



CHAPTER 23

TAKING RIGHTS FORWARD: MOBILISATION, ORGANISATION AND PUBLIC PARTICIPATION

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INTRODUCTION

THE STATE OF EDUCATION IN SOUTH AFRICA

South Africa has a long and well-known history of unequal education. The most infamous instance of this is the apartheid-era Bantu Education Act of 1953. This act built on older colonial education and saw the creation of multiple racially segregated education departments (including education departments in each 'independent' homeland) with different curricula and radically unequal funding between racial groups.

Since the demise of apartheid in 1994 the various departments of education have been combined, and racially segregated schools have been outlawed. The amount of money spent by the government on school children has been equalised across races, and to a small degree government has introduced some aspects of pro-poor school funding.

Access to schooling for learners has improved significantly, particularly for those in township and rural schools. In its 2018 Education Series Volume report, Statistics South Africa reported that between 2014 and 2018, close to 99 percent of children between the ages of six and 13 years were attending some sort of education institution. Ninety-one percent of children in this age group were attending primary school, and 8.1 percent were attending either pre-primary, secondary or other special schools. This same report also revealed that of the different population groups in South Africa, black African children had the highest percentage of children attending primary school. The state has also made education more accessible to children through the removal of school fees as a barrier to education. According to figures

from the Department of Basic Education's 2019/2020 Annual Report, 87 percent of all schools are now no-fee-paying schools.

However, the education system is still deeply unequal, and many learners receive low-quality education, particularly in former African schools. The Minister of Basic Education, Angie Motshekga, has gone so far as to describe South Africa's education system as being in a state of "crisis" and a "national catastrophe". She stated that the system is plagued by "pockets of disasters", including educator absenteeism in "former African schools", lack of school infrastructure, mismanagement within some provincial education departments, textbook shortages and unfilled vacancies, among other problems.

It can be inferred from the Minister's remarks that the education crisis in South Africa is far-reaching. The physical crisis can be seen in the state of school infrastructure at schools across the country, particularly former African schools. To this day, there are schools where learners are expected to use dangerous pit toilets to relieve themselves, sometimes risking and sometimes losing their lives. Learners at some schools are forced to attend classes in classrooms that are made of mud or asbestos, which compromises their safety and health. At other schools, there are insufficient classrooms to accommodate the number of learners at the school, which leads to severe overcrowding. A lack of adequate school furniture and learning and teaching support material, such as textbooks, is a common issue.

These are but some of the tangible problems that continue to plague the basic education system, and they exacerbate the problems associated with another

important aspect of education – the quality of teaching and learning. The 2019 Trends in International Mathematics and Science Study (TIMSS), which is an international study aimed at assessing countries' education and achievement in mathematics and science, found that there is an achievement gap between learners in South Africa due to schooling inequalities. It also revealed that in South Africa, 59 percent of grade 9 learners had not acquired basic mathematical knowledge and 64 percent had not acquired basic science knowledge. Although there was an improvement in South Africa's TIMSS scores between 1994 and 2019, particularly at the lower end of the score distribution, these improvements have been slowing down each year.

South African learners don't fare much better at reading. The Progress in International reading Literacy Study (PIRLS) was conducted in South Africa again in 2016. This study assessed the reading and comprehension levels of grade 4 learners. The study revealed that out of the 50 countries that had participated in the study, South Africa had performed the worst. The study revealed further that 78 percent of South African grade 4 learners were unable to read for meaning. It also showed that 89 percent of the learners were "somewhat affected by reading resource shortages", and that this had a clear negative impact on how these learners performed in comparison to learners who were not affected by reading resource shortages. These figures, as bad as they are, should not come as a surprise. They highlight the point that poor physical conditions and lack of resources at many schools are not conducive to – and directly impact – optimal teaching and learning.



The right to education is justiciable, which means that you can use the courts to hold government accountable to its obligations in this area.

RIGHTS AND THE NEED FOR PUBLIC ACTION

Section 29(1) (a) of the Constitution establishes the right to a basic education. Unlike some other rights, the right to a basic education is **unqualified** and must be **immediately realised**. This means that the government is not allowed to say that it cannot afford to uphold this right because of other priorities or budget commitments – it must do everything it can to uphold it. This right has both negative and positive aspects.

- The **negative** component refers to the obligation on both government and private entities **not** to impair and diminish enjoyment of the right without appropriate justification.
- The **positive** component refers to the obligation on the government to provide a basic education for all, and to respect, protect, promote and fulfil the right to a basic education.

It is clear from the earlier discussion that while access to education has improved significantly, the right to basic education is not yet being fully realised. However, it is powerful even in cases such as this for ordinary people to use the right to basic education as a

lever for change, by framing particular conduct by government as a violation of rights and therefore demanding that there must be some action taken.

This can take place at different levels. At a local level – in other words, in your school community – you could use the right to argue for taking action about issues such as:

- Unfair discrimination taking place in your school on the basis of race, gender, sexuality, socio-economic status and so on
- Exclusion of learners who cannot pay school fees (and the illegal charging of fees by no-fee-paying schools)
- Corporal punishment
- Disciplinary procedures
- Decision-making
- Educator vacancies
- Lack of basic infrastructure or poor delivery of infrastructure upgrades.

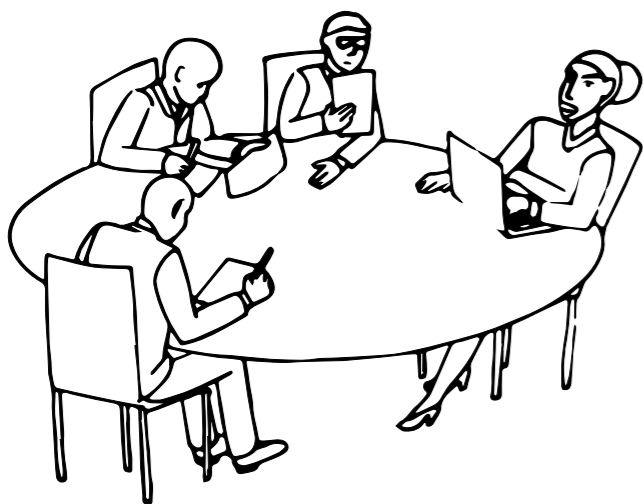
At national and provincial level, you might be interested in changing:

- **Policy**, such as campaigning for laws which specify the basic infrastructure a school needs to function.
- **Budgeting**, such as participating in the budget-making process to make sure that there is enough money allocated to build the infrastructure required.

- **Implementation**, for example by auditing whether infrastructure upgrades that have been promised have been delivered.

The right to education is **justiciable**, which means that you can use the courts to hold government accountable to its obligations in this area. But going to court can be a lengthy process which requires a lot of money, and it may be out of reach for most school communities, including learners and parents. Also, the government does not always obey instructions from a judge, which are called court orders. Nevertheless, as will be explained later in this chapter, this is an option that you can explore.

For ordinary learners, parents and community members, a more viable first option (or a strategy to be used in combination with the use of the courts) is to make their voices heard in a way that can influence school governance structures and policymakers. In the main, this does not happen when they are speaking alone. Rather, public support for the issue needs to be **mobilised**, and supporters need to be **organised** into a structure which can lead the campaign and amplify the demands. Once this happens, you can take advantage of formal opportunities for **public participation** in decision-making, as well as staging your own events, such as **protests**.



