [to housing, education and health budgets] will affect service delivery by delaying the rollout of some housing, school and health infrastructure projects. And reducing the provincial equitable share⁴¹³ will make it difficult for provinces to continue to maintain education and health priorities".⁴¹⁴

In February 2018, the government allocated R792 billion (US\$ 55.1 billion) for basic education over the medium term (i.e. beyond the subsequent 12 months), including R31.7 billion (US\$ 2.2 billion) for education infrastructure and R3.8 billion (US\$ 0.26 billion) for school infrastructure backlogs in order to replace 82 inappropriate and unsafe schools, while providing water to 325 schools and sanitation to 286 schools. In addition, R21.7 billion (US\$ 1.5 billion) was allocated to provide daily meals to 19,800 schools (9 million learners) through the national school nutrition programme grant.⁴¹⁵

403. According to UNESCO, between 1987 and 2016 the average value for South Africa was 5.45% with a minimum of 4.85% in 1989 and a maximum of 6.37% in 2012 [UNESCO REF]

404. South Africa ranked 14th out of 77 countries in a 2016 survey, see https://www.theglobaleconomy.com/rankings/Education_spending/

405. Some commentators have pointed out that the South Africa's debt is modest compared to others and does not merit such drastic austerity measures. See CESR and section 27 parallel report to CESCR paras. 15 and 16 at <https://www.cesr.org/joint-submission-committee-economic-social-and-cultural-rights-south-africa%E2%80%99s-first-period-report>

406. This is expenditure that relates solely to the operating costs of a government's social and economic programmes.

407. CESR and section 27 parallel report to CESCR 2018 para. 53 at <https://www.cesr.org/joint-submission-committee-economic-social-and-cultural-rights-south-africa%E2%80%99s-first-period-report>

408. UNESCO, *Government expenditure on education, total (% of GDP)* UNESCO Institute for Statistics (uis.unesco.org), <https://data.worldbank.org/indicator/SE.XPD.TOTL.GD.ZS?locations=ZA>

409. See https://www.unicef.org/southafrica/SAF_resources_educationbudgetbrief2019.pdf p. 9.

410. Murtin, F. 2013. "Improving Education Quality in South Africa", OECD Economics Department Working Papers, No. 1056, OECD Publishing, Paris.

411. See figure 2 in CESR and section 27 parallel report to CESCR, p. 17 at <https://www.cesr.org/joint-submission-committee-economic-social-and-cultural-rights-south-africa%E2%80%99s-first-period-report>

412. Nic Spaul, "Basic education thrown under the bus – and it shows up in test results," *Business Day*, 16 April 2018

413. Local government and each province are entitled to "an equitable share of revenue raised nationally" in accordance with Section 214(1) of the Constitution. Equitable shares are unconditional and enable provinces and municipalities to provide the services and the functions allocated to them.

414. National Treasury, February 2018, "Budget Review", p. 75.

415. International Relations & Cooperation, Republic of South Africa, 2018 Budget Speech by Finance Minister, Malusi Gigaba, Cape Town, South Africa, 2018, www.dirco.gov.za/docs/speeches/2018/giga0221.htm

However, expert analysis has concluded that the current levels of investment in basic education remain insufficient for South Africa to meet its obligations under the ICESR to ensure both the minimum core content of and non-discrimination in the right to education.⁴¹⁶

Other fiscal measures have added to the financial burden on families sending children to school. In April 2018, VAT was increased from 14% to 15%, which will have a disproportionate impact on those living in poverty, reducing the amount that families can spend on educating children.⁴¹⁷ At the same time, the government has refused to exempt certain essential items from VAT, including school uniforms, thereby adding to the burden of indirect costs of education for people living in poverty.⁴¹⁸

Corruption and mismanagement of funds have also been identified as a serious problem, with an estimated R6.1 billion (US \$ 424 million) of irregular expenditure (i.e. not in accordance with procurement laws) on education.⁴¹⁹

7.2 DYSFUNCTIONAL FUNDING FORMULA

As highlighted earlier in this report the common narrative is that South Africa spends a great deal of money on education but achieves relatively poor results. However, the picture is more complex. Nic Spaull, a leading expert on the subject, told Amnesty International that it is not so how much is being spent but *how it is spent*: “The percentage of GDP argument does not work for me....[the more important question is] is the way that funding is allocated addressing or exacerbating inequality?”⁴²⁰

Section 215(1) of the Constitution states, “National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and effective financial management”. The principle of accountability applies to all government processes and is particularly important in the allocation and expenditure of government budgets. The budgeting process involves actors at both the national level, such as the DBE and National Treasury, and those at the provincial level, such as PEDs and treasuries, as well as at the local district level. Revenue is distributed between the three levels according to their “equitable share”.⁴²¹ – with the national equitable share making up 65% of the total; provincial 31% and local government 4%. However, it is important to note that while each equitable share is transferred directly to the respective level, a significant portion of the national share goes

416. CESR, Section 27 and Institute for Economic Justice parallel report to CESCR, para. 68 at <https://www.cesr.org/joint-submission-committee-economic-social-and-cultural-rights-south-africa%E2%80%99s-first-period-report>

417. This increase is projected to raise the share of VAT as part of the overall tax raised from 24.6% in 2017/18 to 26.3% in 2020/21. On regressive impact of consumer taxes, see <https://www.ohchr.org/Documents/Publications/RealizingHRTThroughGovernmentBudgets.pdf> and <https://www.taxjustice.net/wp-content/uploads/2016/11/Tax-and-Human-Rights-Report.pdf>

418. This is despite the fact that 23 additional categories of goods and services that could be zero-rated, financially benefiting low-income households, have been identified. See Institute for Economic Justice, 2018. “Mitigating the impact of the VAT increase: can zero-rating help?”

419. CESR, Institute for Economic Justice, Section 27, “Joint Submission to the Committee on Economic, Social and Cultural Rights on the occasion of the review of South Africa’s first period report at the 64th Session”, October 2018, Submitted by the Center for Economic and Social Rights Institute for Economic Justice, Section 27, 2018, at <https://www.cesr.org/joint-submission-committee-economic-social-and-cultural-rights-south-africa%E2%80%99s-first-period-report> para. 43 compared to health (R11.8 billion) and transport (R6.4 billion).

420. Interview with Nic Spaull 12 December 2017

421. The equitable share is revenue raised nationally to enable municipalities and provinces to provide basic services and perform the functions allocated to them as stipulated in Section 227(1)(a) of the Constitution. The amount of equitable share a municipality receives depends on factors such as the size of its low income population, the cost of basic services and its capacity to raise revenue. This allocation is meant to be used for basic services and operational costs, since the equitable share falls under the operating budget of a municipality. Funding is provided from both the provincial equitable share (around 90% of the total basic education budget) and the national equitable share (the remaining 10%). For more information, see Section 27, *Basic Education Rights Handbook* pp. 47-48 at <http://section27.org.za/basic-education-handbook/>

towards meeting South Africa's debt service costs,⁴²² which is having an increasingly negative impact on the amount allocated for education.⁴²³

The total basic education budget is split between national expenditure,⁴²⁴ conditional grants⁴²⁵ and the provincial equitable share.⁴²⁶ The latter is the provinces' main budget for basic education, covering expenditure on both personnel and non-personnel costs, such as books and school facilities, supplemented by conditional grants.⁴²⁷ Combining provincial equitable share expenditure with conditional grants, provincial expenditure makes up approximately 97% of all expenditure on basic education.⁴²⁸ However, there has been a trend towards PEDs having less control of the total basic education budget.⁴²⁹

How much each province receives of its equitable share is determined using the **equitable share formula**. The formula, used to divide the approximately third of the government's budget which is allocated to the provinces, is meant to ensure an equitable division of funds between provinces based on the following criteria:

- the need to ensure that the provinces can provide basic services and perform the functions allocated to them;
- developmental and other needs of the provinces; and
- economic disparities within and among the provinces.⁴³⁰

The formula, which is tabled in parliament annually in the Division of Revenue Act, consists of six separate components.⁴³¹ Education at 48% is by far the largest and is based on the size of the school age population in each province and the number of learners enrolled in public ordinary schools⁴³² although provinces are not required to spend 48% of their share all on education. If this money was sent to provinces separately from the rest of the equitable share and only spent on education, each province would have a certain minimum amount to spend on education per learner. However, this is not how the equitable share is actually distributed, leading to anomalies and inequality.

422. In 2016/2017 this amounted to R 148 billion or 11.2% of the total share. See Section 27, *Basic Education Rights Handbook* Table 2.2 p. 47 at <http://section27.org.za/basic-education-handbook/>

423. The share going to national departments dropped from 43.5% to 42.5%, and the share going to the provinces dropped from 39.5% to 37.9% during the same period. The share going to local government has been relatively stable.

424. This includes administration costs, curriculum policy, support and monitoring, teacher education and institutional development, planning, assessment and educational enrichment services.

425. Conditional grants are used to transfer funding to provinces and municipalities for the purpose of achieving particular national government policy objectives. This mechanism is especially important in South Africa, where the Constitution provides for equal access to basic public services, including health, education, water and welfare. In the context of education conditional grants cover specific programmes such as national school nutrition and HIV/AIDS life skills.

426. Local government and each province are entitled to "an equitable share of revenue raised nationally" in accordance with Section 214(1) of the Constitution. Equitable shares are unconditional and enable provinces and municipalities to provide the services and the functions allocated to them.

