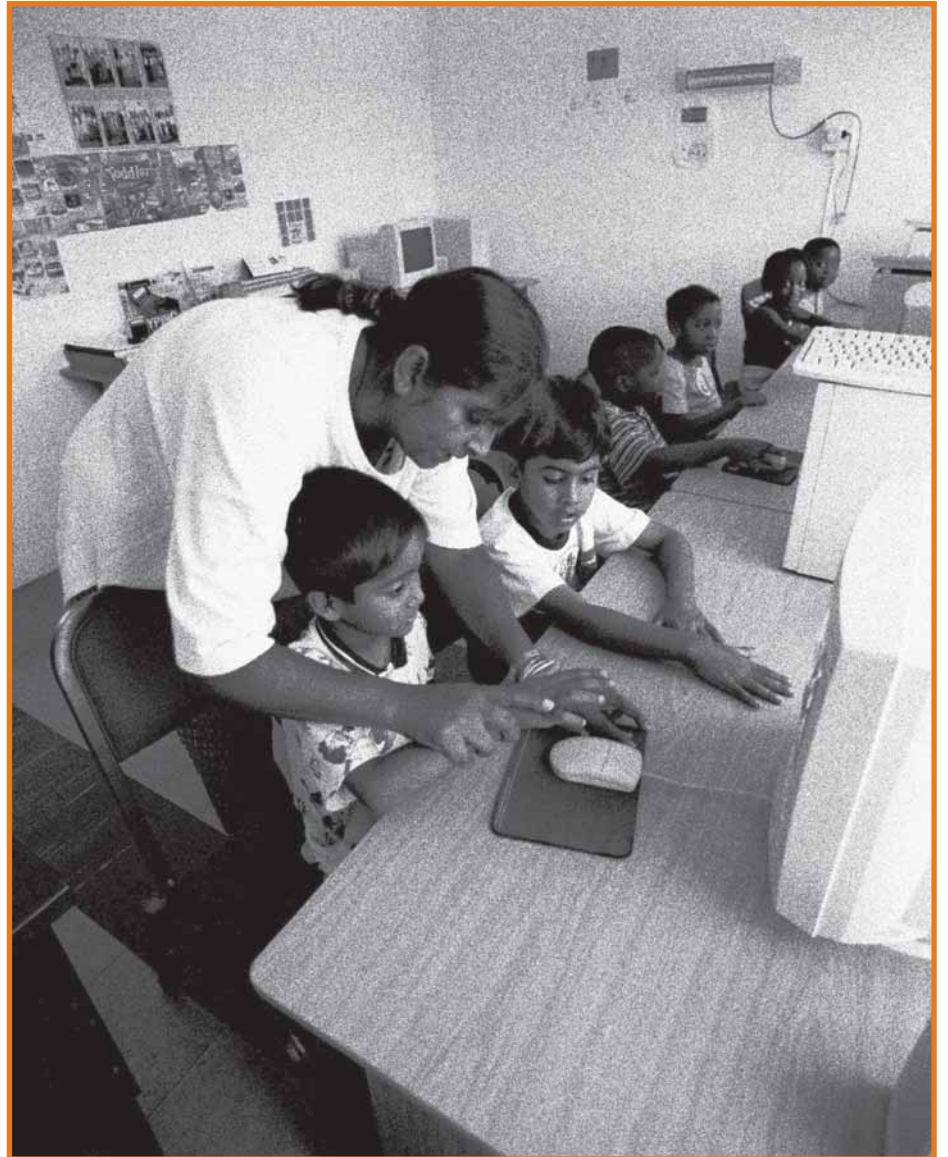

Education rights

CHAPTER 12



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KEY WORDS


Access/Accessible	Able to get, have or use something, eg access to further education.
Advocacy/Advocate	Working for change, eg through media, campaigns and law reform.
Appropriate	Suitable, made to fit in with needs and conditions.
Arrears	When you are behind with payments, eg school fee arrears.
Binding	A law, agreement or treaty that must be followed.
Class action	A court case brought by one person in the interests of a group of people all having the same complaint.
Compliance/Comply	Whether or not you obey a law, policy or court judgment.
Compulsory education	When you have a duty to attend school, and parents must send their children to school.
Criteria	Factors used to decide something, eg criteria, such as the salary of parents, for deciding on exemptions from paying school fees.
Dual-medium	Teaching in two languages.
Enforceable	When you can make something happen by law.
Equitable/Equity	Fair and reasonable.
Exemption	When you are excused from doing something, eg exempted from paying school fees.
Functionally illiterate	Not able to do basic reading and writing needed to carry out day-to-day activities.
Gross income	Total amount of money earned or received before tax.

Justifiable/Justifiably	With good reason.
Literacy	The ability to read and write.
Lobby	Influence or persuade authorities to change law or policies.
Multilingualism	The ability to use many languages.
Non-discrimination	Not allowing discrimination against learners, eg not treating learners differently because their parents cannot afford to pay school fees.
Numeracy	The ability to work with numbers, eg to add, subtract, divide and multiply.
Outcomes-based education	Education policy that says that, as a result of education, you should develop literacy, numeracy and other measurable skills.
Perpetrator	Person who carries out unlawful or immoral actions, eg a perpetrator of sexual abuse against learners.
Progressive realisation	Steps to improve people's access to socio-economic rights over a period of time.
Ratify	Formally accept a document, and agree to carry out international duties under it.
Single-medium	Teaching in only one language.
State party	When a country signs and agrees to obey an international agreement, it becomes a State party to the agreement.
Unconstitutional	Not in line with the Constitution.
Unfair discrimination	A policy, law, conduct or a situation that unfairly disadvantages you, eg because you are a woman, black, bisexual, living with a disability, or living with HIV.
Violate/Violation	Abuse or not respect your rights, eg violation of your right to basic education.
Vulnerable groups	People who need special protection, eg children orphaned by AIDS.

12.1

Why are education rights important?


Education rights have been described as “empowerment rights” (Coomans, 2002, 160). This is because education rights are necessary for exercising and enjoying other rights. In other words, education rights enable you to control the course of your life. This relationship between education rights and other rights also highlights the interdependency between all human rights.

EXAMPLES	<ul style="list-style-type: none">• An education is necessary to enjoy civil and political rights. For example, the extent of your participation in political life depends on your level of education, or using your right to vote. Without a basic level of literacy, you cannot read a ballot paper, newspapers and other materials that will assist you in making an informed choice.• Education is also necessary for the enjoyment of economic, social and cultural rights. For example, your freedom to choose a trade, occupation or profession is largely dependent on the level of education that you receive.
	
LINKS TO OTHER RIGHTS	

For more on the links between education rights and other human rights, see page 434.

This interdependency between the right to education and other rights is also significant for a nation’s development. For example, lack of basic education for individuals affects their knowledge of health and hygiene, and this has serious consequences for communities and their quality of life (Sen, 1999, 3).

Education also serves a positive social function in helping to build values such as tolerance and respect for human rights. Education therefore aims at strengthening a culture of human rights within and between nations.