SCHOOL GOVERNANCE

HOW ARE SCHOOLS GOVERNED?

Although we tend to think of the principal as the most powerful person in a school, the South African Schools Act (SASA) gives a lot of decision-making power to school governing bodies (SGBs). Their mandate includes:

- Managing a school's money
- Recommending teachers to be appointed
- Drafting a school's code of conduct, and deciding on the religious, admissions and language policy for the school
- Holding educators and principals accountable
- Ensuring children's well-being at school

This is important because SGBs are bodies which include democratically elected parents and learners. SGBs are made up of the following people:

- The principal
- A maximum of five teachers
- One non-educator staff member
- Two Representative Council of

Learners (RCL) members

- Parents of learners at the school (there must be one more parent member than the number of other members of the SGB combined).

Parents thus have a majority voice in SGBs, and are able to make and influence decisions which affect their children's education. Learners themselves also have a voice.

USING GOVERNANCE STRUCTURES FOR CHANGE

Let's say you have identified an issue in your school. It could be anything from dirty and broken toilets, to teachers using corporal punishment, to not having after-school programmes. If you have spoken to your teachers about it and nothing has changed, your next step might be to take it to your school's SGB. You could do this by:

- Speaking to the learner or parent

representatives and asking them to raise your issues

- Attending the meetings of the SGB and raising them yourself

A longer-term strategy is to focus on SGB elections. These happen every three years for parent members, and every year for learner representatives. However, if a parent member leaves the SGB (for example if their child finishes school), there must be a by-election to choose a parent who will replace them within 90 days of the vacancy. You can use SGB elections to help advance your issue, by:

- Attending SGB elections, and asking questions about the candidates' views on the issue/s you are concerned about
- Encouraging parents to attend and vote in the SGB elections
- Encouraging parents and learners who support the issue you are concerned about to stand for election, or by standing yourself



CASE STUDY

THE SCHOOL GOVERNING BODY OF MAKANGWANE SECONDARY SCHOOL

Makangwane Secondary School is a public school located in Limpopo that was built by community members in 1974. Since the school was built, it had received very little maintenance or repairs from government; and because of the lack of maintenance, the state of the school infrastructure had deteriorated severely. The condition of the school was so bad that the walls, floors and roof had large cracks, and electrical wires had become exposed.

The hazardous conditions at the school almost injured learners in January 2018 when the corrugated iron that was attached to the roof of one of the buildings was completely blown off during break time, nearly injuring learners. Because of the danger that the buildings posed to the safety of the learners, the SGB decided to move the learners out of the classrooms, and from then on the learners were taught underneath a tree on the school premises, away from the buildings. The matter was reported to the PED, and

the authorities' response was to suspend teaching and learning at the school.

The SGB, which was very active in the affairs of the school and concerned about the education and well-being of their learners, approached the public interest law centre SECTION27 for assistance. SECTION27 took the matter on as legal representatives of the SGB, and in June 2018 approached the Polokwane Division of the High Court for relief. The SGB was successful in their fight, as the court ruled that the PED's failure to address the unsafe conditions at the school and to provide adequate infrastructure was unconstitutional and unlawful. While a longer-term plan to address the issue at the school was to be formulated by the PED, the court ordered that mobile classrooms be provided to the school in the interim.

The SGB of Makangwane demonstrated how a proactive and involved SGB can contribute to resolving the issues faced by a school. In 2019, after the school had received mobile classrooms and school furniture following the SGB's court victory, the school managed to obtain a 100 percent matric pass rate, after obtaining a low 9.1 percent pass rate in 2018 when learning and teaching were disrupted.

In terms of the Schools Act, funds for capacity building of SGBs must be allocated by the provincial legislature, and the responsibility for training and capacitating SGBs lies with the Head of Department (HOD) at the provincial education department (PED). It is essential that SGBs (especially newly-elected SGBs) are trained and capacitated on their duties and responsibilities. This enables them to execute their functions well, and helps to ensure that the SGB does not become dysfunctional. The voices of parents who support your issue in the SGB will be very useful to your cause, but this can only happen if they are well trained and capacitated. It is thus of utmost importance that you and the community keep an eye on the SGB and ensure that it is functioning as it should. In the event that your SGB is dysfunctional, you can report this to the district office where your school is located. Having under-capacitated SGBs means that the voices of parents who are supposed to serve as the majority in the SGB will be lost.

MOBILISATION AND ORGANISATION

In order to get your issues onto the agenda, or to elect members who agree with your agenda, you will need to build support for the issue. You will need to convince learners and parents that your issue is important, and demonstrate how they can take action around it – such as voting in a particular way, or joining a march.

This is known as **mobilising**, and it can take many forms. It can simply be people going door-to-door in a community, or making an announcement in a school assembly, and asking people to support an action. This type of action can also get people to come forward with more information about the issue, and you could begin to see how the issue may affect different learners differently (for example, poor sanitation may affect girls particularly badly because they feel like they cannot come to school when they are menstruating).

However, even if you manage to mobilise parents and learners, you may not be able to win the changes you seek immediately. Your SGB may not be willing to change your school, or it may not be able to. For example, it may not have the money to repair the toilets, or the facilities or staff to set up after-school programmes. The conditions in township and rural schools in particular are shaped by broader structures of inequality. Given this, you may need to take your campaign further than just one school.

- Are other schools also experiencing these issues?
- How can you link up with them?

- Is there a person in a position of power you can make demands on (e.g. district officials or PED officials)?
- How and when will you make these demands (e.g. handing over a memorandum at actions such as marches or pickets, or garnering broader support through petitions)?

A danger inherent in mobilisation is that often, it doesn't last. While the public may come out in their masses and enthusiastically support your campaign, they may become discouraged if there is no quick victory; not everyone will have the determination to follow through and continue to put pressure on decision-makers. As an activist in this field, it is your job to make sure that the issue does not disappear from the public's mind. You need to make it clear that the campaign may take time, and you need to explain each development that occurs. You also need to be sensitive to what your supporters think about the strategies used, and be willing to adapt your strategies. It is equally important that your efforts to mobilise are ongoing so that new members of the public with fresh ideas

and strategies can be brought on board for the duration of your campaign.

But even more important than this is that in order to build a campaign that is strong and popular, and that will last long enough to achieve meaningful change, you must start to **organise**. This means to set up structures that can lead the campaign – an **organisation** of some sort. Organising is a way of bringing supporters, or affected people, into a campaign in a way that goes deeper than mobilising: it often includes a process of political education or conscientisation, which gives them the skills and political analysis needed to take strategic action. This allows them to help direct the way the campaign goes. A strong organisation will be better at hearing the voices of its members, and will be able to amplify these voices. In order to facilitate democratic organising, it is essential that organisers and mobilisers prioritise and centre the voices of individual members in the community when building support for the cause, so that they are able to take ownership of the campaign and have their voices heard. This is as essential as raising awareness, training and conscientising people who are involved in your campaign.

SCHOOL-BASED CAMPAIGNS

There is also another way to be mobilised and organised at school: school-based campaigns have been able to keep learners mobilised when a big campaign gets too technical.