427. Of the total funds allocated to the DBE, around 70% is transferred to PEDs as conditional grants. This means that the total provincial budget for basic education is made up of two funding streams: conditional grants from the DBE; and an amount allocated from the provinces' equitable share allocation.

428. Section 27, *Basic Education Rights Handbook*, Chapter 2, p. 56 at <http://section27.org.za/basic-education-handbook/>

429. In 2005/06, PEDs had discretion over almost 98% of total basic education spending, compared to 2016/17 where they controlled less than 90%.

430. See: <http://www.treasury.gov.za/documents/national%20budget/2017/review/Annexure%20W1.pdf>

431. In addition to education, the other five components are: health (27%) based on the province's risk profile and health system case load; basic allocation (16%) based on share of national population; institutional component (5%) divided equally between provinces; poverty (3%), which is distributed progressively based on the number of people living in each province who fall in the lowest 40% of household incomes; and economic output (1%) distributed regressively based on regional GDP.

432. The non-education portion of the share (52%) is divided largely based on population.

In reality, how equitable is the equitable share formula? Some of the poorest provinces allocate more of their share to education than other provinces but end up with some of the lowest spending per individual learner.⁴³³ This anomaly is because the formula only counts the number of learners in each province, not their proportion of the total population. The proportions vary greatly and have a big impact on the amount that each province can allocate per learner. Consequently, the five provinces with the highest proportion of learners (KwaZulu-Natal, Limpopo, Mpumalanga, Free State and Eastern Cape) spend the highest percentage of their equitable share allocations on education but end up with the least amount of funding allocated per learner. For example, the two poorest provinces – Limpopo and Eastern Cape – allocated more of their equitable share to basic education than any other province in 2016/17 (50.6% and 48.6% respectively) but ended up with the lowest education allocations per learner (R14,058 (US\$ 978) and R14,473 (US\$ 1006). By contrast, Western Cape and Gauteng, the two richest provinces with among the lowest proportion of their population in school, spent 10% to 17% more per learner. This is a major defect of the formula and is driving and deepening inequality.⁴³⁴

Further failings contribute to a widening divide. Firstly, the formula fails to take into account that it is cheaper to provide education in urban areas owing to economies of scale and population density together with a better provision of goods and services. Secondly, the formula does not recognize the unequal starting points of historically disadvantaged and under-funded schools⁴³⁵ For example, a rural province such as the Eastern Cape is more likely to have a higher number of schools that were under-resourced during apartheid and therefore require more funds now for constructing new schools or re-building inadequate ones. Mitigation measures such as conditional grants⁴³⁶ and the poverty weighting at 3% are insufficient to address this wide inequality gap.⁴³⁷

A more equitable share formula would take both of these factors into account. It would also increase the weighting given to the poverty component so that provinces with a higher share of their population living in poverty would receive more funds.⁴³⁸



Imiqhayi school, Mount Coke, King Williams Town, Eastern Cape.
© Amnesty International

433. See: https://www.unicef.org/esaro/UNICEF_South_Africa_--_2017_--_Education_Budget_Brief.pdf

434. Section 27, *Basic Education Rights Handbook*, pp. 48-50 at <http://section27.org.za/basic-education-handbook/>

435. See: https://www.unicef.org/esaro/UNICEF_South_Africa_--_2017_--_Education_Budget_Brief.pdf

436. Although conditional grants have been allocated in recent years to tackle backlogs in school infrastructure, these make up a very small portion of provincial spending compared to the equitable share.

437. The poverty weighting is based on income data from each province and is meant to reinforce the redistributive bias of the formula. See <http://www.treasury.gov.za/documents/national%20budget/2017/review/Annexure%20W1.pdf>

438. Section 27, *Basic Education Rights Handbook*. p. 51 at <http://section27.org.za/basic-education-handbook/>

7.3 FEES VERSUS NO FEES: THE NEED TO ENSURE ALL SCHOOLS ARE ADEQUATELY FUNDED

“The distinguishing factor for schools is not so much private versus public but fee versus no fee.”

Nic Spaull, Senior Researcher, University of Stellenbosch⁴³⁹

“We have 26... paid staff and 15 staff members paid through funds raised from parents. We are in the quintile 5 and can charge fees. Our fees are R750 per year. The problem is with the socio-economic condition of parents. Currently 40-50% are not paying fees. Learners can apply for exemption from paying fees. We are currently losing R1.8 million because of exemptions and the department gave us only R32,000 to cover the gap.”

Koos Pretorious, Head of Galway Primary School, Gauteng⁴⁴⁰

“Fee schools can pay for additional teachers and fundraise. No fee can't plus less likely that local community can fundraise so deepens inequality.”

Michelle van Zyl, Deputy Principal Rant en Dal school Gauteng⁴⁴¹



Pendla primary school New Brighton, Eastern Cape. © Amnesty International

The education system still allows some state schools, including at primary level, to charge fees. This not only entrenches inequality in the absence of sufficient state funding but is also contrary to South Africa's international human rights obligations (see Chapter 9).

439. Interview with Nic Spaull 12 December 2017

440. Interview with Koos Pretorious 5 December 2017

441. Interview with Michelle Van Zyl 4 December 2017

Historically, all schools were allowed to charge fees. Those who could generate more income from the wealthier communities that they served received less state funding than schools in poorer areas. This policy changed in 2009, when all quintile 1-3 schools were reclassified as “no fee” schools. This has meant that increasing numbers of learners do not have to pay fees.⁴⁴² However, there are still significant numbers of learners paying fees at both primary and secondary level, with substantial differences between provinces depending on the levels of economic development. For example, in 2014 92% of learners in Limpopo and 81.5% in the Eastern Cape attended no fee schools compared to 40.7% in the Western Cape and 45.3% in Gauteng.⁴⁴³

Although quintile 1-3 schools cannot charge fees, they can request voluntary contributions from parents and others to help to meet running costs and provide for new resources, facilities and equipment. However, our research has shown that in many cases poorer communities are unable to help with providing additional resources. It is also important to note that learners who attend no fee schools have to meet indirect educational costs such as school uniforms, books, stationary and transportation. Moreover, there have been reports of quintile 1-3 schools charging fees in the form of “voluntary contributions” or “development levies”. Although the government has made it clear that such contributions are not compulsory, in reality failure to pay them has sometimes led to learners being excluded or denied access to learning materials, or even being given report cards.⁴⁴⁴

A major problem in the classification of schools is the extent to which it accurately reflects the circumstances of the individual learners. The quintile classification is based on the socio-economic conditions of the whole communities, not those who actually attend the school. The result can be particularly harmful in urban areas, where informal settlements or townships are situated near wealthier areas. This problem is compounded by the use of census data to determine each school’s score, as such data becomes out of date rapidly because of high levels of migration. The result is that many poor learners have to pay school fees or apply for fee exemptions, which can in turn cause their schools to be inadequately funded.⁴⁴⁵

7.4 CONCLUSIONS

The way that South Africa funds its education breaches its international and regional human rights obligations.

Both Article 13(2)(a) of the ICESCR and Article 28(1)(a) of the CRC makes clear that primary education should be compulsory and available free for all. The CESCR has clarified that this obligation is an immediate duty of all States parties.⁴⁴⁶ Consequently, the CESCR has confirmed that the failure to introduce universal, free primary education as a matter of priority amounts to a violation of Article 13.⁴⁴⁷

442. In 2009, 55.2% of public schools covering 41.8% of learners were classified as no fee schools. During the 2015/16 financial year, about 9 million learners in 20,965 public schools, benefited from the “no fee” school policy. This represents 87.1% of public schools classified as “no fee” schools benefitting 71.8% of learners in those schools. By 2017/18 financial year, more than 9.8 million learners in 23,796 public schools benefited from the “no fee” school policy. This represents 86% of public schools, benefiting 78.6% of learners in those schools (State party response to CESCR LOI).

443. Ibid. See also Ally and McLaren <https://www.groundup.org.za/article/fees-are-issue-school-too-not-just-university/>

444. EE and Equal Education Law Centre (EELC) shadow report to CESCR Para 7; CHILD RIGHTS coalition shadow report para. 93.

445. Section 27, *Basic Education Rights Handbook* at <http://section27.org.za/basic-education-handbook/>

446. CESCR General Comment 13, para. 51.

447. CESCR General Comment 13, para. 59. See also para. 6 (b)(iii) on economic accessibility.

Similarly, Article 13(2)(b) requires secondary education to be made progressively free to all and that a failure to take deliberate, concrete and targeted measures to achieve this amounts to a violation of the ICESCR.⁴⁴⁸ While States must prioritize the provision of free primary education, they are also obliged to take concrete steps towards achieving free secondary education.⁴⁴⁹

Beyond the issue of fees, the funding system breaches the requirement that education should be delivered without discrimination. In this respect the CESCR has emphasized that “[s]harp disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant.”⁴⁵⁰

With respect to the austerity measures, the CESCR has made clear that “there is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education [and that] if any... are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party’s maximum available resources.”⁴⁵¹

448. Ibid.

449. CESCR General Comment 13, para. 14.

450. CESCR General Comment 13, para. 35.

451. CESCR General Comment 13, para. 45.

8. GOVERNANCE AND ACCOUNTABILITY GAPS

8.1 GOVERNANCE AND SCHOOL GOVERNING BODIES

Section 41(1)(h) of the Constitution emphasizes the importance of cooperative governance to the delivery of public goods and services including education:

“All spheres of government and all organs of state within each sphere must co-operate with one another in mutual trust and good faith, by – i. fostering friendly relations; ii. assisting and supporting one another; iii. informing one another of, and consulting one another on, matters of common interest; iv. co-ordinating their actions and legislation with one another; v. adhering to agreed procedures; and vi. avoiding legal proceedings against one another.”