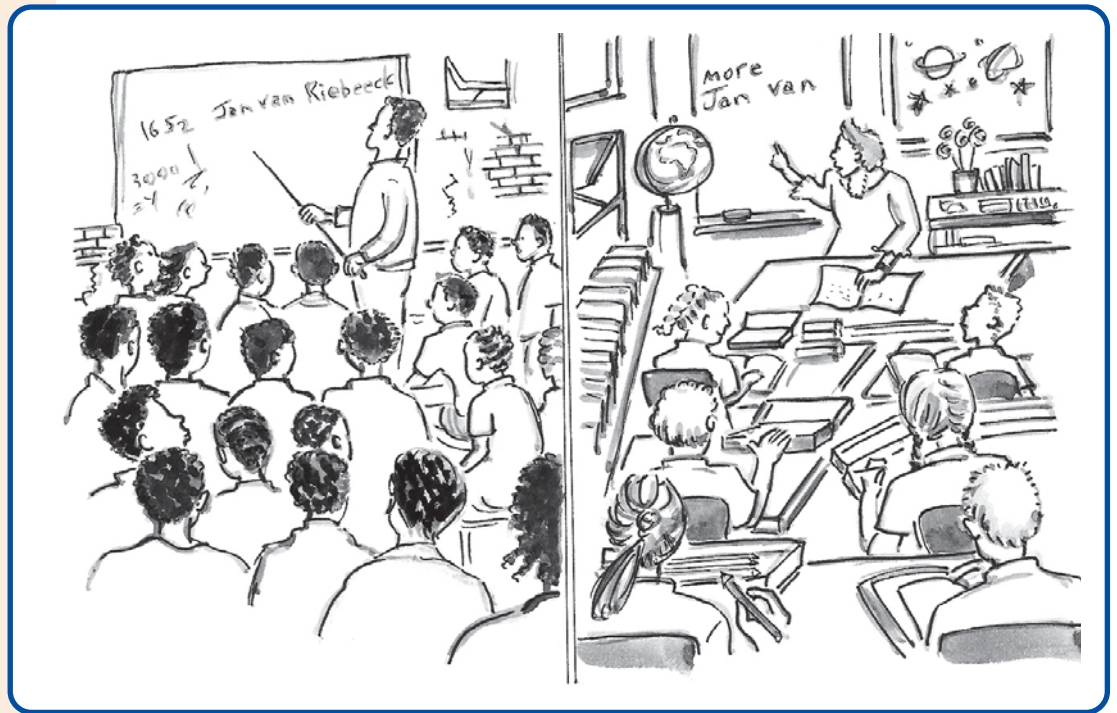
EXAMPLE	<p><i>In South Africa, the teaching of values such as social justice, respect for the environment and human rights (as defined in our Constitution) has become one of the basic principles of the outcomes-based curriculum. Our new curriculum includes these values in the content of each of the eight different learning areas on which the curriculum is based.</i></p>
	
INCLUDING CONSTITUTIONAL VALUES	

12.2

History and current context

12.2.1 Apartheid education

Under apartheid, education was structured along racial lines to prepare learners of different race groups for the roles they were expected to serve in a divided South Africa. The main features of the apartheid education system were huge inequality in the financing of education, different curricula for



different race groups and restricted access of black learners to higher education.

EXAMPLE



APARTHEID SPENDING

In 1994, at the end of apartheid, the differences in annual expenditure for each child were:

- R5 403 for White children.
- R4 687 for Indian children.
- R3 691 for Coloured children.
- Between R2 184 and R1 053 for African children.

Department of Education, 1995, 15

The differences in education for the different races were vast. White schools had many facilities, such as swimming pools, textbooks, laboratories, and soccer and rugby fields. In contrast, African learners, especially rural learners, walked long distances to schools and operated with few facilities, including lack of proper sanitation, running water or electricity.

12.2.2 Current status of South African schools

Today, while schools may not discriminate on racial grounds and must admit learners of all race groups, huge inequalities still exist between schools that were historically 'white' and schools that were historically 'black'.

This is mainly because of the way schools are currently funded. The Government contributes funds to all public schools, but these funds are not enough to improve and maintain schools at a high standard, or to employ sufficient numbers of educators at all schools. Schools are therefore allowed to charge school fees to add to the government funding (*South African Schools Act 84 of 1996*).

The effect of this system of funding is that schools in wealthier communities, mainly the historically white schools, charge higher school fees and maintain a high standard of education with sufficient numbers of educators and good teaching

facilities. Many schools in poor areas, predominantly African schools, cannot generate high school fees and therefore continue to deteriorate.

EXAMPLES



SCHOOL FEES

- A good suburban school can charge up to R15 000 a year for school fees.
- A good township school can charge up to R6 000 a year in school fees.
- A poor township school will charge about R100 a year for school fees.
- Some farm schools will charge about R50 a year.

EXAMPLES



CONDITIONS IN SOUTH AFRICAN SCHOOLS

These are some South African Human Rights Commission (SAHRC) statistics on conditions in 27 148 schools in 2002:

- 2 280 (8.4%) schools have buildings in a very poor condition.
- 10 723 (39%) schools have a shortage of classrooms.
- 13 204 (49%) schools have inadequate textbooks.
- 8 142 195 learners live beyond a 5-kilometre radius from the school.
- 10 859 (40%) schools are without electricity.
- 9 638 (36%) schools are without telephones.
- 2 496 (9%) schools are without adequate toilets.
- 19 085 (70%) schools do not have access to computer facilities.
- 21 773 (80%) lack access to library facilities.
- 17 762 (65%) lack access to recreational and sporting facilities.

SAHRC: 3rd Socio-Economic Rights Report, 2000–2, 258

CASE STUDY



A FARM SCHOOL IN KWAZULU-NATAL

The Fairleigh Farm School in Kwazulu-Natal has operated in conditions of extreme poverty. This school teaches learners in grades 1–7.

The school building used to consist of two church halls. The first hall catered for grades 1–2 and the second hall for grades 3–7. These church halls did not provide clean running water or toilets. The learners used the sugar cane fields as toilets. As there were no taps, each morning two small buckets of water filled at nearby houses were kept inside each classroom for drinking and washing. The roof of the classrooms had several holes. When it rained, it was impossible to teach because of water leaking into the classrooms.

Most of the learners who attend the school are children of farm workers and cannot afford to pay the school fees at better-resourced schools and walk the long distances to these other schools. The conditions at the school were severely affecting learning and teaching at the school.

After several years of trying to get the Department of Education to upgrade the school, the school principal and parents of the learners at the school approached the Legal Resources Centre (LRC) to assist them in taking the Department to court. The LRC sued the Department for failing to provide classrooms, water, electricity and toilets for the school. The case did not go to court, but was eventually settled as a result of the Department of Education agreeing to upgrade the school. Some of the improvements included:

- Providing piped water to the school.
- Installing a septic tank on the school grounds.
- Making application to Eskom for the connection of power to the school.
- Erecting gates and fences around the school.
- Installing water and sewer connections for the school.
- Installing pre-fabricated units as classrooms for the school.

Fairleigh Primary School and Others v The KwaZulu-Natal Minister of Education and Others, 2002

This case study shows the benefit of understanding your education rights and how taking up conditions in a school led to positive results.

12.3

Your education rights in the Constitution

Section 29 of the *Constitution (Act 108 of 1996)* sets out your education rights:

Section	What is the right?	Who benefits?
29(1)(a)	The right to a basic education, including adult basic education	Everyone (children and adults)
29(1)(b)	The right to further education that the State must make progressively available and accessible through reasonable measures	Everyone
29(2)	The right to receive education in the official languages of your choice in public educational institutions where it is reasonably practicable	Everyone
29(3)	The right to maintain independent educational institutions at your own expense	Everyone

For information on other constitutional rights linked to education rights, see page 434.