WHAT IS A SCHOOL-BASED CAMPAIGN?

A school-based campaign (SBC) is when learners from one school run a campaign to address an issue at their school level, such as lack of teachers, broken windows and so on. SBCs can happen in two ways: they can either be proactive or reactive.

1. **SBCs as proactive and/or planned:** This is when learners identify an issue at their school; research, educate and discuss among themselves; and come up with demands and relevant stakeholders to address this issue. This type of SBC helps to mobilise for a long period of time and get as many learners on board as possible.
2. **SBCs as reactive and/or spontaneous:** This is when an issue arises at school and learners have to respond to it immediately. This is usually not planned, and needs immediate mobilising and organising

An example of this is when learners at Umqhele Secondary School at Ivory

Park shut down their school when news surfaced of an educator who had allegedly raped a pupil. This was not a planned shutdown; the learners had to respond to the issue immediately.

CAN SCHOOL-BASED CAMPAIGNS BE SMALL AND POWERFUL AT THE SAME TIME?

Often, national and provincial campaigns are aimed at mobilising as many other learners as possible for marches and pickets. However, this does not mean that only huge marches of many thousands of supporters are effective. A smart SBC run by a small number of learners can have a powerful impact at school level and in the community. As long as the issue is clear, the cause of the issue is identified, and learners are committed, an SBC can be very powerful and useful for bringing about change at your school. It can also have the potential to motivate and inspire other learners at other schools to build their own SBCs, to bring about change at their schools.

In building a strong campaign, it is always worthwhile to note the following:

- The issue that is being raised must find resonance with the people.
- Those the organisers intend should participate must understand that relief or a solution to the problem will not come immediately.



EQUAL EDUCATION

Equal Education (EE) is an education rights social movement that works to organise learners in poor and working-class schools. EE's activism centres on the power of youth. In five provinces, high-school members – known as Equalisers – attend weekly youth groups and in-school meetings. Here they learn about the inequalities in our education system, receive political education, and work on and discuss campaigns. Equalisers are empowered, and mobilise to challenge unjust practices in their own schools through collective action. There have been many school-level protests around issues from educator vacancies to corporal punishment and exclusion of pregnant learners (these campaigns arising at school level have been addressed above, and are known as School-Based Campaigns). They are also part of the growing number of informed and vocal people who are no longer prepared to accept an unequal, low-quality education system. Equalisers give force and weight to EE's broader campaigns.

Moral justification is a key part of EE's success. Its campaigns have gathered widespread support and have won funding, policy and practical victories for poor, under-resourced schools – in part because the movement has tapped into what many people think is right, and what the government accepts (at least in theory) that it **should** be doing. While moral justification is not enough to bring education to the forefront of the public agenda – mobilisation is still required to turn people's moral instinct into political support – it is a factor which inspires greater mobilisation, such as the 20 000 people who were prepared to march to Parliament in support of the Norms and Standards for School Infrastructure.



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- The leaders of the campaign must constantly engage with their members on strategy and tactics.
- The leading organisation must develop and maintain strategic partnerships that will support the campaign every step of the way.
- The organisation must engage with society by communicating clear demands to the media. Members must also be on the ground, communicating these demands themselves.
- Framing your issue as a violation of rights often helps to give your demands weight and urgency. For example, if the issue you are taking on at your school is poor school infrastructure, frame the issue as a violation of your right to a safe environment, a violation of your right to an education, and so on.
- As the campaign gains momentum, all members of the organisation must be able to publicly communicate the demands as contained in the memorandum of demands, in order to ensure that the messaging that is sent out to the public is coherent and that there are no contradictions

- The organisation must be thoroughly engaged with and consulted on the demands; proof of prior communication must be kept; and most importantly, channels of communication must constantly be open in the midst of the dispute.

COALITION BUILDING

By organising, you act as an enabler, bringing people into knowledge and structures that will help them to demand change. This can spread far beyond any campaign you could have run on your own. When you organise, you will probably reach beyond your own community too. This is how you can link up with other schools. It is also possible that there will already be organisations or community members who are active in those areas. Forming links with them can help by:

- Growing the size of your campaign
- Getting different and diverse views which may enrich your campaign
- Building a diverse set of skills, experience and knowledge

- Extending the campaign geographically without having to organise from scratch in new areas
- Adding politically important groups to the campaign. For example, if you are directing your campaign towards government, forming links with adult activists or organisations can increase the pressure on elected officials, because they can be voted out of power by adults. As learners, most of you are not yet allowed to vote, because you are below the age of 18. But this is not the only kind of coalition that can be formed. Another example is forming links with an organisation representing a constituency that you don't cover. For example, if you are mostly organised in urban schools, it would be powerful to link up with an organisation that works in rural schools as well.

You should start by speaking to people about what is going on in that community, and who is active in it. Try to gain an understanding of who holds power in the community, and what assets that community has. When deciding who to reach out to, ask yourself:

- Do they share some or all of your goals?
- Will working together be strategic? How can they help your campaign?
- Is the campaign flexible enough to accommodate them, and possibly include some of their demands?

Coalition building is more likely to be successful when it doesn't try to take over or dissolve the existing organisations to form a new one (although this may happen eventually). Rather, you need to work with the partner organisations, and share decision making about the direction of the campaign.

As the campaign grows, you will need to make demands at the right level. Schools are clustered into circuits, and then districts. A few districts make up a provincial department of education. Find out which circuit and district your school falls under, and who is responsible for the issue you are working on. If they will not help you, you can take your demands to a higher level of government. But in order to convince them, you will need to continue growing your support.

SCHOOL VISITS

As a social movement, EE conducts school visits to see first-hand the challenges that schools are experiencing (for example, poor infrastructure, safety issues and so on), and to speak to members of the school community (principals, other members of the school management team, educators and learners) to better understand the root causes of these challenges. EE is able to gain access to these schools through the many positive relationships that its organising teams have built and maintained since the movement's inception.

EE visited 40 schools in Cape Town, Western Cape during August and September 2019 to gain insights into the safety realities of schools and to determine whether the interventions in place to address them are working. As a social movement, EE prioritised and centred its learner members in this process, and first surveyed them on their experiences of safety at their schools. The results of these surveys were key in determining the strategic direction of the school visits, because they were informed by actual experiences on the ground. The interview questions were developed collaboratively between researchers and organisers within EE, and the questions posed in the survey were further strengthened through focus-group discussions with Equalisers. To empower organisers and post-school youth members to take a leading role in these school visits, rigorous training was provided ahead of the rollout on conducting interviews.

The school visits provided insights into some of the fault lines in government

policy that hamper its response to school violence. The findings revealed that:

- School management does not have knowledge of key policy documents related to school safety, and many schools do not have the necessary support, safety structures and procedures in place to implement government policies.
- There is a lack of training on identifying and addressing behavioural challenges.
- Referral systems for learners who require psychosocial support are insufficient.

These findings inform the demands that learner members and organisers of EE can make of government officials. Advocacy is supported and bolstered by pressuring government on key issues, for instance through engagements with government, and written and oral submissions to National Parliament and the Western Cape Provincial Legislature. Equalisers also join meetings with government officials to directly articulate challenges and make demands of those in power. In addition, researchers and EE members ensure public education and awareness of EE's Safe Schools Campaign through media engagement and mass action.