Imiqhayi school, Mount Coke, King Williams Town, Eastern Cape. © Amnesty International

International law also recognizes the strong links between human rights and good governance,⁴⁵² which dates back to Article 21 of the Universal Declaration of Human Rights.⁴⁵³ In particular, the CESCR has acknowledged that “good governance is essential to the realization of all human rights.”⁴⁵⁴ Good governance can encompass a number of fundamental principles that cut across human rights realization – participation, accountability, transparency and responsiveness.

In line with the Constitution, South Africa’s education framework requires that all schools are run democratically with the active involvement of all stakeholders – teachers, parents, learners and the wider community – while ensuring that all rules and policies are constitutional and meet certain minimum standards.⁴⁵⁵

Below the national, provincial and district levels, schools in South Africa are governed by school governing bodies (SGBs) composed of parents, learners, educators and members of the local community. The Constitutional Court has referred to SGBs as an example of “grassroots democracy”, allowing the people who are directly affected by the right to education to be involved in achieving it.⁴⁵⁶

The SGB in each school is responsible for the overall governance of the school to ensure that school rules and policies are implemented fairly. SGBs are required to have policies that protect and promote learners’ rights in areas such as school discipline, school fees, language, religion and culture.⁴⁵⁷ An effective SGB can contribute to a school’s ability to ensure that it is delivering a quality education for its pupils.

SGBs can also raise funds to supplement the school’s income and ensure a richer education for pupils. However, capacity to do this varies according to the communities that SGBs are drawn from. In reality, those SGBs from no fee schools serving poorer communities are frequently unable to raise sufficient funds (see previous chapters on infrastructure and funding).⁴⁵⁸

A SGB comprises automatic members, elected members and co-opted members. The school principal is automatically a member. Elected members include parents of learners, teachers, certain learners and members of staff who are not educators. Members of the community, including professionals such as doctors, can also be members. Parents of children at the school vote for the elected members of the SGB.⁴⁵⁹ Again, the capacity of a SGB will often reflect the community it serves.

SGBs are members of the National Association of SGBs (NASGB), which covers eight out of nine provinces (the exception being the Western Cape). It has 9,000 members representing over 20,000 schools.

Amnesty International heard a variety of views on the effectiveness of and challenges faced by SGBs from parents, teachers and SGB members.

452. See: <https://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>. Also UN Human Rights Commission Resolution 2000/64.

453. Article 21 of the Universal Declaration of Human Rights states, among things, “(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country.”

454. CESCR General Comment 12 on the right to food para. 23.

455. Preamble and Chapter 3 Schools Act 1996; see also Section 27, *Basic Education Rights Handbook*, Chapter 3 at <http://section27.org.za/basic-education-handbook/>

456. *Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC) (14 October 2009) and *Department of Education, Free State Province v Welkom High School* 2014 (2) SA 228 (CC) (10 July 2013)

457. See: <https://www.education.gov.za/Informationfor/SGBs.aspx>

458. Interview with Peter Monga regional NASGB representative for Port Elizabeth, 22 August 2018

459. See s23 of the Schools Act 1996.

“We raise the consciousness of parents.”

Odolo, Port Elizabeth SGB⁴⁶⁰

“We are very significant players borne out of necessity.”

Tholo, Port Elizabeth SGB⁴⁶¹

“If you have a competent SGB which is professional, you will have no problem in getting a business plan and getting the funds.”

Aubrey Makhubedu, Head of Mabopane secondary school, Gauteng⁴⁶²

“School governing boards don’t necessarily have the experience. Many of the members join these bodies for personal prestige. They also confuse governance and management of the school and therefore often interfere in areas they are not meant to. Members of these bodies are elected so we can’t get who we want. Parents who have the knowledge and skills to be on the board do not have the time. Some parents want to contribute other means – by helping with tasks but then they expect to be paid because they are unemployed.”

Head of a primary school, Gauteng⁴⁶³

“We have a SGB – they are workshopped by the Department but they are not of much help. They can’t fundraise but want to co-manage and feel entitled.”

Head of a primary school, Gauteng⁴⁶⁴

The survey Amnesty International conducted with the NASGB presented a mixed picture on the challenges faced by their members. There were generally positive results with respect to relationships with schools and the local PED, but more negative views regarding the recruitment of new members.

Table 5: NASGB survey results for governance

GOVERNANCE	STRONGLY AGREED	AGREED	TOTAL	STRONGLY AGREED	AGREED	TOTAL
Do you have a good relationship with the schools in your region?	26	51	77%	9	1	10%
Do you have a good relationship with the PED?	21	45	66%	6	1	7%
Do you feel valued for the role you perform?	34	35	69%	9	1	10%
Do you feel the SGBs can perform their role effectively?	28	41	69%	11	3	14%
Do you have a problem recruiting new members?	19	16	35%	21	15	36%

460. Interviews with eight regional SGB members, Khwezi Lomso school, Zwide, Port Elizabeth. 28 February 2019

461. Ibid.

462. Interview with Aubrey Makhubedu 7 December 2017

463. Interview 5 December 2017

464. Interview 6 December 2017

Historically SGBs have not received funds from the state to assist with the performance of their role. However, this has recently changed although it is clear that many SGBs particularly those serving schools in poorer area remain under resourced. In 2017 the government introduced a Bill to remove many of the SGBs' powers but at the time of writing this is still to become law.

8.2 MONITORING AND INSPECTION

The CESCR has made clear that as part of their obligations with respect to Article 13 of the ICESCR, States parties such as South Africa are obliged to establish “minimum educational standards” to which all educational institutions established in accordance with Article 13(3) and (4) are required to conform and must maintain a transparent and effective system to monitor such standards.⁴⁶⁵ Consequently, a failure to maintain a transparent and effective system to monitor conformity with Article 13 would amount to a violation of this provision.⁴⁶⁶ The UN Special Rapporteur on the right to education has emphasized that States parties need to implement a monitoring system to ensure that schools are complying with whatever standards have been set down and for accountability for not meeting those standards.⁴⁶⁷ Furthermore, the Special Rapporteur has noted that if standards are to be effectively implemented, all concerned stakeholders, including teaching personnel, parents and pupils, must be aware of them and actively involved in compliance.⁴⁶⁸ Inspection should also encompass teacher absenteeism; the way human rights values are promoted in schools; the overall interaction with parents and the community; and the promotion of dialogue with teachers on child-friendly teaching and learning.⁴⁶⁹

In relation to Article 13(2)(b)-(d), a State party has an immediate obligation “to take steps” (Article 2(1)) States parties are required to adopt and implement a national educational strategy that includes the provision of secondary, higher and fundamental education in accordance with the Covenant. This strategy should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored.⁴⁷⁰ In addition States parties must closely monitor education – including all relevant policies, institutions, programmes, spending patterns and other practices – so as to identify and take measures to redress any de facto discrimination. Educational data should be disaggregated by the prohibited grounds of discrimination.⁴⁷¹

A study for UNESCO noted the value of a school inspection system as a quality control mechanism, which exists in almost all countries. This is also considered to be a medium through which education providers can be held accountable for the standards of services and outcomes. However, the purpose of the inspection is also to enhance performance of schools according to the education policy goals and purposes.⁴⁷² Therefore, it is additionally about improving the quality of education for learners and to strengthen capacity of the school benefiting all stakeholders – learners, teachers, parents and the wider community.

465.CESCR General Comment 13, para. 54.

466.Ibid.

467.UN Special Rapporteur report, A/HRC/20/21 [2 May 2012] paras. 79-80.

468.Ibid., para. 80.

469.Ibid., para. 81.

470.General Comment 13, para. 52.

471.General Comment 13, para. 37.