12.4

Guides to interpreting your education rights

12.4.1 Overview of the right to education

Section 29 of the Constitution can be described as a ‘hybrid right’. This is because section 29 is a socio-economic right that says the Government must make education accessible and available to everyone. But, it is also a civil and political right, as it contains freedom of choice guarantees, such as language choice in schools and the freedom to establish and maintain independent educational institutions. Individuals thus have the freedom to choose between State-organised and private education (*Veriava and Coomans, 2005, 59*).

The socio-economic rights under section 29 are also different from each other:

- Section 29(1)(a) is an unqualified socio-economic right – it has been described as a “strong positive right”.
- Section 29(1)(b) is qualified – it has been called a “weak positive right” (*Kriel, 1996, 38–2*).

12.4.2 The right to basic education

In the 1996 case of *In re: The Schools Education Bill of 1995 (Gauteng)* (Schools Education Bill case), the Constitutional Court commented on the constitutional right to basic education:

“This provision creates a positive duty that basic education be provided for every person and not merely a negative right that such a person should not be obstructed in pursuing his or her basic education.” *Paragraph 9*

In the Schools Education Bill case, the Constitutional Court thus recognised that there is a positive obligation to provide basic education, but it has yet to comment in detail on the scope and the content of this right.

a) An unqualified socio-economic right

An important feature of the right to basic education is that it is an unqualified socio-economic right. It is therefore different to the qualified socio-economic rights, such as the rights to health, housing, food, water and social security. These other rights are qualified to the extent that they are made subject to “reasonable legislative and other measures” and “progressive realisation”, and are within the State’s “available resources”.

The 2000 case of *Government of the Republic of South Africa and Others v Grootboom and Others* (Grootboom case) established a standard of review for qualified rights – to determine whether or not State measures were reasonable in progressively facilitating access to the right. The Constitutional Court then listed certain specific criteria which a State policy or programme would have to meet for that policy or programme to be reasonable.

The unqualified nature of the right to basic education seems to suggest that the standard of review for this right should be higher than other socio-economic rights. In other words, the ‘reasonableness test’ would not be appropriate for this right. Instead, the right to basic education should be an immediately enforceable right.

One possible way for the courts to assess whether or not the State has met its duties under the right is to:

- Define the content of the right to basic education, and
- Then to measure the actual level of achievement against the standard set by the right.

To determine the content of the right to basic education, we must look at international law and at our particular South African context.

b) International guidelines

The ICESCR

General Comment No. 13 of the Committee on Economic, Social and Cultural Rights (CESCR) defines article 13(2) of the *International Convention on Economic, Social and Cultural Rights* (ICESCR) as the right to receive an education.

For more on the Grootboom case and these definitions, see Chapter 1 on pages 31 and 38.

The General Comment says that, while the exact standard of the right to basic education may vary according to conditions within a particular country, education must have these four features:

- Availability
- Accessibility
- Acceptability
- Adaptability.

These four features are often together called *the 4-A scheme*. This is a useful tool to analyse the content of the right to basic education under section 29(1)(a) of our Constitution and the duties that flow from this unqualified right.

GUIDELINES



THE 4-A SCHEME

1. Availability

Functioning educational institutions and programmes have to be available in sufficient quantity. Their proper functioning depends on many factors, including the developmental context within which they operate. Examples are:

- Buildings or other protection from the elements
- Sanitation facilities for both sexes
- Safe drinking water
- Trained teachers on competitive salaries
- Teaching materials
- Facilities, such as a library, computer laboratory and information technology in some institutions and programmes.

2. Accessibility

Accessibility should include:

- The principle of non-discrimination – being accessible to all, especially vulnerable groups like children living with or affected by HIV/AIDS.
- Physical accessibility – education has to be within safe physical reach, for example, having neighbourhood schools.
- Economic accessibility – education has to be affordable to all.

3. Acceptability

Acceptability measures how much the curricula and teaching methods meet the aims of education.

4. Adaptability

Education has to be flexible so it can adapt to the needs of changing societies and communities, and respond to the needs of learners within their diverse social and cultural settings.

The *World Declaration on Education for All* (1990), while not a binding international treaty, is helpful in setting out the purpose of a basic education. The Declaration was adopted by the World Conference on Education for All

in Thailand, with the aim of making basic education for all a developmental goal for nations against a background of alarming rates of denial of access to education, and of adult illiteracy.

Article 1 of the World Declaration says:

“Every person – child, youth and adult – shall benefit from educational opportunities designed to meet their basic learning needs.

These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.

The scope of basic learning needs and how they should be met varies with individual countries and cultures, and inevitably, changes with the passage of time.”

c) **Our South African context**

How can we begin to interpret the right to basic education?

Interpreting the right to basic education in our home context means, firstly, looking at the right in relation to other rights. Since education is a precondition for the exercise of other rights, the denial of access to education is also the denial of the full enjoyment of other rights that enable us all to develop to our full potential and to participate meaningfully in society.

Secondly, a right should also be interpreted in its social and historical context. In South Africa, this means creating a system of education that reverses the legacy of apartheid education. This refers to a system of education that is equally accessible to all and of an adequate educational standard to enable access to institutions of higher learning, or to enable learners to compete on equal terms with one another for employment in the labour market.

To give effect to the right to basic education, the State should ideally fulfil these duties immediately:

- Provide schools in sufficient numbers to accommodate all learners.
- Provide a basic education of an equally adequate standard for all learners.
- Ensure that all learners are able to access schools.

Where does 'basic education' fit in?

In South Africa, the *White Paper on Education and Training* (1996) seems to define *basic education* as the phase of education falling within the General Education and Training Phase (GET phase). This includes one year of pre-school up to grade 9. In the *South African Schools Act 84 of 1996* (SASA), this is also the compulsory phase of education.

Under SASA, it is compulsory for all children between 7 and 15, or in grades 1–9 to attend school. In other words, there is a duty:

- On all parents to ensure that children falling within this category attend school, and
- On the State to ensure that all children within this category are placed in schools.

The State has tried to meet its duties to provide basic education by making this phase of education the *compulsory* phase of education, and by prioritising this phase in policy, planning and spending.

EXAMPLES



FOCUS ON GET PHASE

- In the *Norms and Standards for School Funding*, money for the building and extension of schools must be directed towards the GET phase of education before the Further Education and Training phase (1998, paragraph 95).
- The current amendments to school fee laws will make some schools ‘fee-free’. However those schools may continue to charge school fees in grades 9–12 (*Education Laws Amendment Act 1 of 2004*, paragraph 18).

This definition of basic education is very narrow. This is because learners who have completed grade 9 are not yet sufficiently equipped with knowledge and skills that will enable them to develop to their full potential, to live and work with dignity, and to improve the quality of their lives.

With the particularly high employment rate in South Africa, learners who have completed grade 12, or who have degrees and diplomas from higher education institutions, are more likely to be successful in securing job opportunities than learners who have completed grade 9.

‘Basic education’ should therefore include a learner’s entire schooling career. This approach will also be consistent with international trends.

GUIDELINES



WORLD DECLARATION ON EDUCATION FOR ALL

- The World Declaration on Education for All has placed less emphasis on completing specific formal programmes or certification requirements.
- Instead, it emphasises getting basic learning needs, such as literacy, oral expression, numeracy, problem-solving and other skills necessary for an individual to realise full potential and participate in society.
- This connects the meaning of basic education with the aims to be achieved by guaranteeing this right.