EE's grassroots research exposes government's failure to satisfactorily address school safety, and highlights the need for activists to persevere in the struggle for safe schools. As a social movement, EE can provide a unique perspective on the value of research informed by people's direct experiences, and the importance of collaborative efforts to effect change.



PROTEST

You will probably start a campaign on education rights by trying to speak to people who have the power to change it – whether they are educators, the SGB, a district official, the provincial MEC for Education, or even the Minister of Basic Education. However, they may not listen to what you have to say, or even agree to meet with you. A common next step is to protest.

The success of a protest depends on mobilising well, so that there are plenty of supporters ready to take part. It draws public attention to your issue and shows the person or structure you are protesting to that your demands are well supported. While it is very useful to have plenty of supporters at your protest, there are other creative ways you can explore to stage impactful protests without necessarily having many supporters present. Protests are an important way in which the right to education can be advanced. While protests might be about getting immediate relief for a particular problem, they can also be used

to strengthen longer-term transformation efforts in the basic education sector.

Protests are protected by provisions in the Bill of Rights, but are also regulated. Many people have criticised the laws concerning protests as being relics of apartheid control, and possibly unconstitutional. It is also true that police suppression of protests often goes far beyond what is allowed by law. However, it is nonetheless important to know your rights and the regulations to do with protests. The following information is drawn from Right2Know's guide, 'Protesting Your

Rights: The Regulation of Gatherings Act, Arrests and Court Processes'.

The Constitutional Court emphasised the importance of the right to protest – for children, in particular – in the *Mlungwana* case, when it stated that "it must be emphasised that for children, who cannot vote, assembling, demonstrating, and picketing are integral to their involvement in the political process. By virtue of their unique station in life the importance of the section 17 right [the right to protest] has special significance for children who have no other realistic means of expressing their frustrations".

KNOW YOUR RIGHTS

The Bill of Rights has three provisions, which taken together protect the right to peaceful political protest.

- **Section 16** protects freedom of expression, so long as it does not involve distributing war propaganda, or inciting violence or hatred.
- **Section 17** protects your right to assemble, picket, demonstrate and present petitions, so long as you behave peacefully and are unarmed.
- **Section 18** protects your right to freedom of association.

EE AND THE RIGHT TO PROTEST

In 2014, Equal Education initiated its Scholar Transport Campaign. This was a campaign to compel the KwaZulu-Natal Department of Education (KZN DOE) to provide learners in the province with adequate scholar transport. In the uMzinyathi Education District alone (the District in which Nquthu falls), only 15 of the more than 500 schools were provided with scholar transport.

As part of the sustained EE Scholar Transport Campaign, EE planned a peaceful and creative protest which was set to take place at the KZN DOE offices in Pietermaritzburg in July 2017. The protest action involved screening a short film titled *Long Walk to School* by projecting it onto the walls of the KZN DOE office buildings. The film highlights the plight of learners in Nquthu and the difficulties they face in accessing basic education because of the lack of scholar transport provisioning. The protest action also aimed to inform the public of EE's campaign.

In the lead-up to the day of the planned protest, EE complied with all the steps prescribed by the Regulation of Gatherings Act. As required, on 30 June 2017 EE submitted a completed notice of gathering in terms of Section 3 of the Regulation of Gatherings Act. The notice indicated that on 11 July 2017, an anticipated thirty people would gather outside the KZN DOE offices for a film screening. On 4 July 2017, an EE representative met with the KZN South African Police Service (SAPS), members from the SAPS Crime Intelligence Unit and Msunduzi Municipality Security, as per Section 4 of the Regulation of Gatherings Act. At this meeting, the protest and its details were acknowledged. The EE representative was informed of the guidelines and conditions EE would have to abide by during the protest. On 10 July 2017, the EE representative was requested to sign an 'approval document' which recorded approval of the protest and the relevant conditions which had to be followed.

However, despite following all the legally required steps for a peaceful protest, the protest was disrupted by officials from the KZN DOE and the South African Police

Service (SAPS). On 11 July 2017, as had been communicated by EE, approximately thirty people gathered outside the KZN DOE offices in Pietermaritzburg. The police on the scene asked to speak to the convener, and were shown the 'approval document'. The police officer then indicated that EE could continue setting up. Shortly after, the head of security at the KZN DOE, as well as a SAPS officer, informed the EE representative that they were not allowed to continue with the protest. The reasons they listed were that the 'approval document' did not indicate the location and the timeframes of the protest, that learners were attending the protest without their school's permission, that the approval document was fraudulent and that the KZN DOE's permission is required when learners in school uniform are protesting.

A meeting between the KZN DOE officials and EE was then held, in which the officials repeated some of the reasons above and stated that the film screening and protest could not continue. Despite EE informing the KZN DOE officials that this was a violation of the organisation's and learners' constitutional rights, one of the KZN DOE officials responded by sarcastically and patronisingly saying that EE would be free to challenge the KZN DOE's actions in court. The SAPS officers were then ordered to disperse the gathered EE members. The SAPS officers spoke aggressively to the peaceful EE members, many of whom were children, and threatened to use teargas to disperse them. For the safety of its members, the creative protest was ended abruptly.

EE subsequently took this matter to the High Court in Pietermaritzburg. EE asked the court to declare the KZN DOE and SAPS's dispersal of the protest to be unlawful, and a violation of the right to protest. EE also asked that the court order the KZN DOE and SAPS to apologise to EE, its members, and the public generally. The matter was heard by the court in August 2019 and the judgment was handed down in December 2019. The judgment in this case was not in EE's favour. Unfortunately, these kind of incidents are common across the country.

THE USE OF EXCESSIVE FORCE BY THE POLICE

The SAPS have a history of using disproportionate and excessive force to disperse and suppress protests. In March 2021, students at Wits University protested against the state and the university. The reason for these protests was that many students were not being allowed to register for the new academic year because of outstanding fees that they owed to the university. These protests have been going on for many years at universities across the country, but in 2015 they came to be known as #FeesMustFall protests.

On 10 March 2021, the protest action spilled over to areas outside of the university precincts, specifically Braamfontein. The police attempted to disperse the protest by firing rubber bullets at the protesting students. A bystander, Mthokozisi Ntumba, who had just come from a doctor's appointment and was not even participating in the protest, was shot at close range with rubber bullets. Ntumba succumbed to the injuries inflicted on him by the police and died.

Organisations such as Human Rights Watch subsequently called for a comprehensive investigation into the events that led to Ntumba's death, the suspension of the use of rubber bullets by police officers, and improved training of police officers.

Four police officers were subsequently charged with murder, attempted murder and defeating the ends of justice, and the matter is still before our courts.



The government is only allowed to limit these rights in very specific circumstances. In terms of Section 36, these limitations must be "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom". It is up to the courts to decide whether government limitations meet this requirement.

THE GATHERINGS ACT

The Regulation of Gatherings Act (1993) sets out rules for how any gathering which takes place in a public place, and involves protest or criticism, may occur. This can be directed towards an individual or an organisation, whether private or public, and can be about an issue, or a specific law or policy.