472.Wilcox, B. 2000. *Making school inspection more effective: English experience*. Paris: International Institute for Educational Planning, UNESCO. <http://unesdoc.unesco.org/images/0012/001202/120289E.pdf>

In South Africa, the 1997 Public Service Commission (PSC) Act requires that every public institution should be subject to inspection upon the demand of the Commission in order to ensure “the performance of the functions”.⁴⁷³ This includes those providing education. However, the history of school inspection in South Africa has been deeply problematic. Under apartheid, schools were inspected but evidence that it was often carried out in a draconian manner means that teachers and teaching unions continue to view the process of inspection with suspicion.⁴⁷⁴

Under the current system the district education office is responsible for the overall inspection of schools. This is mostly carried out through evaluation, including self-evaluation which should involve the school making an annual plan involving all the relevant stakeholders and using nine sets of criteria.⁴⁷⁵ External evaluation is also conducted from the central level in selected districts and schools in all provinces. These “whole school evaluations” take place in schools run by the district education offices to assess and monitor the quality of the service delivery system in the schools through “partnership between supervisors, schools and support services at one level, and national and provincial governments at another”.⁴⁷⁶ Assessments have shown that in some cases these evaluations have resulted in positive changes.⁴⁷⁷

In addition, the PSC inspects a small number of sample districts and schools. The 2016 school inspection report revealed that 99 schools in nine provinces had been inspected in 2016. However, this is a tiny fraction of the total of 420,000 schools in the country.⁴⁷⁸

There are some additional monitoring mechanisms and reports, but it is unclear that it amounts to a comprehensive schools inspection system that evaluates the quality of education being delivered to learners.⁴⁷⁹ Amnesty International’s research presents a mixed picture with some head teachers stated that inspection merely takes the form of an audit of expenditure rather than looking at actual teaching.⁴⁸⁰

The government has indicated that it would like some form of more comprehensive inspection system to return but this has yet to happen.⁴⁸¹ Many remain opposed to this, including the South Africa Democratic Teachers Union (SADTU). The union’s Secretary General was reported as saying, “The history of the country tells us inspectors were not doing the education system any good. They were

473. See: <http://www.psc.gov.za/documents/docs/legislation/act46-97.pdf>

474. See Mark Hunter *Race for Education* (CUP 2019). See also <https://www.timeslive.co.za/sunday-times/opinion-and-analysis/2019-02-17-qa-with-sadtu-general-secretary-mugwena-maluleke/>

475. School Self Evaluation Instrument. Department of Basic Education 2001 at <https://www.education.gov.za/Portals/0/Documents/Publications/School%20Self%20Evaluation%20Instrument.pdf?ver=2015-03-09-091810-600>

476. The National Policy on Whole-School Evaluation. Pretoria, South Africa: Department of Education, at <http://www.education.gov.za/Portals/0/Documents/Publications/National%20Policy%20on%20WSE.pdf?ver=2012-07-04-152050-000>

477. A study of 18 externally evaluated underperforming schools in all four districts of Mpumalanga Province showed that whole school evaluation or external evaluation improved the school outcomes. Mathaba (2014) *The effectiveness of external whole-school evaluation on underperforming secondary schools in the Mpumalanga province* <https://upjournals.co.za/index.php/CYD/article/view/1635>

478. Public Service Commission Annual Report 2015/2016 at <http://www.psc.gov.za/documents/reports/2016/PSC%20AR%202016%20CONTENT%20web.pdf>

479. According to the government, there are various mechanisms to monitor progress towards the full realization of the right to education and a number of monitoring reports that the DBE routinely produces. These include: progress reports on the achievement of the Sustainable Development Goals; the Macro Indicator Report (an analytical report on sector performance conducted every few years); the Education Report on the General Household Survey (produced annually); and annual sector reviews. The sector reviews are a response to the National Development Plan’s call for more evidence-based planning and more intensive use of government data. Its focus is, in particular, on 18 indicators dealing with educational attainment and learner performance appearing in the *Department of Basic Education’s Action Plan to 2019: Towards the Realization of Schooling 2030*. Several of these indicators are also the focus of the Medium-Term Strategic Framework 2014-2019. Some of the sector review indicators are produced using data from the School Monitoring Survey, which was first conducted in 2011. See State party report to CESCR para. 155 at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2fZAF%2f1&Lang=en

480. Interview with Head Emfundweni Senior Secondary School, Qeto, Eastern Cape 29 August 2018

481. See: <https://mg.co.za/article/2012-12-21-00-spectre-of-inspectors-irks-teacher-unions>

victimising principals and destabilising schools... were just there to find fault, policing teachers without playing a developmental role.”⁴⁸² The union continues to prefer district-based subject experts whose full-time job is to cultivate teachers' content knowledge as they adapt to – curriculum reform, arguing that “they work with teachers instead of policing them”.⁴⁸³

However, as set out above, international law is clear that to ensure quality education for all learners, an effective form of monitoring is required which periodically evaluates how pupils are being taught across a range of subjects.

8.3 CONCLUSIONS

South Africa does have mechanisms in place to monitor the delivery of education but could do more to meet its obligations in this area particularly with respect to the inspection system. Enhancing the capacity of school governing bodies, particularly those serving schools in poorer communities, needs greater attention.

482. Ibid.

483. Ibid.

9. INTERNATIONAL AND REGIONAL STANDARDS



Imiqhayi school, Mount Coke, King Williams Town, Eastern Cape. © Amnesty International

South Africa has ratified a range of international and regional human rights treaties guaranteeing the right to education. These include:

- the UN International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴⁸⁴
- the Convention on the Rights of the Child (CRC)⁴⁸⁵
- the Convention for the Elimination of Discrimination Against Women⁴⁸⁶

484. Ratified 12 January 2015.

485. Ratified 16 June 1995.

486. Ratified 15 December 1995.

- the Convention for the Elimination of Racial Discrimination;⁴⁸⁷
- the Convention on the Rights of Persons with Disabilities;⁴⁸⁸
- the African Charter on Human and People's Rights;⁴⁸⁹
- the African Charter on the Rights and Welfare of the Child.⁴⁹⁰

Significantly, when ratifying the ICESCR, South Africa made a declaration with respect to the implementation of Articles 13(2)(a) and 14 that provide for free and compulsory primary education for all. The declaration states that South Africa will “*give progressive effect to the right to education... within the framework of the National Education Policy and available resources* thereby effectively making a reservation to Articles 13(2)(a) and 14”.⁴⁹¹ This is reflected by the fact that many primary and secondary schools continue to charge fees (see Chapter 6). The declaration has been held by the Constitutional Court to breach Section 29 of the Constitution, which enshrines the right to basic education as being immediately realizable and therefore not subject to “progressive realization and available resources”.⁴⁹² It also breaches Articles 13(2)(a) and 14 of the ICESCR as confirmed by CESCR’s General Comment 13, which states that the obligation to provide primary education for all is an immediate duty of all States parties, the failure of which constitutes a violation of Article 13 of the ICESCR. In this respect Amnesty International would maintain that such a declaration is not permissible under international law as being contrary to the object and purpose of the ratified treaty as provided for by Article 19(1)(c) of the Vienna Convention on the Law of Treaties.⁴⁹³

Even though civil society organizations have objected to the declaration as being contrary to South Africa’s international obligations,⁴⁹⁴ it remains in place. This was confirmed by the government when, in its initial State report to CESCR in April 2017, it declared that the right to education, as provided for in Article 13(2)(a) and Article 14 of the ICESCR, will be given “progressive effect” within the framework of its National Education Policy and “available resources”.⁴⁹⁵

In its concluding observations, the CESCR expressed concern at the continued maintenance of the declaration and recommended its withdrawal.⁴⁹⁶ In so doing the CESCR noted the Constitutional Court’s decision that stated that the right to a basic education under Section 29(1)(a) of the Constitution is “immediately realizable”.⁴⁹⁷

487. Ratified 10 December 1998.

488. Ratified 30 November 2007.

489. Ratified 7 January 2000.

490. Ratified 7 January 2000.

491. See: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en#bottom

492. See *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* 2011 (8) BCLR 761 (CC) (11 April 2011) at para. 37.

493. Article 19(1)(c) of the Vienna Convention states inter alia that “*a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless ...the reservation is incompatible with the object and purpose of the treaty.*” It should be noted that although South Africa has not ratified the Vienna Convention it has been widely accepted that the Convention codified existing customary law with respect to treaty reservations.

494. Section 27 et al, *Joint Statement: South African government’s ratification of the ICESCR – South African governments declaration on education clause mars the welcome ratification of the ICESCR*, 21 January 2015, South Africa initial report, E/C.12/ZAF/1. at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fZAF%2f1&Lang=en

495. Ibid., para. 139.

496. The UN Committee on Economic, Social and Cultural Rights Concluding observations on the initial report of South Africa 2018 E/C.12/ZAF/CO/1 (29 November 2018) paras. 6 and 7 at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fZAF%2fCO%2f1&Lang=en

497. *Governing Body of the Juma Masjid Primary School and Others v. Ahmed Asruff Essay N.O. and Others* (CCT 29/10; [2011] ZACC 13) para. 37 at <http://www1.saflii.org/za/cases/ZACC/2011/13.pdf>

It is important to note that South Africa did not make a similar declaration with respect to Article 28(1) (a) of the Convention on the Rights of the Child which also requires States parties to “[m]ake primary education compulsory and available free to all” and Article 11(3)(a) of the African Charter on the Rights and Welfare of the Child which requires State Parties to “...take all appropriate measures with a view to achieving the full realization of this right and shall in particular: provide free and compulsory basic education.” Therefore, it is still bound by these provisions.

It should also be noted that South Africa has yet to develop an action plan on how it will guarantee free and compulsory primary education to all children, pursuant to its obligations under Article 14 of the ICESCR.

9.1 KEY PROVISIONS OF INTERNATIONAL AND REGIONAL LAW

There are a number of key provisions of international and regional law which South Africa is obliged to implement with respect to the right to education. At the international level these include Article 13 of the International Covenant on Economic, Social and Cultural Rights;⁴⁹⁸ Articles 28 and 29 of the Convention on the Rights of the Child⁴⁹⁹ and Article 11 of the African Charter on the Rights and Welfare of the Child.⁵⁰⁰

9.2 CONTENT OF THE RIGHT TO EDUCATION

The CESCR has set out how the content of the right to education should be assessed against four key aspects and this is the approach used in this report:

(a) Availability – *functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;*

(b) Accessibility – *educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:*

- i. *Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination);*
- ii. *Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme);*

498. Text at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

499. Text at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

500. Text at https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf

- iii. *Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education.*

(c) Acceptability – the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

(d) Adaptability – education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.⁵⁰¹

It should also be noted that South Africa has also committed to implement Sustainable Development Goal 4 to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.⁵⁰² Relevant targets include:

Outcome Target 1 By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.