12.4.3 The right to adult basic education

Included in the right to basic education is the right to adult basic education. This right gives people, who have not received an education in the past and who are now beyond the school-going age, the right to receive an education.

The *Policy Document on Adult Basic Education and Training* defines adult basic education and training (ABET) as education that:

“Subsumes both literacy and post-literacy as it seeks to connect literacy with basic (general) adult education on the one hand and with training for income generation on the other hand.”

Policy Document on Adult Basic Education and Training, 1997

This right is very important to help deal with the shortcomings of apartheid education where the majority of South Africans received no education or an education of a very low standard.

As section 29(1)(a) of the Constitution gives an unqualified right, the right to adult basic education must be capable of being enforced immediately. This means the State must ensure that:

- There are sufficient and affordable ABET Centres.
- All ABET learners are able to access these institutions.

EXAMPLES



WHAT THE STATE MAY HAVE TO DO

- Set up facilities for you to exercise your right to receive adult basic education.
- Give you financial assistance if you cannot afford to pay for the education.
- Provide financial assistance to non-governmental literacy organisations that provide adult basic education.

12.4.4 The right to further education

This right, unlike the right to basic education, is a qualified socio-economic right. The standard of review is therefore likely to be whether the measures taken to realise this right are 'reasonable'.

However, section 29(1)(b) of the Constitution is different from the other qualified socio-economic rights because the limitation of "within available resources" is not part of this section. This could mean that, where a State policy or programme is challenged, assessing the reasonableness of the programme could include an evaluation of the amount of funding made available for implementing the programme.

GUIDELINES



THE MEANING OF 'FURTHER EDUCATION'

- *Further education and training* is defined in the *Further Education and Training Act 98 of 1998* as levels above 'general education', but below 'higher education'.
- *Higher education* is defined under the *Higher Education Act 101 of 1997* as "all learning programmes leading to qualifications higher than grade 12 or its equivalent in terms of the National Qualifications Framework". This includes universities, technikons and colleges.
- In spite of these definitions, *further education* under the constitutional right should be seen as referring to all education of a higher level than basic education, including higher education.
- This approach would be consistent with the international interpretation given to the meaning of the right, and would be the only way to make sense of the different meaning the Constitution gives to basic *and* further education.

12.4.5 The right to education in the language of your choice

The approach taken to this right has been to balance the need to give effect to this right against the need to ensure broader access to education for all. Thus, this right is qualified by including an internal balancing test when deciding on the possible alternatives for implementing the right. This means the State must give effect to this right where it is 'reasonably practicable'.

In deciding what is *reasonably practicable*, the State must consider factors like:

- Equity.
- How practical it is to implement.
- The need to reverse the results of past racially discriminatory laws and practices.

CASE STUDY



A SINGLE-MEDIUM PUBLIC SCHOOL

A school tries to set up an Afrikaans single-medium institution. This may have the effect of denying other learners in that area, in particular black children who are not Afrikaans speaking, access to a school. Government can justifiably decide not to allow a single-medium institution, based on the right of all children to education in a language of their choice.

When you do not receive the right to education in your chosen language, the State will have to show that all possible alternatives were considered and that the failure to accommodate a learner was justifiable on the basis of one or more of the listed factors.

12.4.6 The right to set up an independent educational institution

This right enables people to set up and maintain their own schools. In other words, this right allows for the establishment of private schools.

This right is important in countries all over the world to ensure the protection of minority rights. This is because when specific language, religious or cultural groups set up their own schools, they are able to transfer knowledge of that particular language, religion or culture. They can then ensure that the language, religion or culture is passed on to the next generation.

Under the *interim Constitution* until 1996 (*Act 200 of 1993*), the protection of this right was only available to schools established by a specific cultural or religious identity. The right under our final Constitution of 1996 applies to all private schools.

In exercising this right, independent schools must follow these rules:

- They must not discriminate on the basis of race.
- They must be registered with the State.
- They must maintain standards that are not lower than the standards in public educational institutions.

EXAMPLE



A GERMAN SCHOOL

For example, an African learner wishing to attend a school teaching in German cannot be denied access to the school on the basis that she is an African. However, she must be willing to learn the language taught by the school.

This right does not place a duty on the State to fund independent schools. So this right must be exercised by people or communities at their own expense. However, the State can give subsidies to independent schools.

COURT CASE



NO OBLIGATION ON THE STATE

In the 1996 Schools Education Bill case, the Constitutional Court had to deal with a similar provision in the interim Constitution. The Court had to decide if the State had a positive obligation to establish educational institutions based on a common culture, language or religion, as long as there was no discrimination on the ground of race. In other words, was there a duty on the State to establish and fund this kind of school?

The Court decided that there was no positive duty on the State. Instead, there was a 'defensive' right, meaning that it protects the right of people to establish independent schools without fear of invasion or interference by the State.

12.5

Policies, legislation and programmes to implement your education rights

12.5.1 Basic education: introduction

Since 1994, the new democratic Government has developed and passed many laws and policies that have as their main aim taking steps to deal with the negative effects of apartheid education. The main principles and laws that govern basic education are set out in the South African Schools Act (SASA) of 1996 and the *Education Policy Act 27 of 1996*. There are also provincial policies, laws and regulations that give further details and help to implement national laws.

EXAMPLE



EXEMPTIONS FROM SCHOOL FEES

*Section 39 of SASA sets out the procedure that schools must follow when adopting its school fee and exemption policy. Section 39 says that the Minister of Education must make regulations setting out the criteria and procedure for getting exemption from school fees. The **Exemption of Parents from the Payment of School Fees Regulations, 1998 (School Fees Regulations)**, cover the criteria and procedure in detail.*

These education laws together transform apartheid education and regulate all issues relating to basic education. This includes issues such as:

- The funding of education and the charging of school fees.
- Governance for schools.
- The discipline of learners.
- Language policies for schools.
- Admission policies for schools.

12.5.2 Basic education: the principle of non-discrimination

SASA has a general prohibition on unfair discrimination in the admission of learners. This ensures the end of racial segregation in schools. SASA, together with other laws, also identifies and prohibits other practices that have the potential to discriminate against learners of different races, cultures or socio-economic backgrounds.

EXAMPLES



NON-DISCRIMINATION

- *SASA and the Admission Policy for Ordinary Schools Act 27 of 1996, (the Admissions Policy), prohibit excluding a learner from any of the school's activities where parents have not paid school fees.*
- *The Admissions Policy states that non-nationals, whose parents are temporary or permanent residents, must be treated in the same way as South Africans.*
- *The Admissions Policy states that learners with special needs must be accommodated in ordinary schools where 'reasonably practical'.*
- *The National Policy on HIV/AIDS for Learners and Educators in Public Schools of 1999 sets out guidelines for non-discrimination against learners living with or affected by HIV/AIDS.*

Education laws cannot always provide protection from all forms of discrimination, particularly hidden discrimination, likely to be experienced by learners. In these cases, litigation or advocating for law reform is useful.

COURT CASE



HIDDEN DISCRIMINATION

An example of a case of hidden racism is the 1996 case of *Matukane and Others v Laerskool Potgietersrus*. In this case, the school argued that their exclusively Afrikaans culture and ethos would be negatively affected by admitting learners from a different cultural background. The school attempted to rely on arguments about the protection of minority rights to exclude black learners.