DEMONSTRATIONS VS. GATHERINGS

In terms of the Gatherings Act, a **demonstration** is a march or picket of 15 people or fewer. This can happen without the authorities being notified.

A **gathering** is a march or picket of more than 15 people. It

is also understood as an event that expresses criticism or contestation. A gathering requires that you notify the local authorities in advance.

NOTIFICATION

You must notify the responsible officer of the local municipality, by filling in a form called 'Notice Under Regulation of Gatherings Act'.

- This must happen at least seven days before the protest.
- If this is not possible, you must still notify the authorities, and explain why seven days' notice was not given.
- If notice is given less than 48 hours before a protest, the responsible officer is allowed to prohibit the protest without providing any reasons.
- However, if you submit notice seven days in advance, and the local authorities have not contacted you to meet within 24 hours, the gathering is **automatically legal**.

There is a popular misunderstanding that the Gatherings Act says that you need permission to protest

from police or other authorities. This is not true, because protest is an exercise of your constitutional rights. Unfortunately, the authorities themselves often claim that this is the case, and do not give this permission, as a way of quashing criticism of the government. Alternatively, they sometimes try to negotiate with the protesters to change the time or route, or they interrogate the political reasons for the protest.

Prior to 2019, Section 12(a) of the Gatherings Act made failure to notify the local municipality of a gathering a criminal offence. This meant that if you organised a protest and failed to notify the local municipality officials of your gathering, you could possibly face criminal charges and receive a criminal record. However, in the Mlungwana case in 2019, the Constitutional Court found that this provision in the Gatherings Act was unconstitutional, as it severely limited the freedom of assembly. The court held that there were other less restrictive ways that could be used to ensure that organisers give notice to local municipalities.

PROHIBITION OF GATHERINGS

In exceptional circumstances, a gathering can be prohibited by the responsible officer. However, this is not the same as refusing permission. 'Permission' implies that it is up to the authorities to decide whether or not to allow the protest. In fact, protests are legal except in very specific cases. In these cases, it is the job of the authorities to show why the protest cannot be permitted. They must do the following:

- Have an affidavit saying that the gathering will result in serious disruption of traffic, injury to participants or others, or extensive damage to property
- Meet the convenor to discuss the notice and try to negotiate a safe gathering
- Give a letter to the convenor with written reasons for prohibiting the gathering.

If a protest has been prohibited, anyone participating in it is committing an offence. However, if you feel your protest has been unfairly prohibited, you may approach a court (no lawyer required) to ask them to allow it to go ahead.

RACISM IN PRIVATE SCHOOLS

Racism at private schools is an issue which has increasingly become part of the national conversation. In recent years we have seen protests led by learners in private schools.

In 2020, current and former learners from Cornwall Hill College – a private school in Gauteng – took action against alleged racism at the school. Black learners and former learners created a petition highlighting the systemic racism at the school. Black learners alleged that they were called derogatory names, endured racist comments about their African hair, and were separated according to their race in the tuck-shop lines. Moreover, parents of learners highlighted the fact that there were very few black people employed by the school and that the racial demographics of learners at the school were not representative of the country – according to the parents, the number of black learners admitted to the school had consistently been below 25 percent of all learners.

A year after the learners submitted their petition to the school, these issues had still not been addressed. In May 2021, the parents of the black learners at the school stood in solidarity with their children and helped to organise (and participated in) a mass protest at the school, to call for transformation and an end to racism. This protest attracted media attention, and the experiences of the learners at the school were widely shared across social media platforms.

The awareness that was created by the protest prompted institutions such as the Gauteng Department of Education to get involved. Importantly, the South African Human Rights Commission (SAHRC), which is a very important institution that gets its power and mandate to safeguard human rights from the Constitution, also became involved. The SAHRC's intervention is to investigate the school's culture and environment, as well as reviewing the school's policies and procedures. Ultimately, the SAHRC will provide recommendations on what needs to be changed within the school at a systemic level.

CREATIVE PROTESTS #FRIDAYSFORFUTURE

Young activists across the world have been staging protests and campaigning for urgent action to be taken by those in power to slow down global warming and recognise that we are in the midst of a climate crisis. Internationally, activists such as Greta Thunberg from Sweden and Vanessa Nakate from Uganda have become well known for their climate activism.

In South Africa, youth climate activist Raeesah Noor-Mohamed, who was a learner at Parktown Girls High, grabbed the attention of the media with her #FridaysForFuture protest. She staged her protest by boycotting classes on Fridays and sitting outside her school with banners and placards which urged the government to take action on the climate crisis. Her demand was for the Department of Environmental Affairs to declare a climate emergency. Noor-Mohamed was later joined in her protest by a few other learners from her school and learners from other schools. Shortly after starting her weekly protests, she got the attention of various media platforms such as newspapers and TV and radio stations. The learners also made use of social media platforms such as Instagram, Twitter and Facebook to inform members of the public about the climate crisis, as well as about their protest and demands.

It is not ideal for learners to miss classes, but these learners made up for the lost time by working extra hard to catch up on the classes they missed on Fridays. The learners were also fortunate because the school backed their cause, so they received support from their educators too.

ORGANISING A PROTEST

In terms of the Gatherings Act, you need to choose a convener for the protest. This is the person who leads the protest. They must submit the notification form to the local authorities and meet with the authorities when required. A deputy convener must also be chosen in case the convener is unavailable.

Planning a protest is not just about mobilising supporters and submitting notice. You also need to spend time thinking about how to manage (and possibly transport) a large group of people. The organisers should clearly divide roles between themselves. It is a good idea to have marshals to keep the protest in a defined area. Make sure to keep a copy of the notification of protest form and all communication with the authorities with you during the protest. The police may well ask to see it, or question whether you have received permission for the march. The convener should be available to speak with them.

CREATIVE PROTEST

Protests are about making your voices heard. Marches and pickets are popular kinds of protest, but there is no limit

to the different kinds of protest you can organise. Creativity in protest is important as a form of self- or communal expression, but also because you need to find new and exciting ways to grab people's attention, and shape the way that people talk about and understand your issue. 'Read-ins', 'teach-ins', occupations, solidarity visits, fasting, participating in coordinated action: all of these are forms of protest.

Creative protests become even more important during times where your ability to stage traditional forms of protest is limited. For example, under circumstances such as COVID-19, you may not be able to organise marches with masses of supporters. This may be because the law places limits on the number of people who are allowed to gather to avoid the spread of the virus. Whatever the legal restrictions, you should not put the lives of people at risk unnecessarily. It would be wise to explore creative protests during times like these, and move away from traditional methods of protest. Organisations such as Amandla.mobi, which give you a platform to launch campaigns and petitions online, can be very useful.

PUBLIC PARTICIPATION

This chapter began by looking at governance structures within schools, and opportunities to participate in them. As your campaign grows, you may take advantage of the formal provisions for participation in national structures, such as Parliament; as well as provincial structures, including provincial legislatures, which are intended to be open and responsive to the public. Your participation can help shape policy and budgeting, as well as contributing towards holding the government accountable.

Members of the public can petition Parliament about an issue. They can also make written or oral submissions to parliamentary committees and provincial legislature committees.