Outcome Target 2 By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education.

Outcome Target 6 By 2030, ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy.

Implementation Target 1 Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all.

Implementation Target 3 By 2030, substantially increase the supply of qualified teachers.

9.3 SCRUTINY

South Africa has been subject to scrutiny by various international and regional human rights bodies during the last five years with respect to the right to education. Significantly, different bodies have repeatedly raised many issues highlighted in this report, such as poor infrastructure, teaching challenges, and widespread and persistent inequality.

Most recently, in November 2018 the CESCR reviewed South Africa’s initial report. On a general level it noted that with a Gini coefficient of 0.63 and a Palma ratio of 7.1,⁵⁰³ South Africa is among the most unequal countries in the world. The CESCR made clear that it was well aware of the historical roots of the inequalities and welcomed the efforts pursued since the end of apartheid. However, in the CESCR’s view, the persistence of such inequalities signals that the model of economic development pursued by the government remains insufficiently inclusive and expressed deep concern about such unacceptably

501. CESCR General Comment 13, para. 6.

502. Further information at Unpacking SDG 4 Education 2030 (UNESCO 2017) at <https://www.campaignforeducation.org/wp/wp-content/uploads/2018/07/SDG4.pdf>

503. The Palma ratio is the ratio of the richest 10% of the population's share of gross national income divided by the share of poorest 40%

high levels of economic and social inequality.⁵⁰⁴ It also criticized the current fiscal policy in so far as it was insufficient to mobilize the resources required to reduce such inequalities.⁵⁰⁵

Furthermore, although it welcomed the National Treasury's introduction in 2017 of rurally focused indicators, the CESCR regretted the significant geographical disparities between provinces and between rural and urban municipalities.⁵⁰⁶ It was also concerned that the government had introduced austerity measures to relieve the debt level without defining the timeframe within which such measures should be re-examined or lifted. It noted that these measures had resulted in significant budget cuts in a range of public services, including education.⁵⁰⁷

Among other things, the CESCR recommended that the government consider revising the provincial and local government equitable share formulas to reduce regional disparities in the enjoyment of the rights under the Covenant.⁵⁰⁸ It also recommended increased funding to public sectors affected by austerity, including education.⁵⁰⁹ Specifically, the CESCR made a number of observations and recommendations in addition to the recommendation to withdraw the declaration in relation to Articles 13(2)(a) and 14 of the ICESCR.

The CESCR welcomed the significant progress made in enhancing access to education, including the nearly universal access to primary and secondary education; the improved access to early childhood education benefiting 88% of children aged 5 and 6 (although access remains very limited among children from the poorest families); and the free higher education and training currently made available to first-year students from low-income families.

However, the CESCR expressed concerns about a range of issues, some of which are explored in this report. It noted that public school infrastructure is poor and, in some cases, there is mismanagement of funds. It was also concerned at the high drop-out rates among school children, mainly because of weak learning foundations. It was further concerned at the practice of charging fees in the form of voluntary contributions in no fee schools, and at the discriminatory effects of fee exemptions in fee-paying schools, particularly for children of single parents. Additionally, it was concerned about the lack of guidance on the roles and responsibilities of private sector actors in education.⁵¹⁰

In light of these concerns the CESCR recommended that the government intensify its efforts to:

- a. improve school infrastructure and ensure that all schools have access to water, sanitation facilities and electricity by allocating and effectively managing a sufficient level of funding;
- b. reduce the school drop-out rate by improving the acquisition of foundational numeracy and literacy;
- c. stop no fee schools charging parents fees and review the requirements for fee exemption in fee-paying schools, with a view to ensuring that disadvantaged and marginalized children are not discriminated against or stigmatized;

504. CESCR Concluding Observations, para 16 at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/ZAF/CO/1&Lang=En

505. Ibid.

506. Ibid.

507. Ibid., paras. 18 and 19(a).

508. Ibid., para. 17(b).

509. Ibid., para. 19.

510. Additional concerns included: the participation of children from low income families in early education remains low (Articles 13 and 14); the large number of children with disabilities who do not attend school and that such children, particularly those from low income families, do not benefit from no fee schools; and corresponding lack of data. It was also concerned that about 30% of undocumented migrant, refugee and asylum-seeking children are not enrolled in formal education.

- d. improve the regulatory framework to define the roles and responsibilities of private sector actors, and monitor the education provided by such actors; and
- e. guarantee high-quality early education for all children, especially those from disadvantaged families.⁵¹¹

The CESCR identified two other general areas of concern that are critical to effective monitoring and accountability:

- the lack of disaggregated statistical data relating to the fulfilment of economic, social and cultural rights;⁵¹² and
- the need to develop and apply appropriate indicators on implementation.⁵¹³

Consequently, the CESCR recommended that the government improve its data collection system with a view to collecting comprehensive and reliable data, disaggregated by race, gender, province and other relevant criteria, particularly among disadvantaged and marginalized individuals and groups.⁵¹⁴ It also recommended that steps be taken to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights.

In the 2017 Universal Periodic Review, a number of states welcomed the overall progress made on education in South Africa in terms of budget allocation and access. However, some made recommendations on issues that still need to be addressed. These included:

- improve the quality of basic education through programmes to ensure that teachers have adequate content knowledge and appropriate training;⁵¹⁵
- prioritize the most disadvantaged schools in infrastructure and other improvement programmes;⁵¹⁶
- increase investment to improve education in rural areas;⁵¹⁷
- continue the efforts to improve the quality of education, including the quality and availability of school facilities, educational materials, teaching staff and curricula, prioritizing the most disadvantaged schools;⁵¹⁸
- introduce concrete measures to ensure the right to education for all, focusing on decreasing the drop-out rate and improving the quality of education;⁵¹⁹ and
- provide appropriate solutions to the significant decline in the rate of school attendance in secondary education, especially among girls.⁵²⁰

511. Ibid., para. 71.

512. Ibid., para. 10.

513. Ibid., para. 81

514. Ibid., para. 11.

515. Report of the Working Group on the Universal Periodic Review of South Africa, A/HRC/36/16 (18 July 2017), Canada para 139.179

516. Ibid.

517. Ibid. China para 139.180

518. Ibid. State of Palestine para 139.182

519. Ibid. Republic of Moldova para 139.183

520. Ibid. Mauritania para 139.184

In its most recent review in 2016, the Committee on the Rights of Child expressed concern about, among other things:

- the lack of a system to identify and track budget allocations and spending for children;
- the fluctuation in the annual increase in expenditure;
- the lack of robust audits on public expenditure; and
- wasteful or irregular expenditure, including corruption.⁵²¹

The Committee welcomed that access to education remains a high priority for the government, as well as the significant progress made in improving access to basic education, together with efforts aimed at improving school infrastructure and the quality of education. However, it expressed concern about the persistence of:

- wide disparities in access to quality education according to economic status, race and geography;
- the uneven distribution of public resources, resources being allocated to address less critical issues rather than the most urgent ones, and the lack of transparency in the management of funding in the education system;
- poor school infrastructure;
- the shortage of educational materials;
- the insufficient numbers and low capacity of teaching staff, including the shortage of “home language” teachers;
- a lack of safety and security at school owing to the prevalence of violence, which includes bullying, sexual abuse and harassment, by students as well as educators;⁵²² and
- the high drop-out rate of pregnant students and their exclusion from schools.

In light of these concerns, the Committee called on South Africa to:

- a. Enhance its efforts to provide access to free and quality basic education for all children, prioritizing access to education by children facing multiple discrimination.
- b. Improve the transparency, efficiency and accountability of the management of the budget for education, including through active and meaningful participation by children and civil society organizations in the development of the budget and through monitoring and evaluating its implementation.
- c. Improve the quality of education, including the quality and availability of school facilities, educational materials, teaching staff and curricula, while prioritising the most disadvantaged schools.
- d. Take effective measures to prevent and eliminate school violence both by students and educators.

521. The UN Committee on the Rights of the Child Concluding observations on the second periodic report of South Africa 2016 CRC/C/ZAF/CO/2 (27 October 2016) para. 11 at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/ZAF/CO/2&Lang=En

522. Ibid., para. 59.

- e. Expedite the adoption of a new policy on pregnancy among learners and ensure that pregnant teenagers and adolescent mothers are supported and assisted in continuing their education.
- f. Prevent early pregnancy among students through mandatory sexual and reproductive health education at school, for girls and boys.⁵²³

The UN Committee on the Elimination of All Forms of Racial Discrimination expressed similar concerns about disparities in access to quality education and educational resources by all ethnic groups in its most recent review in 2016. It also noted that the current educational programmes have not assisted in eliminating racial and xenophobic tensions and barriers.⁵²⁴

In its consideration of South Africa's initial report in 2014, the African Committee of Experts on the Rights and Welfare of the Child urged the government to take all necessary measures to ensure that children from marginalized groups are not discriminated against, and in particular undertake measures to avoid unnecessary barriers to accessing, among other things, basic education, while guaranteeing the rights of asylum-seekers, migrants and refugee children. In this respect the Committee recommended lifting barriers such as the requirement of documents for refugee and stateless children. The Committee also noted with concern the inadequate number of schools and infrastructure, the high level of school absenteeism, the poor capacity of school regulating bodies, the high cost of education, the shortage of materials, and the lack of sufficient home language teachers. It made appropriate recommendations to address these issues.⁵²⁵



Rural area, nr Mdatsane, Eastern Cape. © Amnesty International

523. Ibid., para. 60.

524. The UN Committee on the Elimination of Racial Discrimination Concluding observations on the fourth to eighth periodic reports of South Africa 2016 CERD/C/ZAF/CO/4-8 (5 October 2016) para. 18 at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/ZAF/CO/4-8&Lang=En

525. Committee of Experts on the Rights and Welfare of the Child REF paras. 23 and 51, at http://www.acerwc.org/download/concluding_observations_south_africa/?wpdmdl=8754

10. CONCLUSIONS AND RECOMMENDATIONS

10.1 CONCLUSIONS

South Africa has made significant progress on ensuring the right to education for pupils since the end of apartheid. Access has widened to the point where there is almost universal participation although the numbers of pupils dropping out before completing their basic education is concerning.