The High Court rejected these arguments mainly because the school was a dual-medium school providing learning and teaching in both Afrikaans and English. The Court then decided that black learners had been unfairly discriminated against by having their application to the school rejected.

The Court ordered the school:

- Not to refuse entry to any child on grounds related to race, ethnic or social origin, culture, colour or language.
- To admit all the black children whose applications had originally been rejected.

12.5.3 Basic education: school fees

Under the current law, schools are allowed to charge school fees. However, parents who cannot afford to pay the fees charged by a school, can apply for exemption from paying school fees. This system has not been working well and many schools and school governing bodies (SGBs) do not obey and implement the laws.



EXAMPLES



HOW SCHOOL FEE LAWS HAVE BEEN ABUSED

- Although there should be no discrimination for non-payment of school fees, there have been many cases where learners are treated differently if their parents have not paid school fees. Schools have withheld report cards or textbooks, or sent learners home until their parents have paid school fees.
- Parents, who qualify for exemptions from school fees, are sued for arrear school fees. They receive letters of demand from lawyers, are served with a summons, or already have judgments against them for unpaid school fees.
- Learners cannot register at the school if they cannot afford the registration fees charged by a school.


It is very important for parents and learners to understand school fee laws to ensure that schools and SGBs properly implement these laws.


a) **Determining fees and exemptions**

The procedure for determining the fees charged at a school must be lawful:

1. Every year, the school must call a general meeting.
2. At this meeting, parents must vote whether or not to charge school fees.
3. They must also decide on the amount of school fees for the year and they must develop the school's exemption policy to assist poor parents, who cannot afford the fees charged by a particular school.
4. The exemption policy must follow the basic principles set out in the School Fees Regulations.



GUIDELINES	Category	Criteria	Example (for R1000 a year school fees)
	Full exemption	If the combined gross annual income of both parents (or just one if there is only one) is less than 10 times the annual school fees for each learner, the parent can get a full exemption.	A parent will be fully exempted if earning less than R10 000 for the year.
EXEMPTIONS FROM SCHOOL FEES	Partial exemption	If the combined gross annual income of the parents is less than 30 times, but more than 10 times, the annual school fees for each learner, the parent can get a partial exemption.	A parent will be partially exempted if earning more than R10 000, but less than R30 000, for the year. The total of a partial exemption should be calculated according to a sliding-scale. For example, if the parents' income is R20 000 for the year, they should receive a 50% exemption and will pay R500 school fees for the year.

GUIDELINES	
	<ol style="list-style-type: none"> 1. The person must apply to the SGB for an exemption. 2. The SGB must consider the application. For the application to be fair, it must follow the guidelines set out in the School Fees Regulations. 3. If the SGB does not grant an exemption or a person is unsatisfied with the exemption, they can appeal against the decision of the SGB to the head of the Department of Education in the province.
STEPS FOR GETTING AN EXEMPTION	

A school can only sue parents for school fee arrears if:

- The school fees were lawfully determined at the general meeting of parents.
- The SGB has notified all parents in writing of the annual school fees, and also the criteria and procedure for exemption from school fees.
- The parents would not qualify for an exemption.

Where these steps are not followed, parents can defend an action for school fee arrears.

COURT CASE



SCHOOL FEE ARREARS

In the 2003 case of *Sorsa and Sorsa v Simonstown School*, the Centre for Applied Legal Studies (CALs) successfully assisted parents in rescinding (setting aside) a default judgment for R24 000 for school fee arrears. The basis for the court's decision was that the parents had a valid defence to the school's demand for school fee arrears:

- The parents had qualified for an exemption from the payment of school fees under SASA and the School Fees Regulations.
- The parents were denied the right to apply for the exemption by the school.
- The school had also not complied with several of their duties under SASA and the School Fees Regulations, such as notifying the parents of their right to an exemption.
- The parents therefore correctly claimed that these unlawful actions by the school cancelled out their claim for school fee arrears.

Caregivers

GUIDELINES



WHO ARE CAREGIVERS?

- Caregivers can be grandparents, aunts, uncles, older brothers or sisters, or even family friends.
- Caregivers are people in whose care children live if their parents are deceased or no longer care for them.
- Caregivers provide for the children's daily needs out of their own means.

Caregivers have a right to apply for an exemption in the same way as parents. Including caregivers is very important in our South African context where so many children have been orphaned by HIV/AIDS.

b) New developments on fees

These are some of the main changes in the Education Laws Amendment Act 1 of 2004:

- National funding norms and minimum standards will be established:
 - The national department will set the amount that provinces should allocate to each category of school – schools are ranked into five categories from the poorest to the least poor.
 - The national department will also set an 'adequacy benchmark' that it considers the minimum adequate amount for a learner's right to a basic education to be realised. Thus, for example, in 2006 the poorest category of schools should receive an allocation of R703 for each learner and the wealthiest category R117, while the adequacy benchmark is set at R527.
- There will be 'no fee' or 'fee-free' schools in the poorest category of schools, but only if these schools receive an 'adequate' allocation from their provincial department. This means that there will be some schools that must

be completely free and cannot charge school fees. Also, schools must first be given an 'adequate allocation' from the provincial department.

- Where school fees continue to be charged, the new laws improve the exemption policy and strengthen non-discrimination provisions protecting poor learners.

There are some positive developments about the new laws that will improve access to schools for poor learners, but there are also concerns that this system will not do enough to improve access to schools.

<p>Improvements to school fee system</p>	<ul style="list-style-type: none"> • The poorest schools will be free. • Extra fees such as registration fees are prohibited. • There is a duty on schools to investigate whether or not a parent qualifies for an exemption before suing that parent. • A school cannot attach (hold as security for a legal debt) a parent's residence for a school fees debt without making arrangements for alternative accommodation.
<p>Concerns with new school fee system</p>	<ul style="list-style-type: none"> • The new system is very complex and administratively difficult to implement. • Which schools are fee-free is not set out in the Act – rather, this will be determined every year by the Minister depending on how that school is ranked. This may create a lot of uncertainty for parents and learners. • The new formula for exemptions is very difficult and parents will need assistance in working it out. • Even where schools are free, fees will still be charged in grades 9–12.

The new system should be closely monitored to ensure that no learner is denied access to school because they cannot afford school fees. If the new system does not improve access for poor learners, parents, learners and communities should mobilise to have the system changed again. The Department of Education wants to meet a 40% target of schools that would no longer charge fees.

c) **Meeting our international duties?**

This new system continues to fall short of meeting South Africa's duties under international law. International law says that education must be free and compulsory, at least at primary school level.

South Africa has ratified the *Convention on the Rights of the Child* (CRC) and the *African Charter on the Rights and Welfare of the Child* (African Charter). This means that South Africa has committed itself to fulfilling the duties arising from these international agreements. Yet it has not done this in practice. In Africa, countries such as Kenya and Tanzania have moved towards providing free education by abolishing school fees.

GUIDELINES



WHAT DO INTERNATIONAL AGREEMENTS GUARANTEE

- Article 26(1) of the *Universal Declaration of Human Rights* guarantees that education shall be free, at least in the elementary stages. Elementary education is also compulsory.
- Article 13(2)(a) of the CDESCR guarantees free and compulsory primary education, and article 13(2)(b) provides for the progressive introduction of free secondary education.
- Article 28(1)(a) of the CRC also guarantees free and compulsory primary education, while article 28(1)(b) directs State parties to make secondary education “available and accessible to every child, and take appropriate steps such as the introduction of free education and offering financial assistance in the case of need”.
- Article 11(3)(a) of the African Charter says State parties must take all appropriate measures to “provide free and compulsory basic education”.

d) **School fees and other access costs**

Not only do many parents struggle to pay school fees. They also struggle to pay other costs involved in sending a child to a school, such as transport, uniforms, books and stationery. These costs can make schooling inaccessible to poor learners.