Members of Parliament and Members of Provincial Legislatures sit on different committees. The committees are intended to provide oversight for different areas of the government's work. At times, the committees make a call for submissions from the public; but you can make a submission at any time, by sending it to the secretary and

chairperson of that committee.

In cases such as this, it is largely at their discretion whether or not the committee considers your submission. This is difficult when they are members of the ruling party of government: they may have little interest in a submission that is critical of their government.

One way to get around this barrier is to build positive relationships with MPs – having a good relationship with an MP could improve the chances of your submissions being considered. Organisations need to be adaptable to the political nature of Parliament. You

can attend committee meetings and sittings of Parliament to make these connections. All MPs' email addresses are also provided on the Parliament website.

Once a relationship with an MP has been established, you can use them to ask questions to the government on your or your organisation's behalf. When it comes to flagging important issues or asking pertinent questions, it is best to move between the different political parties that make up a committee, rather than align too closely with one or another. Opposition MPs tend to be more receptive to requests

for information or clarity on particular issues than MPs of the ruling party.

In addition, building and maintaining strong networks within the provincial legislatures is key to advancing your advocacy and campaign work. As with national Parliament, it is important to engage Members of the Provincial Legislature (MPLs), including committee chairs, as well as administrative staff such as committee coordinators, to secure avenues that will help you get your work onto the agenda of the provincial committees on education.

For example, if a committee is scheduled to meet on a certain topic that is relevant to your work, you can request, through the chair, an opportunity to make an oral presentation in that meeting. To make sure that MPLs have a clear and thorough understanding of your work and the objectives that you present, it is worthwhile to prepare written submissions or fact sheets that can be circulated to the MPLs beforehand.

Another way to leverage the relationships with MPLs and to obtain information that may not be easily available to you, is to request that they ask questions of the MEC or government department on your behalf. The MEC is obligated to respond to written questions submitted by MPLs within a

certain timeframe. An MPL may also be willing to ask questions in a committee meeting on your behalf, especially if you have built a working relationship with them and if they know your work.

EDUCATION POLICY

There are two parliamentary committees which oversee basic education: the Portfolio Committee on Basic Education (which is part of the first house of Parliament, the National Assembly), and the Select Committee on Education and Technology, Sports, Arts and Culture (which is part of the second house of Parliament, the National Council of Provinces).

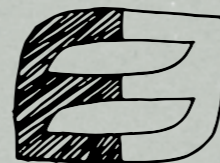
BUDGETS

Oversight of the National Treasury, and budgeting, falls to the Select Committee on Appropriations and the Standing Committee on Appropriations. As part of the process leading to Parliament approving the Division of Revenue Bill (which outlines government spending for the year), the Committees call for public comment. Despite the immediately realisable nature of the right to education, the government's defence against a lot of education activism is the claim of

budgetary constraints. It must be noted that there has been fair criticism against Parliament for failing to exercise its duty to represent the public interest in budgeting decisions and to adequately engage with submissions made by members of the public regarding the budget. It is nevertheless important to participate in the budgeting process, as it can potentially allow activists to overcome the 'budgetary constraints' roadblock and move into a space where their input can shape funding priorities.

PARLIAMENT AND THE PROVINCIAL LEGISLATURES AS SITES OF STRUGGLE

Using the opportunities for public participation does not mean you cannot continue to mobilise and protest. In fact, doing so adds weight to your arguments. For example, if you are invited to present a submission you have made to a committee, you might decide to fill the committee room with supporters or members, or to hold a picket outside Parliament at the same time, to demonstrate the depth of support for your case.



CASE STUDY

EQUAL EDUCATION'S PUBLIC PARTICIPATION

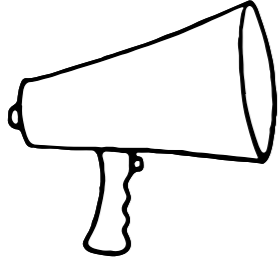
In June 2019, EE raised the alarm when the organisation learned that the African National Congress (ANC) Parliamentary Caucus nominated Zukisa Faku as the chairperson of the Portfolio Committee on Basic Education, a critical committee in our national Parliament – this despite the fact that in March 2016, Faku had been found guilty on nine counts of fraud, which included the abuse of her municipal credit card during her tenure as the mayor of Buffalo City in the Eastern Cape. At the time, the ANC spokesperson, as well as the former ANC Chief Whip, Jackson Mthembu, had accepted the judgment, with Mthembu having acknowledged that her actions “were abusive of her position of trust”.

By nominating Faku to this position, the ANC grossly undermined its public commitment to clean governance, and the nomination went against “the minimum ethical standards of behaviour that South Africans expect of public representatives, including upholding propriety, integrity and ethical values in their conduct”, as outlined in Parliament's Code of Ethical Conduct.

EE made a public call to President Cyril Ramaphosa and the ANC Parliamentary Caucus to withdraw Faku's nomination, maintaining that Faku was unfit for this position given that a key function of her role would be to ensure that the Department of Basic Education spends its budget responsibly. EE also held a demonstration outside President Ramaphosa's State of the Nation Address in June 2019, where Equalisers expressed their concerns around Faku's potential appointment, and exercised their right to protest by calling on President Ramaphosa to withdraw the nomination.

In a letter of complaint to ANC Chief Whip Pemmy Majodina, EE again called on the ANC to withdraw this nomination and to pursue the necessary processes to remove Faku as a Member of Parliament. This letter was endorsed by eighteen civil society organisations.

The eventual withdrawal of Faku's nomination was the result of strong and coordinated public participation, which ultimately protected the integrity of the oversight role for which the Portfolio Committee of Basic Education is responsible.



MEDIA

The media is an important tool for education activism. As you work in this field, you can use the media to:

- Document the daily struggles of your members and share this with a wider audience – this can help build support for and awareness of your cause
- Shape the narrative on your issue of choice: your media input can determine how people think about and understand the issue, and in fact the language that is used to describe it. This is the first step to winning a campaign
- Publicise the action you are taking and mobilise greater support
- Criticise and put pressure on those in power.

As with MPs, it is useful to build relationships with journalists who cover education. Keeping in contact with journalists will increase coverage for your action and add to the pressure you create. You can also write opinion pieces for publication in newspapers and online.

When you engage with the media, think about who you are targeting with your communication. This should shape the kind of media you emphasise. For example, radio is a good medium for reaching rural areas, as many people in these areas don't have televisions. Different newspapers and radio stations also appeal to different audiences.

Mainstream media often does not cover community protests well – even when the reporter is sympathetic to the issue. Often, reporting tends to focus on the dramatic aspects of the protest, or the inconvenience caused (such as traffic disruptions) rather than looking at the underlying causes and the frustrations of protesters. There are often limited or no interviews with protesters, and police repression is often underplayed. This is unfortunate, as the media is a pillar of democracy, with the responsibility of reporting fairly and accurately. Nevertheless, you need to bear in mind that this is the climate in which you operate, and strategise ways to promote a strong image of your movement in the media. One simple point is making sure that when there is a protest, or other action, all members know your demands, and are prepared to speak on the issue if questioned by reporters. Also, sending journalists an official statement beforehand can make it less likely that you will be misrepresented. When reaching out to the media, it is also important to look beyond the well-established mainstream media houses. There are other newer, smaller and more progressive publications such as *New Frame*, *Daily Maverick*

Citizen, *GroundUp* and others which have covered social justice issues well.