However, in certain key areas as this report highlights the government – at both national and provincial levels - is not doing enough to meet its own domestic and international legal obligations. Too many schools suffer from poor infrastructure compromising the quality of education available for learners. These include poorly maintained and unsafe buildings; inadequate sanitation facilities for pupils including pit toilets; and the lack of essential facilities such as a library, computer facilities and information technology.

Beyond infrastructure there are additional barriers that children in South Africa face to access a quality education. Pupils experience a lack of sufficient transport, which often impacts on their ability to access education and may put their safety at risk. Teaching is hampered by an insufficient number of trained teachers many of whom have to teach in overcrowded classes with an increasing workload, while the government struggles to address teacher retention and recruitment.

The government's approach to resourcing the education system is at the heart of many of these problems. Instead of an adequately funded system that ensure that primary education should be compulsory and available free for all in line with a core immediate obligation and that concrete and targeted steps to do the same at the secondary level, South Africa chooses to persist with a system whereby a significant number of public schools are still permitted to charge fees. Inequality is further compounded by the way that funds are disbursed both between and within provinces to the extent that poorer communities and regions are disproportionately impacted.

South Africa needs to better monitor and inspect the quality and nature of education being delivered.

10.2 RECOMMENDATIONS

TO THE SOUTH AFRICAN GOVERNMENT:

- Withdraw the declaration in relation to Articles 13(2)(a) and 14 of the UN International Covenant on Economic, Social and Cultural Rights.
- Ensure that all key education strategies and policies are human rights-compliant with aligned benchmarks, targets and indicators.
- Ensure that, before any budget cuts are taken with respect to the funding of education, all less restrictive alternatives are considered; and that even during a period of resource scarcity the most disadvantaged are protected and prioritized.
- Reverse recent budget cuts and ensure that spending per learner increases incrementally in line with inflation to meet actual needs.
- Progressively phase out fees at all remaining public schools that still charge pupils for education, prioritizing the primary level, whilst ensuring that any loss of funding is met through sufficient government budgetary allocations.
- Review and reform the equitable share formula to ensure that it fairly allocates resources to all provinces taking into account the respective needs of each. In particular, ensure that it takes into account (a) that it is cheaper to provide education in urban areas owing to economies of scale and population density together with a better provision of goods and services and (b) the unequal starting points of historically disadvantaged and under-funded schools.
- Ensure that provincial education departments have sufficient funds to comply with the 2013 Minimum Norms and Standards for School Infrastructure.
- Set concrete targets and deadlines for addressing all school infrastructure that requires upgrading and commit to meeting them by 2023 at the latest.
- Ensure all schools have access to adequate and safe water and sanitation, including replacing all unsafe and unsanitary pit toilets by end of 2020 and eradicate all pit toilets completely by 2023.
- Ensure that where targets are not met, appropriate remedial action is taken including holding both ministers and officials to account for any failings.
- Review and amend the policy on scholar transport to ensure that it provides sufficient and clear guidance to provinces to ensure that all learners who require and qualify for state-subsidized transport to school receive it. Specifically ensure criteria reflect the range of challenges pupils face in travelling to school in addition to distance.
- Ensure that no school exceeds the teacher-pupil ratio of 1:35 per class at primary level and 1:27 at secondary level.
- Review the workload of teachers, including by exploring ways for reducing the amount of paperwork in order to free up more time for teaching.
- Review teacher training to ensure that teachers are equipped with the necessary practical skills as well as content.
- Urgently address teacher retention and recruitment by examining and addressing the root causes.
- Enhance the capacity of School Governing Bodies through increased resources and training particularly those serving schools in poorer/disadvantaged communities.

- Review and reform the means by which all schools including private schools are inspected to ensure that there is a comprehensive and effective system for assessing the quality of education.
- Strengthen the regulatory framework with respect to private sector actors drawing on the Abidjan Principles.
- Ensure that the government's data collection system is able to collect comprehensive and reliable data, disaggregated by all prohibited grounds of discrimination and other relevant criteria, in order to enable the assessment of the level of enjoyment of the right to education, particularly among disadvantaged and marginalized individuals and groups.
- Conduct a participatory needs-assessment involving learners, parents, teachers, administrators and civil society to build consensus on the steps necessary for providing quality education for all.

TO PROVINCIAL GOVERNMENTS:

- Ensure that poverty classifications of schools better reflect the poverty characteristics of the actual learners who attend those schools, and not just those of the surrounding communities, through collecting and analysing accurate and up to date data.
- In combination with the national government set concrete targets and deadlines for addressing all school infrastructure that requires upgrading by 2023 at the latest and develop appropriate policies and plans to deliver.
- Ensure that all schools have access to adequate water and sanitation, including replacing all pit toilets by 2023.
- Ensure that all schools do not exceed the teacher-pupil ratio of 1:35 per class at primary level and 1:27 at secondary level.
- Ensure that all learners who require and qualify for state-subsidized transport to school receive it. Specifically ensure criteria reflect the range of challenges pupils face in travelling to school in addition to distance.
- Improve data-collection, with a view to collecting comprehensive and reliable data, disaggregated by race, gender, province and other relevant criteria, in order to enable the assessment of the level of enjoyment of the right to education, particularly among disadvantaged and marginalized individuals and groups.
- Develop and apply appropriate human rights compliant indicators regarding the implementation of the right to education as well as other economic, social and cultural rights.

ANNEX A: SURVEY QUESTIONNAIRE SENT TO SCHOOL GOVERNING BODY REPRESENTATIVES

Table 6: Survey questionnaire sent to School Governing Body representatives

PROVINCE/REGION					
GOVERNANCE	STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
Do you have a good relationship with the schools in your region?					
Do you have a good relationship with the PED?					
Do you feel valued for the role you perform?					
Do you feel the SGBs can perform their role effectively?					
Do you have a problem recruiting new members?					

INFRASTRUCTURE	ALL	MOST	SOME	FEW	NONE
Have school buildings been renovated in the last 20 years?					
Do schools still have pit toilets?					
Do schools have enough class rooms for all learners?					
Do schools have their own sports facilities?					
Do schools have a library?					

FUNDING	ALL	MOST	SOME	FEW	NONE
Do schools have sufficient funding to meet their basic needs?					
Do schools always receive funding on time?					

	STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
Do you think the current provincial funding formula is fair?					
Do you think the current quintile system is fair?					

ANNEX A CONTINUED

SAFETY AND SECURITY	ALL	MOST	SOME	FEW	NONE
Do learners and teachers feel safe in the school?					
Do parents provide enough support in addressing safety and security?					
Have there been any attacks on learners and/or teachers?					
Have schools been subject to any crimes such as burglary or vandalism?					

TEACHING	ALL	MOST	SOME	FEW	NONE
Is the average class size in schools more than 1:35?					
Do schools have sufficient number of teachers?					
Are teachers adequately qualified?					
Is it hard to recruit new teachers?					
Have schools been inspected in the last 3 years?					
	STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
Do schools have an issue with teacher absenteeism?					

TRANSPORTATION	ALL	MOST	SOME	FEW	NONE
Do learners have to travel more than 2 km to schools?					
Is transportation provided for those who need it?					
	STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
Does lack of transport affect pupil attendance?					