According to the 2006 SAHRC *Report of the Public Hearing on the Right to Basic Education*, transport and uniform costs are often more of a burden on parents than school fees. The Report therefore makes recommendations to improve accessibility for learners, for example:

- Abolish school fees at primary level.
- The government must move rapidly to increase the number of fee-free schools available for poor learners.
- Poor learners who live far from their nearest school should receive State transport assistance to access education (*SAHRC 2006, 39–40*).

12.5.4 **Education of the girl child**

In many countries around the world, the education of boys is seen as more important than the education of girls. The effect of this is that girls are formally excluded from receiving an education. For example, until recently in Afghanistan girls were not allowed to attend school. Many countries have a huge gap between the enrolment of boys and the enrolment of girls.

The reason for this is that some people see the role of women as staying at home and raising children, and they view the education of girls as being of little value. Yet, women that are educated are more likely to participate in the education of their children, and to have a better understanding of issues relating to the nutrition and health care of their children.

CASE STUDY



UGANDA

In Uganda, a district official describes education as an obstacle to a girl's marital prospects:

"Educated girls do not fetch the 100–120 head of cattle for bride-price. Myth has it that education turns them into prostitutes, and they lose virginity, which is culturally treasured."

Tomasevski, 2003, 160

In South Africa, there are no formal barriers to girl learners receiving an education. But there are sometimes informal barriers to a girl learner receiving an education. These can result in a girl learner being forced to drop out of school or her performance at school being affected.

EXAMPLES



INFORMAL BARRIERS FOR GIRL LEARNERS

- *Where there are limited financial resources to pay school fees, transport, books and uniforms, a family may choose to send their male children to school and keep their female children at home.*
- *Girl learners are sometimes made to do more household chores, such as cooking, cleaning and caring of other siblings than boys. This may mean that girls have to stay out of school often or have little time to study or do homework.*
- *Where a girl learner becomes pregnant, she may be forced to leave school. According to the SAHRC Report of the Public Hearing on the Right to Basic Education (2006), teenage pregnancy and motherhood have been identified by the Department of Education as a challenge to the enrolment of girls in school.*
- *A Human Rights Watch Report (2001) found that one out of four girl learners in South Africa experience sexual harassment in school. These acts are perpetrated by other learners and by educators. Girl learners who have experienced sexual abuse complain that they find it difficult to continue to concentrate in school after the abuse or the harassment, or they drop out from school completely.*

The principle of non-discrimination in SASA should protect girl learners where they are not getting access to school when pregnant. A girl learner, who is asked to leave school because of pregnancy, can therefore assert her right not to be excluded from school. She can take her case to the courts or to the Commission for Gender Equality.

The Department of Education has started a process to develop regulations to protect girl learners who have been sexually harassed or sexually abused. Once these regulations are in force, they will set out procedures for assisting girl learners and for punishing perpetrators. Where the perpetrator is a teacher, he can also be dismissed for serious misconduct under the *Employment of Educators Act 76 of 1998*.

12.5.5 Adult basic education

CASE STUDY



LIMPOPO

The Limpopo Department of Education's termination of adult educator services, and the insufficient allocation of payment in the financial year 2001–2, resulted in the suspension of services of 795 Adult Learning Centres in the province. This led to 34 685 students not having the right to adult basic education (SAHRC, 2000–2, 277–278).

The Policy Document on Adult Basic Education and Training states that there are approximately 9,4 million potential ABET students. Yet spending on ABET shows that it is considered a low priority, with ABET spending not matching the great need for adult basic education.

12.5.6 Further education

The *Higher Education Act 101 of 1997* creates the “legal basis of a single, national higher education system on the basis of the rights and freedoms in our Constitution”. At the same time, institutions can regulate themselves around “student admissions, curriculum, methods of teaching and assessment, research, establishment of academic regulations and the internal management of resources” (*Higher Education White Paper, 1997*).

Against the background of an apartheid past where the majority of African students were denied opportunities for higher education, the Act directs institutions to develop and implement policies and programmes that deal with this legacy. For example, selection tests have been developed at certain universities to assess the potential of students, whose schooling results may not qualify them for university entrance. But through these tests, they may demonstrate an ability to succeed at university.

COURT CASE



CHALLENGING A UNIVERSITY ADMISSION POLICY

In the 1995 case of *Motala and Another v University of Natal*, the university's admission policy was the subject of an equality challenge. In this case, the parents of an Indian student brought an application against the university after her application to medical school had been rejected, in spite of her good academic results. The parents claimed that the university admission policy discriminated against their daughter and favoured African applicants.

The High Court decided:

- The discrimination was not unfair and the policy was within the meaning of section 8(3)(a) of the interim Constitution.
- Although the Indian community had been disadvantaged under apartheid, the disadvantage experienced by African learners under apartheid was significantly greater – thus, an admission policy that acknowledged this was not unfair.

The State also has a responsibility to fund higher education institutions. Funding for institutions should be fair and transparent, and should also consider racial inequalities of the past.

Higher education institutions can charge fees. A national student aid scheme has been established under the *National Student Aid Scheme Act 56 of 1999* to enable poor students to gain access to a higher education. The Act provides for the establishment of a board to allocate funds for loans and bursaries to qualifying students, and to develop the criteria and conditions for granting and withdrawing loans and bursaries.

Funding under this Act is provided from various sources, such as State allocations, private funding and the repayment of loans. The scheme has to consider the difficult circumstances under which students from historically disadvantaged communities learn.

GUIDELINES



ONGOING SUPPORT FOR DISADVANTAGED STUDENTS

One of the current problems being experienced is that students initially receive assistance under the National Student Aid Scheme Act, but then have this assistance withdrawn because of poor academic performance. Factors that need to be considered when setting conditions for granting and withdrawing loans should include:

- An assessment of the impact of economic hardship on an individual student's academic performance (such as the long distances a student may have to travel).
- Whether or not processes are in place to bridge the gap between the schooling received and the demands of the particular institution.

12.5.7 Instruction in the language of your choice

The *Norms and Standards for Language Policy in Public Schools* (1997) sets out how schools and education departments should implement their duties under section 29(2) of the Constitution. It sets out the process for:

- Choosing a learner's language of education at a school.
- The Department of Education to assist in accommodating a learner at another school in that area, if the school of choice is unable to accommodate the learner's language of choice.

The policy also defines "reasonably practicable":

"It is reasonably practicable to provide education in a particular language of learning and teaching if at least 40 in grades 1 to 6, or 35 in grades 7 to 12, learners in a particular grade request it in a particular school." *Paragraph V(D)(3)*

However in a recent court case, the Supreme Court of Appeal appears to have rejected this interpretation of "reasonably practicable".

COURT CASE



LANGUAGE POLICY IN SCHOOLS

In the 2005 case of *The Governing Body of Mikro Primary School and Another v The Western Cape Minister of Education and Others*, Mikro Primary School, an Afrikaans single-medium school, challenged the approach of the Western Cape Department of Education.