Social media has allowed activists and movements to connect more directly with supporters and the public. You can create and share your own content – photos, videos, articles, and infographics – independently of traditional media, and quickly document police brutality or government's empty promises. Social media is also a space for members and supporters to share their own experiences and commentary. This can help to mobilise large numbers of people in a short amount of time, as has been seen in uprisings such as the Arab Spring. The inclusion of hashtags in your social media posts can be eye-catching and can help your campaign reach larger audiences. Remember, social media posts should include a 'call to action' which describes how members of the public can get involved with your other actions. However, while it makes lines of communication broader, and raises awareness, the use of social media is no substitute for organising on the ground. While social media helps to create some form of shared identity and online community, this should feed into real action.



LITIGATION

As already explained earlier in this chapter, the right to a basic education is an unqualified right which is immediately realisable. Our courts have played and continue to play an important role in giving meaning and content to the right to education. However, for most South Africans, the courts are not very accessible.

This is true especially for learners and communities from marginalised communities. Additionally, the DBE and the PEDs have at times not complied with court orders, which have meant that people who have been successful in court against the DBE or PEDs have had to go back to court to ask the court to force the department/s to comply with the court order.

Although approaching the courts and using litigation to bring about change is often an expensive and

lengthy process, litigation is still an important tool that has been and can be effectively used. Litigation is most often effective when it is used alongside the other strategies that have already been discussed, such as mobilisation, organisation and public participation. Education rights organisations have often made use of litigation alongside these other strategies to change government policies; and in some cases, just the mere threat of litigation has prompted the government to change its policies.

Getting legal representatives to take the matter to court on your behalf may be too expensive but you can approach the education rights organisations listed at the back of this handbook for legal advice and assistance with your issue. These organisations may give you advice, write legal letters on your behalf or offer legal representation to you in a court of law. However, due to the expensive and slow nature of litigation, it is advisable that litigation is only used as a last resort.



NORMS AND STANDARDS FOR SCHOOL INFRASTRUCTURE

The Norms and Standards campaign reads like a manual of Equal Education's methods. EE was concerned about the unacceptable state of school infrastructure in many of the country's schools, and initiated a sustained campaign to force the Minister of Basic Education to issue legally binding regulations for norms and standards for school infrastructure. These would describe the basic infrastructure every school requires in order to function.

EE members marched and picketed, petitioned, wrote countless letters to the Minister, went door-to-door in communities to garner support for the campaign, and even spent nights fasting and sleeping outside Parliament. EE lobbied Parliament and politicians, and on Human Rights Day in March 2011 led 20 000 learners and supporters in a march to Parliament to demand that the Minister and the DBE keep their promise and adopt legally binding minimum norms and standards that ensure all learners in South Africa, regardless of race or wealth, are able to learn in schools with adequate infrastructure.

EE also used both traditional and social media to raise awareness and support for the campaign. Learners wrote newspaper articles about their struggles, and journalists covered the campaign.

EE parent members wrote to Basic Education Minister Angie Motshekga as one group of parents to another parent. The letter

appeared in newspapers. EE also led a Solidarity Visit of eminent South Africans – activists, educationists, academics, moral leaders and public figures – to several Eastern Cape schools. The visit found terrible conditions of overcrowding, and collapsing, inadequate infrastructure. This was well-publicised: journalists and members of the group of eminent persons wrote about their experiences and used their authority to support EE's campaign. The visit was also filmed and generated a short video, which was shared on social media.

EE also produced a series of animated videos explaining the campaign, and the dire state of school infrastructure, in an accessible way. The organisation created Twitter hashtags such as #FixOurSchools and #BuildtheFuture as a way of spreading awareness of the campaign. It was also able to confront government officials more directly, and in the public domain, via its Twitter account.

EE's intention was to win gains in the campaign politically rather than through the courts. However, in 2012, with the Minister remaining stubborn in the face of mass mobilisation, it became increasingly clear that resorting to the courts to achieve norms would be necessary. Section 29(1) (a) of the Constitution provides that "everyone has the right to a basic education".

Unlike other socio-economic rights, this right is unqualified and immediately realisable. So, on 2 March 2012 the Legal Resources Centre (LRC), on behalf of EE and the infrastructure committees of two schools in the Eastern Cape, filed an application in the Bhisho High Court against the Minister, all nine MECs for Education and the Minister of Finance, to secure national minimum uniform norms and standards for school infrastructure. This was done while simultaneously applying political pressure. In fact, EE members were planning to camp outside the Bhisho High Court where the case was going to be heard.

Before the case was heard, the Minister settled out of court and agreed to adopt norms and standards. But she then delayed releasing them, and eventually published very weak 'guidelines' for school infrastructure. EE returned to the courts to secure an order for her to keep to her agreement. Finally, on 29 November 2013, binding Norms and Standards for School Infrastructure were released for the first time.

However, the Norms and Standards law, as it was published, was vague and contained unconstitutional loopholes. Government used these gaps to circumvent the infrastructure deadlines which they had set for themselves, and which were contained in the law – actions which undermined the education sector's accountability.

EE tried to engage Basic Education Minister Angie Motshekga to #FixTheNorms, but the minister continually failed to do so. EE, represented by the Equal Education Law Centre, eventually sought relief through the court in an effort to tighten the Norms. The case was heard in the Bhisho High Court in March 2018, and EE raised five specific concerns with the law. Judgment was handed down on 19 July 2018 – entirely in EE's favour.

Below is a short summary of the five key issues and what the Bhisho High Court declared:

1. The Norms and Standards contained an escape clause, which said that infrastructure standards need only be met insofar as cooperation and resources are forthcoming from "other government agencies and entities responsible for school infrastructure".

This clause was declared inconsistent with the Constitution, the Schools Act and the 2013 court order. The clause was therefore declared unlawful and invalid.

A short example of the consequences of this clause was that if Eskom failed to provide electricity, this minimum infrastructure standard would not be met, but education departments would not be held responsible. This would continue to make learners vulnerable to the infrastructural legacy of apartheid and colonialism in schools.

2. Schools built partly or substantially from inappropriate materials (mud, wood, zinc or asbestos) were excluded from the categories of schools that needed to be fixed.

The Court declared the phrasing of the Norms and Standards, which obliges the national Department of Basic Education (DBE) only to fix schools made 'entirely' of inappropriate materials, to be "inconsistent with the Constitution". The Court said the regulations should be changed to reflect that all "classrooms built entirely or substantially" of inappropriate materials should be replaced by 29 November 2016. This means that the DBE will no longer be able to disregard schools that have one or two brick buildings, with the rest of its classrooms made of inappropriate materials.

3. The Norms lacked an accountability mechanism to ensure that Norms and Standards plans and progress reports would be made public

EE spent months on end demanding these documents, which are required to be provided to Minister Motshekga annually by each provincial education MEC. Our argument in Court was that principles of accountability and transparency require these documents to be made public, so that schools and communities can see what is being planned and can hold the state to its commitments. The Court agreed that the omission was "unconstitutional and invalid" and instructed Minister Motshekga to amend the Norms and Standards to provide that plans and reports be made publicly available within a reasonable time after she receives them from provinces.