ANNEX B: RESULTS OF NASGB SURVEY

Table 6: Results of NASGB survey

PROVINCE/REGION	%	%	%	%	%
GOVERNANCE	STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
Do you have a good relationship with the schools in your region?	26	51	13	9	1
Do you have a good relationship with the PED?	21	45	27	6	1
Do you feel valued for the role you perform?	34	35	21	9	1
Do you feel the SGBs can perform their role effectively?	28	41	18	11	3
Do you have a problem recruiting new members?	19	16	29	21	15

INFRASTRUCTURE	ALL	MOST	SOME	FEW	NONE
Have school buildings been renovated in the last 20 years?	7	10	22	22	38
Do schools still have pit toilets?	6	15	15	11	53
Do schools have enough class rooms for all learners?	16	28	19	26	11
Do schools have their own sports facilities?	4	14	27	31	24
Do schools have a library?	9	9	18	23	40

FUNDING	ALL	MOST	SOME	FEW	NONE
Do schools have sufficient funding to meet their basic needs?	7	23	36	26	8
Do schools always receive funding on time?	11	33	25	23	8
	STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
Do you think the current provincial funding formula is fair?	4	33	23	28	12
Do you think the current quintile system is fair?	3	30	26	26	14

ANNEX B CONTINUED

SAFETY AND SECURITY	ALL	MOST	SOME	FEW	NONE
Do learners and teachers feel safe in the school?	4	18	24	36	18
Do parents provide enough support in addressing safety and security?	3	15	39	30	12
Have there been any attacks on learners and/or teachers?	7	19	22	25	27
Have schools been subject to any crimes such as burglary or vandalism?	11	45	15	13	17

TEACHING	ALL	MOST	SOME	FEW	NONE
Is the average class size in schools more than 1:35?	23	25	22	18	12
Do schools have sufficient number of teachers?	10	20	31	29	12
Are teachers adequately qualified?	41	37	20	1	1
Is it hard to recruit new teachers?	2	19	25	31	23
Have schools been inspected in the last 3 years?	14	30	24	21	11
	STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
Do schools have an issue with teacher absenteeism?	8	24	35	22	10

TRANSPORTATION	ALL	MOST	SOME	FEW	NONE
Do learners have to travel more than 2 km to schools?	2	24	45	18	10
Is transportation provided for those who need it?	1	8	19	19	54
	STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
Does lack of transport affect pupil attendance?	29	31	21	8	10

ANNEX C: RESPONSES FROM THE SOUTH AFRICAN DEPARTMENT OF BASIC EDUCATION



basic education

Department:
Basic Education
REPUBLIC OF SOUTH AFRICA

Private Bag X895, Pretoria, 0001, Sol Plaatje House, 222 Struben Street, Pretoria, 0002, South Africa
Tel.: (012) 357 3000, Fax: (012) 323 0601, www.education.gov.za

Enquiries: Dr JJ Joshua
Tel: 012 357 4500
Email: joshua.j@dbe.gov.za

Ms S Mohamed
Director: Amnesty International South Africa
97 Oxford Road
Saxonwold
JOHANNESBURG
2196

By email: info@amnesty.org.za

Dear Ms Mohamed

REQUEST TO SIGN A LETTER ADDRESSED TO THE SOUTH AFRICAN AMNESTY INTERNATIONAL

On 16 January 2020, a communique dated 14 January 2020 was received from your organisation informing the Department of Basic Education (DBE) of your intention to publish a report on 11 February 2020 that focusses on the state of education in South Africa.

In your letter you highlighted a few of your key findings and requested the DBE's response on these findings. You also raised a few questions that the DBE had to respond to.

The Department has drafted a response to the findings and the questions raised for your attention.

It will be appreciated if Amnesty International South Africa could share the full Report with the DBE before, it being published on 11 February 2020.

Should you need further clarity, please do not hesitate to contact my office.

Yours sincerely

MR/HM MWELI
DIRECTOR-GENERAL

DATE: 24/01/2020

Basic Education • Basiese Onderwys • Imfundvo Lesisekelo • Ifundosisekelo • IMfundo Eyisisekelo • IMfundo esiSiseko • Dyondzo ya le Hamsi
Pfunzo ya Mutho • Thuto ya Motheo • Thuto ya Motheo • Thuto e Potlana

24 January 2020

Reference: AFR TG 53/2020.003

DBE Response to Amnesty International

We thank Amnesty international for giving us notice about the release of their research into the state of education in South Africa, and allowing us the opportunity to comment. At the time of writing this response the department had received a letter from Amnesty International, which highlighted the main findings from the report and posed certain questions to the department, but it must be emphasized that the department did not have access to the full report. Therefore, the department is not able to comment on any particular statistics or information presented in the report.

The letter we received from Amnesty International provided some information about the methodology employed in their research, namely that it was based on field research conducted in 38 schools in the Quintile 1-3 range in Gauteng and Eastern Cape serving poorer communities, including interviews with over 300 people involved in the education system - learners, parents, teachers, state officials, experts, civil society and School Governing Bodies (SGBs). Although this sampling strategy may have been appropriate for the purposes of the report, it must be recognized by all reading this report that the findings cannot be interpreted as a nationally or even provincially representative reality. In other words, the findings cannot be interpreted as representative of the state of education in South Africa as a whole, but rather as representing a specifically chosen group of schools located in the poorer and more rural parts of two provinces.

The report by Amnesty International highlights a number of critical challenges that persist in parts of our schooling system, and as the department we will consider this report carefully to inform appropriate responses. However, the challenges we face in our schooling system must be understood within a historical context of clearly improving education provision and educational outcomes that are being achieved. We encourage all readers of this report to also read the Department's 25 Year Review of Basic Education which serves to document some of the long term trends in the sector, as well as the reports on the School Monitoring Survey, which is based on a nationally and provincially representative sample of about 2000 schools and allows for comparisons to be made between 2011 and 2017. The reports are available online at <https://www.education.gov.za/Resources/Reports.aspx>.

It is also worth noting some of the key trends in educational outcomes in South Africa that can be observed based on nationally representative and scientifically rigorous research. On essentially all measures of access to education it is clear that more and more children are participating in formal schooling. The most dramatic improvement in access to education has been in the area of pre-school – driven mainly by the expansion of Grade R since the White Paper of 2001. In 2002, only about 40% of 5-year olds were attending an educational institution and this number is now approximately 90%, according to STATS SA's General Household Survey data. Amongst 6 year-olds there is now almost universal attendance of an educational institution, and approximately 95% of children entering Grade 1 have previously attended Grade R. In 2017, approximately 99% of 7 to 15 year-olds were attending educational institutions, up from about 96% in 2002. Amongst 16 to 18 year-olds the participation rate is about 86%, indicating that it is within this age range that school dropout begins to occur in large numbers, although this figure has also been steadily improving over the years.

South Africa has been one of the fastest improving countries in the world according to the independent international surveys of learning quality. The well-known TIMSS, PIRLS and SEACMEQ surveys all conduct rigorous testing of learning in nationally representative samples of children and have a methodology that allows valid comparisons over time. According to all three of these international assessments, South Africa has registered significant improvements in our mathematics, science and literacy achievement, although these improvements have been off a low base. It is encouraging that the biggest improvements have been seen amongst historically disadvantaged parts of the system although inequalities in South Africa's learning outcomes are still unacceptably wide. Faster improvements are arguably improbable given international norms for how fast education systems change.

Issues of teacher workload, linked to recruitment and retention are an ongoing sources of concern to the department. The average initial (raw) learner to educator ratios (LER) in public schools has averaged about 1:34 nationally over the last five years. When including the governing body posts, the average reduces to 1:32. However, there are factors at school level that may lead to larger actual class sizes than the average or the initial LER at school level even though a school may have all its allocated posts filled. Two main ones are the availability of class room space and the distribution of learners across Grades and across academic streams and subjects in secondary schools. The former leads to generally big actual class sizes while the latter leads to uneven distribution of class sizes with some learners experiencing larger class sizes than others.

The delays in the filling of allocated vacant posts can also exacerbate the workload challenges at schools. The national Department of Basic Education is continuously working with Provincial Education Departments (PEDs) to ensure that schools fill vacancies as soon as they occur based on the principle of "no class must be without a teacher". In terms of policy and legislation, measures are in place to ensure that the filling of post level one (classroom teacher) vacancies

is fast-tracked. These measures include the immediate appointment of a temporary teacher in an identified vacant post without undergoing a lengthy recruitment and selection process; and the provision to appoint a temporary teacher against a vacant promotional (school management) post, this is to ensure that educators appointed on acting capacity in promotional posts do not experience high workloads. In terms of monitoring and oversight, PEDs are required to report on the filling of posts at schools on a quarterly basis. It was encouraging to note from the School Monitoring Survey that the percentage of schools nationally in which all allocated teaching posts were filled increased from an estimated 69% in 2011 to 78% in 2017.

The department continues to work towards better provisioning of learning resources such as laboratories and libraries, as well as other critical resources such as textbooks and workbooks. It is encouraging to note that learners' access to libraries increased significantly from 45% in 2011 to 62% in 2017, according to the School Monitoring Survey.

Although there is no official system of "School Inspection", at least not by that name, the department monitors the quality of support offered to schools by district officials. According to the 2017 School Monitoring Survey, 84% of schools nationally had been visited at least twice by district officials for monitoring and support purposes. This value can be regarded as a significant achievement in light of the huge distances that must be covered by district officials in some of the more rural areas. A substantively larger percentage of secondary schools (94%) than primary schools (80%) received at least two visits from district officials in 2017 – this points to a specific need to bolster the support offered to primary schools. The survey also found that 78% of principals were satisfied with the quality of monitoring and support visits by district officials.

South Africa is firmly committed to making primary education available to all - education is compulsory by law for 7-15 year-olds, and indeed, an estimated 99% of 7-15 year-olds were attending educational institutions according to the 2018 General Household Survey. This commitment has been consolidated through various Constitutional Court judgements that emphasise that the right to education is immediately realisable. Since 2004, non-fee schooling has also been rolled out – more than 70% of learners now benefit from not paying fees, with the remainder choosing to attend schools whose governing bodies (where parents are represented) choose to charge fees, and where fee exemptions are available for those who cannot afford it."