At the end of 2004, the Department instructed the school to admit 40 learners to grade 1 and to provide teaching to them in English. In effect, this would change the school to a dual-medium school. The school did not want to follow this instruction and turned to the courts. This eventually led to the Cape High Court setting aside the Department's decision.

The Department:

- Argued that section 29(2) meant that everyone had the right to be educated in an official language of their choice at each and every public educational institution, where this was reasonably practicable.
- Relied on the definition of "reasonably practicable" in the language policy, and argued that, as there were 40 names on the list, it was reasonably practicable for the school to provide teaching in English to the grade 1 learners.

However, the High Court rejected this interpretation and decided that:

- While the learners had a right to receive an education in English, and the State had the duty to fulfil that right, the learners did not have a constitutional right to receive an education at that particular school (Mikro Primary School).

The Department appealed against the High Court's decision to the Supreme Court of Appeal (SCA), but the SCA dismissed the appeal.

12.6

Other human rights linked to education rights

In addition to the specific protection guaranteed by section 29 of the Constitution, other parts of the Bill of Rights also affect the rights and freedoms of learners and students while at educational institutions.

Where potential violations of these rights are easily recognised, the State has taken steps to protect these rights in SASA. For example, the Act deals with protecting a learner's rights to dignity in section 10 and freedom from degrading or inhuman punishment in section 12. It sets out clear rules for how learners should be disciplined, including:

- Directing that the discipline of learners takes place in accordance with a code of conduct that is adopted by a particular school's SGB after consultation with learners, parents and educators.
- Directing that disciplinary proceedings follow the rules of due process to protect a learner's interest. The *rules of due process* include notifying a learner of the charges, giving an opportunity to present his/her side of the story, and giving a right to appeal.
- Prohibiting corporal punishment in schools.



COURT CASE



CORPORAL PUNISHMENT

In the 2000 case of *Christian Education South Africa v Minister of Education*, the ban on corporal punishment was challenged. The case was brought by a group of independent Christian schools. They argued that ‘corporal correction’ was a part of the Christian ethos in these schools, and thus that the banning of corporal punishment by section 10 of SASA should be declared invalid, as it limited the individual, parental and community rights of parents to practise their religion.

The Court decided that:

- To the extent that the ban on corporal punishment was a restriction on the ability of parents to practise their religion and culture, this was justifiable, as the practice of corporal punishment was inconsistent with the values guiding the Bill of Rights of the Constitution.

SASA also protect rights such as the right to the freedom of religion in section 15 of SASA, but this protection may not cover every case of a violation of that right.

EXAMPLE



RELIGIOUS OBSERVANCE AT SCHOOL

SASA allows religious observances, such as school prayers, to be conducted at schools, provided that these observances are conducted on an equitable basis, and attendance is voluntary. There is no provision to protect learners from exercising their religious beliefs in other contexts. So there is no specific provision that protects a Muslim girl learner’s right to wear a headscarf where an individual school governing body bans the wearing of the scarf (The Star, ‘Wrangle over headscarf at Joburg school’, 23 January 2004).

Parents and learners should be vigilant of rights violations and take steps where rights have been violated, for example, related to:

- The freedom of expression (section 1 of SASA).
- The freedom of assembly (section 17 of SASA).

COURT CASE

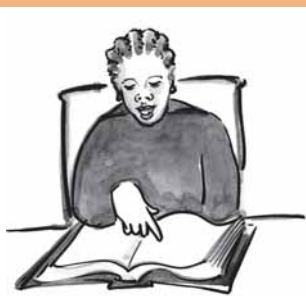


A RASTAFARIAN LEARNER

In the 2002 case of *Antonie v Governing Body, Settlers High School, and Others*, a Rastafarian learner challenged the school governing body's decision that found her guilty of serious misconduct and suspended her for five days for wearing a dreadlock hairstyle and covering her head with a cap. The school decided that she had violated the school's code of conduct that had a rule about the appearance of learners.

The Cape High Court set aside the decision of the SGB on the basis that it should have given 'adequate recognition' to the values and principles in the Constitution, including the learner's need to have freedom of expression.

COURT CASE



STUDENT ASSEMBLY AND PROTEST

In the 1996 case of *Acting Superintendent-General of Education KwaZulu-Natal v Ngubo and Others*, the Department of Education succeeded in limiting student action at a university. The High Court:

- Acknowledged the rights of students to assemble and protest under section 17 of SASA.
- Stated that this right was limited by two conditions – the demonstration had to be peaceful and the demonstrators had to be unarmed.
- Decided that the behaviour of students in this case had gone beyond the core content of a right with 'express limitations', because the demonstrations on campus involved trespassing, intentional and negligent damage to property, and intimidation of students and staff.

12.7

Protecting and advancing your education rights

12.7.1 Taking up education rights

To ensure that a learner's education rights are protected, it is important that parents, learners and communities are aware of and understand education laws. They may then make use of procedures set out in legislation to express their rights.

EXAMPLE



KNOWING ABOUT SCHOOL FEE EXEMPTIONS

Parents should know about their right to an exemption from paying school fees and the procedures to apply for an exemption:

- Parents must apply to the SGB in writing for an exemption from paying school fees.
- If the SGB does not give them an exemption, they may appeal to the Head of the Department of Education within 30 days of receiving the decision of the SGB.

There may be situations where legislation is inadequate in protecting the rights of learners, such as when:

- A law is unconstitutional.
- A law is not comprehensive enough in protecting a particular right.
- Educational institutions are not implementing the law.

Under these circumstances, parents and learners, or even SGBs, may approach different bodies to assist them in addressing their complaints. Public interest organisations and national institutions provide cheaper ways for taking up complaints, because they cover the financial costs of whatever action is taken to protect learners' rights.

Public interest organisations such as the Legal Resources Centre (LRC) or the Centre for Applied Legal Studies (CALs) assist parents and learners in dealing with education complaints.

For contact details of organisations and institutions to help with complaints, see the back cover pocket.

COURT CASE



CALS ASSISTING A COMMUNITY SCHOOL

The 2005 case of *The Governing Body of Bopasetjhaba and Others v The Premier of the Free State Province and Others* was heard in the Free State High Court. Bopasetjhaba Primary School is a school that was being *platooned*. This meant that it had to share facilities during different periods of the day with another school. To overcome this situation, the Department of Education promised that a new school with at least 20 classrooms and other facilities would be built. This promise was later withdrawn by the MEC for Education.

The SGB then approached CALs to assist them with legal representation. The SGB argued that they had a 'legitimate expectation' that a new school would be built, and therefore the provincial government should have consulted with them before the promise was withdrawn.

The Court decided in favour of the SGB and ordered that:

- The decision not to build the new school must be withdrawn.
- The SGB must be given a hearing before any decision relating to the building of a new school is taken.

CASE STUDY



GETTING HELP FROM THE SAHRC

The SAHRC received a complaint from a Muslim girl, who wrote an essay on the conflict in the Middle East between Israel and the Palestinians. The school, Crawford College, suspended her because they said she was an anti-Semite (anti-Jewish). The SAHRC decided that there had been a violation of the learner's right to freedom of expression (SAHRC, 1999, 8).

National institutions set up under our Constitution, such as the SAHRC and the Commission for Gender Equality (CGE), also assist individuals and organisations in addressing individual complaints. For example, a girl learner, who is pregnant and who has been excluded from school because of her pregnancy, may take her complaint to the CGE.