The DBE does not agree that the equitable share formula, which is managed by National Treasury, systematically discriminates against poorer provinces. Equity in public spending across provinces in South Africa, in the area of school education, has been found to be exceptionally good in South Africa, according to a UNESCO report. This fact, and statistics reflecting equitable spending, can be seen in a 2017 DBE report titled 'Per learner spending inequities in 2016'. This report also indicates that per learner spending is in fact the lowest in the two 'rich' provinces, Gauteng and Western Cape. There are undoubtedly provincial and district-based inequalities in the quality of schooling offered across the country, and this is the subject of ongoing debate between the DBE and relevant stakeholders inside and outside government. These debates result in action, for instance a concerted effort to protect the non-personnel school allocation amounts in recent years. The equitable share formula is one of many policies which must be considered when considering inequities in the schooling system. Moreover, the equitable share system is complex. While provinces with many small schools, such as Eastern Cape, have argued that the formula should consider school size explicitly, provinces with exceptionally costly teachers, such as Limpopo, will argue that demographic factors behind the average teacher cost must be taken into account.

The current funding system for the schooling sector is transparent and driven by clear equity imperatives, in the areas of personnel, non-personnel, and capital spending. The system was built up after the demise of apartheid on the basis of extensive consultation, and the participation of experts from South Africa and beyond. It has been considered exemplary on several occasions, for instance by UNESCO. There is obviously room for improvement. For instance, priority lists for schools receiving infrastructure development should become more transparent. This is an area where the DBE has been working with provinces to make progress.

The Department of Basic Education is putting a lot of efforts in trying to provide conducive learning environment by ensuring that all schools are funded at least at the minimum per learner levels determined nationally and that funds are utilised transparently and effectively. In line with Goal 24 of the Action Plan to 2024: Towards the Realisation of Schooling 2030, the department tries to ensure that the physical infrastructure and environment of every school inspires learners to want to come to school, this is done through state of the art schools built through the school infrastructure backlogs grant (ASIDI).

The Programmes are funded through the Education Infrastructure Grant and the School Infrastructure Backlogs Grant. The Education Infrastructure Grant is a supplementary grant transferred to provinces for the provision of school infrastructure. This grant is to help accelerate construction, maintenance, upgrading and rehabilitation of new and existing infrastructure in education including district and circuit accommodation, to enhance capacity to deliver infrastructure in education and to address damages to infrastructure. Maintenance of school infrastructure is also a major focus for the department and the Department has launched the Guidelines for the General Upkeep and Maintenance of Education Facilities targeting to channel up to 60% of the infrastructure funding towards maintenance by 2023/24.

The Department of Basic Education published regulations relating to minimum uniform norms and standards for public school infrastructure on 28 November 2013 and The regulations are divided into different timeframes; Three, Seven, Ten and Seventeen year timeframes as per regulations. Libraries, laboratories and sports fields are targeted to be totally addressed within the 10-year target quoted as follows: Ten-year timeframe: Regulation 4 (b) (iii) the provision of libraries, laboratories for science, technology and life sciences. The Education sector continues to put efforts in place to help accelerate construction, maintenance, upgrading and rehabilitation of new and existing infrastructure in education to address shortages of libraries, laboratories and sports fields as per the School Infrastructure Norms and Standards for Public Ordinary Schools. For the 2019/20 Financial year, the sector has targeted to build 45 libraries and 51 laboratories in both primary and secondary schools to alleviate over-crowding in schools and has since delivered 14 libraries and 5 laboratories by second quarter of 2019/20 Financial year.

The Department of Basic Education launched the Sanitation Appropriate for Education (SAFE) Initiative in addressing issues of sanitation in schools by his excellency, Honourable President Cyril Ramaphosa in Pretoria on 14 August 2018 to restore the dignity of education through the eradication of pit toilets and pit latrines. To date 188 Schools have been provided with adequate sanitation, 880 Projects are currently in the planning and design phase, 127 Projects are currently under construction.

The learner transport planning and provision is undertaken by provincial Education and Transport departments in provinces. The identification of the beneficiaries is undertaken in compliance with the national and provincial policies. The criteria for the subsidised learner transport is outlined below:

- Beneficiaries for subsidised learner transport must be a needy learner from Grade R to Grade 12 as prescribed;
- Learner transport will be to the nearest appropriate school. Parental choice of schools must not be subsidised. Parental choice refers to when parents prefer to enroll their children at schools other than the nearest suitable school;
- Priority must be given to learners with disabilities considering the nature of the disability as well as primary school learners who walk long distances to schools;
- The inclusion of a learner into the subsidised services scheme must take into account existing learner transport services and that no learner transport must be provided in areas where public transport is available to avoid duplication of services and resources;
- For the 2019/20 Financial Year, Provinces have identified 706 559 learners that are in need of learner transport in the current financial year of 2019/20. The total number of schools that require learner transport is 5206. KwaZulu-Natal province has the highest number of learners in need of learner transport with 176 895 learners followed by Gauteng province with 111 127 learners. Free State province have the least number of learners in need of transport with 10 612;
- However, the provinces plan to transport 538 163 learners, which is 76% of total need covering 3660 schools. There are over 168 396 learners who qualify and require learner transport but will not be transported, this represents 24% of the need. The KwaZulu-Natal province has the highest number of learners who will not be transported with 117 248 learners. The targets for the provinces of KwaZulu-Natal and Eastern Cape are 33% and 75% respectively;
- Some provinces have prioritised learner transport in that, all identified learners that need transport are provided with transport. Budgets have been allocated based on the need of transport. These provinces are Western Cape and Mpumalanga. Other provinces have varying targets of 94%, 94% and 90% in Gauteng, Limpopo and Northern Cape respectively; and
- To date, there were 545 745 learners transported in second (2nd) quarter of 2019/20 nationally. This represents 77,23% of the total need of learner transport and 101.40 % against the target. Most provinces have performed well against their targets except Free State and Western Cape which is at 94% and 98,26% respectively. Comparatively, the numbers of learners transported have increased by 14 229 from 531 516 in the first quarter to 545 745 in the second quarter.

The major impediments in meeting the National Minimum Norms and Standards with respect to infrastructure improvements is lack of sufficient funding, but the Department of Basic Education (DBE) has made significant progress in terms of the delivery of school infrastructure since the promulgation of the Minimum Uniform Norms and Standards for Public School infrastructure. Despite the sustained interventions through the ASIDI and the EIG, the DBE concede that there is still a substantial number of schools with unsafe facilities that do not comply with the Minimum Uniform Norms and Standards for Public Schools Infrastructure (Norms and Standards).

With regards to whether the government is spending enough on infrastructure upgrading in line with commitments made under the Accelerated School Infrastructure Delivery Initiative (ASIDI) and the Sanitation Appropriate for Education (SAFE) Initiative, the Department through the ASIDI Programme, a total of 233 built has reached practical completion to date, and the Department will build 31 new schools in 2020 and a total of 83 schools over the MTEF, provide sanitation to 691 schools in 2020, 2377 schools over the MTEF and provide water to 125 schools in 2020 and 250 over the MTEF. The SAFE Initiative addresses the backlog of the provision of appropriate sanitation in all schools in the country. The Department of Basic Education conducted an audit that revealed that about 3 898 schools still have inappropriate sanitation. To date, 188 Schools have been provided with adequate sanitation, 880 Projects are currently in the planning and design phase, 127 Projects are currently under construction. An allocation of R2.8 billion has been allocation for the SAFE Initiative over the 2019 MTEF as follows; 2019/20: R700 million, 2010/21: R800 million and 2021/22: R1.3 billion.

One of the main reasons for the delays in service delivery to schools is that the sector's over-reliance on the Implementing Agents often delays infrastructure service delivery to schools, Community/Stakeholder demands - invasion and closing of sites leading to delays, insufficient funding/budget cuts, lack of equitable share funding by Provinces, and high cost of providing schools infrastructure among others.

The expenditure planned on infrastructure upgrading during the next three years is as follows:

- The Education Infrastructure Grant allocation over the 2020 MTEF period amounts to R35 billion; and
- The Schools Infrastructure Backlogs Grant (ASIDI) allocation over the 2020 MTEF period amounts to R6.4 billion; and
- The SAFE Allocation is classified under the School Infrastructure Backlog Grant.

The Action Plans (the Provincial Infrastructure User-Asset Management Plans and individual provincial learner transport progress reports) can be shared.



**AMNESTY INTERNATIONAL IS
A GLOBAL MOVEMENT FOR
HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

JOIN THE CONVERSATION



www.facebook.com/AmnestyGlobal



[@AmnestyOnline](https://twitter.com/AmnestyOnline)

BROKEN AND UNEQUAL

THE STATE OF EDUCATION IN SOUTH AFRICA

South Africa is failing too many of its young people when it comes to education. Although it has made significant progress since the end of apartheid in widening access this has not always translated into a quality education for all pupils. The system continues to be dogged by stark inequalities and chronic underperformance that have deep roots in the legacy of apartheid, but which are also not being effectively tackled by the current government. The result is many schools with crumbling infrastructure, overcrowded classrooms and poor educational outcomes.

South Africa needs to prioritise investment in order to stop missing and to actually meet its own targets on critical infrastructure. The complete removal of all pit toilets must be a key priority. Other key issues such as scholar transport, teacher recruitment and retention, capacity and training also need to be given urgent attention. In so doing the government can ensure that all schools including those serving the poorest communities can deliver a quality education for pupils.