12.7.2 Advocating for change

Where education rights are threatened because of a specific law or because there is not a law to protect a right, it may be necessary to advocate for change.

GUIDELINES



ADVOCACY STRATEGIES

1. *Develop a social mobilisation strategy*

You can work with organisations and communities in developing awareness on specific education issues. Organisations and communities may then voice their concerns on public platforms, such as demonstrations, gatherings and other kinds of advocacy campaigns.

2. *Lobby for legislative reform*

When the Department of Education drafts laws, it makes these documents available to the public and calls for comments before revising the draft laws. The draft laws are then sent to Parliament, where public hearings are held to debate these draft laws before finalising them. Individuals and organisations can use these processes to comment on the laws.

3. *Getting media attention on a specific issue*

You can alert the media about an issue by writing a press release. You can also write newspaper opinion pieces, for example, analysing a new law and highlighting problems with it.

CASE STUDY



MOBILISING AROUND SCHOOL FEES

In recent years, there has been social mobilisation on the issue of school fees. Organisations such as the Global Campaign for Education have been calling for free education. The Alliance for Children's Entitlement to Social Security has highlighted cases of fee discrimination experienced by learners. CALS has publicised their cases of defending parents, who were being sued for school fee arrears.

These combined civil society efforts have created an awareness of the challenges faced by poor learners. This has pressurised the Department of Education into making school fee reforms. However, there are still many concerns with the effectiveness of the amendments in facilitating access to poor learners.

Renewed civil society efforts are therefore mobilising to:

- Publicise problems with the new school fee system.
- Build a case challenging the reasonableness of the new system.
- Jointly research and advocate for alternative models of school fees and school funding.

Advocacy strategies are most useful when they are all used together. Where advocacy fails and no reform takes place, you can then decide to go to court to protect education rights and other related rights.

Discussion ideas



TALKING POINTS:

1. Can you think of examples not mentioned in this chapter where learners' rights are violated? What rights are being violated? Do you know if these rights are protected in the education laws?
2. What is the impact on the right to education if schools do not have basic amenities such as classrooms, toilets and electricity? What steps can a school or the parents of learners at the school take to improve the school?
3. What do you think of the new laws relating to school fees? Will they facilitate access for poor learners? Why do we have school fees? Should schools continue to charge school fees?
4. What do you think of the law abolishing corporal punishment? Can you think of alternatives to corporal punishment for ensuring discipline in schools, while respecting the rights of learners?
5. You think that the Department of Education should develop a law protecting specific religious rights. For example, Muslim girl learners should be allowed to wear headscarves in schools. Rastafarian learners should be allowed to grow dreadlocks. Develop an advocacy strategy to push for a law that protects these rights.

References and resource materials

Constitutions, legislation and policy documents

Admission Policy for Ordinary Schools Act 27 of 1996.

Amendments to the National Norms and Standards for School Funding, Government Notice 1357, vol. 27014, November 2004.

Amendments to the Regulations for the Exemption of Parents from Payment of School Fees, Government Notice 2793, vol. 27068, December 2004.

Constitution of the Republic of South Africa, Act 200 of 1993 (interim Constitution).

Constitution of the Republic of South Africa, Act 108 of 1996 (final Constitution).

Education Laws Amendment Act 1 of 2004.

Employment of Educators Act 76 of 1998.

Exemption of Parents from the Payment of School Fees Regulations, Government Notice 1293, vol. 19347, October 1998.

Further Education and Training Act 98 of 1998.

Higher Education Act 101 of 1997.

Higher Education White Paper, 1997.

National Education Policy Act 27 of 1996.

National Policy on HIV/AIDS for Learners and Educators in Public Schools, Government Notice 1926, vol. 20372, August 1999.

National Student Aid Scheme Act 56 of 1999.

Norms and Standards for Language Policy in Public Schools, Government Notice 3838, vol. 17977, 14 July 1997.

Norms and Standards for School Funding, Government Notice 2362, vol. 19347, October 1998.

Policy Document on Adult Basic Education and Training, 1997.

South African Schools Act 84 of 1996.

White Paper on Education and Training, 1996.

Cases

Acting Superintendent-General of Education KwaZulu-Natal v Ngubo and Others 1996 3 BCLR 369 (N).

Antonie v Governing Body, Settlers High School, and Others 2002 4 SA 738 (CPD).

Christian Education South Africa v Minister of Education 2000 10 BCLR 1051.

Fairleigh Primary School and Others v The KwaZulu-Natal Minister of Education and Others, case no. 2654/02 (settled).

Government of the Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169 (CC).

In re: The Schools Education Bill of 1995 (Gauteng) 1996 (4) BCLR 537(CC).

Matukane and Others v Laerskool Potgietersrus 1996 3 SA 223 (WLD).

Motala and Another v University of Natal 1995 3 BCLR 374 (D).

Sorsa and Sorsa v Simonstown School, case no. 2759/02, 29 May 2003 (unreported).

The Governing Body of Bopasetjhaba and Others v The Premier of the Free State Province and others, case no. 2238/2003, 17 March 2005 (unreported).

The Governing Body of Mikro Primary School and Another v The Western Cape Minister of Education and Others [2005] 2 All SA 37 (C).

The Western Cape Minister of Education and Others v The Governing Body of Mikro Primary School and Another [2005] 3 All SA 436 (SCA).

International documents

African Charter on the Rights and Welfare of the Child, 1990.

CESCR, General Comment No. 13 (21st session), 1999, UN doc. E/C 12/1999/10, The right to education (art. 13 of the ICESCR).

Convention on the Rights of the Child, 1989.

International Covenant on Economic, Social and Cultural Rights, 1966.

Universal Declaration of Human Rights, 1948.

World Declaration on Education for All, 1990.

Publications

Coomans F, 2002, The Core Content of the Right to Education, in Brand D and Russel S (eds), *Exploring the Core Content of Socio-Economic Rights: South African and International Perspectives*, Pretoria: Protea Book House, 1.

Dlamini C, 1994, Culture, Education and Religion, in D van Wyk and others (eds), *Rights and Constitutionalism: The New South African Legal Order*, Juta, 580.

Kriel R, 1996, Education, in M Chaskalson and others (eds), *Constitutional Law of South Africa*, Cape Town: Juta, Chapter 38.

Roithmayr R, 2003, *Access, Adequacy and Equality*, SAJHR, 19(3), 382.

Sen A, 1999, *Development as Freedom*, Oxford University Press.

Tomasevski K, 2003, *Education Denied*, London: Zed Books.

Veriava F and Coomans C, 2005, The Right to Education, in D Brand and CH Heyns (eds), *Socio-Economic Rights in South Africa*, Pretoria: PULP, 57–83.

Reports, submissions and other resource materials

Department of Education: Report of the Committee to Review the Organisation Governance and Funding of Schools, August 1995.

SAHRC, *Kopanong Newsletter*, 1999, 8.

SAHRC, *3rd Socio-Economic Rights Report*, 2000–2.

SAHRC, Report of the Public Hearing on the Right to Basic Education, 2006.

Human Rights Watch, *Scared at School: Sexual Violence Against Girls in South African Schools*, March 2001.

Human Sciences Research Council (HSRC), *School Register of Needs Survey*, 1996.

The Star, 'Wrangle over headscarf at Joburg school', 23 January 2004.

Websites

Department of Education: www.education.gov.za.

South African Education Portal: www.thutong.org.za.