4. The Norms and Standards vaguely required the DBE to "prioritise" schools with no access to water, electricity and sanitation by the first deadline, 29 November 2016.

The Court agreed with EE that the meaning of 'prioritise' was vague, and declared that the provision is to be read as compelling government to ensure that these schools comply with the Norms and Standards by the first deadline.

5. Schools for which plans existed before the Norms and Standards were published were excluded from having to comply with the Norms and Standards.

The Court said it was inconsistent with the Constitution that pre-existing plans for building and upgrading schools were exempt from complying with the Norms and Standards because they were in place before the Norms were published. It said that as far as reasonably possible, all school construction plans should be consistent with the Norms and Standards.

Two deadlines have passed since the Norms were signed into law, with national and provincial education departments failing to provide the minimum infrastructure that was required by November 2016 or by November 2020, including the replacement of structures made of inappropriate materials; access to and adequate supply of electricity, water and sanitation; and the adequate supply of classrooms, as well as electronic connectivity and physical perimeter security.

The Norms and Standards are currently in the process of being revised in their entirety, and it is expected that this revision will incorporate the findings of the court.

CASE STUDY

THE NATIONAL SCHOOL NUTRITION PROGRAMME

2020 COURT CASE

The National School Nutrition Programme (NSNP) is a government programme that provides at least one nutritious meal per day to over nine million vulnerable learners at no-fee schools, as well as to a number of disadvantaged learners in fee-paying schools across South Africa. The NSNP supports the health of all qualifying learners and facilitates their concentration and ability to learn. It supplements the nutrition of half of all children in the country, three quarters of all learners, and a fifth of the total population.

In March 2020, the DBE abruptly stopped this vital programme when schools were closed amid South Africa's COVID-19 lockdown. This move threatened the food security of millions of vulnerable learners, and worsened the hardship experienced in their households due to unemployment and loss of income as a result of the national lockdown. Soon after, EE, EELC, SECTION27, the Centre for Child Law and the Children's Institute rallied together to pen an open letter to Basic Education Minister Angie Motshekga on how the NSNP could continue, and why it was important that it did.

In briefings with civil society in May 2020, the DBE committed to rolling out the NSNP to all qualifying learners when schools reopened in June 2020, including those who were not expected to physically return. But Minister Motshekga broke this promise on the day before schools opened.

So in June 2020, EE and two SGBs in Limpopo – represented by the Equal Education Law Centre (EELC) and SECTION27 – launched an urgent application in the North Gauteng High Court against the DBE and eight provincial education MECs, seeking the following:

- a court order declaring that the government has a duty to ensure that all qualifying learners are entitled to receive a daily meal as provided for under the NSNP, regardless of whether or not they have resumed classes at their respective schools. This is known as a 'declaratory order'.
- a court order requiring the national and provincial departments to each

provide a plan or programme to the court, within five days of the court order, that ensures that all qualifying learners receive their daily meal from the NSNP. This is known as a 'structural order'.

The judgment delivered in the North Gauteng High Court in July 2020 was a huge victory for all learners who qualify for the NSNP. The court handed down a declaratory order that Basic Education Minister Angie Motshekga and eight provincial education MECs were in breach of their Constitutional duties for failing to roll out the NSNP to all learners – whether these learners had returned to school or were still at home.

The court also handed down a supervisory interdict, which is an order that gives the court the power to monitor whether the provincial education departments and DBE were complying with the court's instructions. The supervisory interdict required that the DBE and provincial education departments submit their plans for the reinstatement of the NSNP to all qualifying learners within ten days of the judgment, and thereafter provide the courts with progress reports on the resumption of the NSNP every fifteen days to prove that the plans that were submitted were being implemented and that learners were accessing meals.

EE, SECTION27 and the EELC closely monitor and analyse these reports, and provide written feedback on the quality of the reports to the DBE for each round received. The written feedback addresses pertinent issues such as:

- whether or not important information has been omitted (such as the number of learners being fed)
- ongoing challenges such as meals not being available, poor communication about the availability of meals, lack of scholar transport to collect meals and so on
- data that is inconsistent with what EE, EELC and SECTION27 are seeing on the ground (surveys were developed and rolled out to learners, parents and principals to understand whether the NSNP was in fact being rolled out and whether learners were accessing meals, as well as the associated challenges).

The activities leading up to the case, the eventual victory in court and the ongoing monitoring of the NSNPs implementation is a clear example of the importance and benefits of coalition building and inter-organisational collaboration to bring about real change.

RETURN TO COURT: JUNE 2021

Between March 2021 and May 2021, the DBE and the MECs of eight education departments failed to file their court-ordered reports timeously – or at all. This, despite the fact that the DBE's own data revealed that as at 12 March 2021, over 1.5 million learners who qualified for the NSNP were still not accessing the meals they qualified for through this feeding scheme.

In response to this, EE and the two Limpopo school governing bodies, represented by SECTION27 and the EELC, went back to court on 29 June 2021 and launched an urgent application against the DBE and the MECs of eight provincial education departments for failing to ensure that the NSNP reaches every qualifying learner, despite the 2020 judgment.

The applicants returned to court to get the education departments to submit progress reports on the rollout of the NSNP as per the 2020 court order, but which they had failed to do since March 2021. In addition, the applicants asked the court to order the national and provincial education departments to file – within one month – new, revised plans to deliver the NSNP that are responsive to the ongoing challenges experienced as a result of COVID-19, and thereafter to file updates every month on the implementation of these plans with the court until the order has been discharged.

Notably, on 20 July 2021, a declaratory and supervisory order of the North Gauteng High Court confirmed a settlement agreement between education authorities and EE, EELC and SECTION27 in an effort to guarantee that all qualifying learners receive their NSNP meals, even when schools are closed because of COVID-19 or learners are at home due to rotating timetables.

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CASES

Equal Education 'Founding Affidavit: *Equal Education v MEC for Education; KwaZulu-Natal & Police Commissioner of KwaZulu-Natal*', 2018.

Mlungwana and Others v S and Another 2019 (1) BCLR 88 (CC).

School Governing Body Makangwane Secondary School v MEC Limpopo Department of Education & Another (unreported) case number 3158/2018 of 1 February 2019.

LEGISLATION, POLICY AND GUIDELINES

Constitution of the Republic of South Africa 1996.

Department of Basic Education 'Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure', 2013.

Regulation of Gatherings Act 205 of 1993.

South African Schools Act 84 of 1996.

FURTHER READING

K Ben-Zeev and S Waterhouse 'Not Waiting for an Invitation: Lessons from South African Civil Society Engagement with National Parliament in 2011', 2012.

Department of Basic Education 'Annual Report 2019/2020', 2020.

Human Rights Watch 'South Africa: Police Kill Bystander at Protest' (15 March 2021).

International Association for the Evaluation of Educational Achievement 'PIRLS 2016 International Results in Reading', 2016.

Sipho Maseko 'Angie Motshekga Reads Riot Act', *City Press* (24 January 2016).

Vijay Reddy et al., 'Highlights of South African Grade 9 Results in Mathematics and Science' *Trends in International Mathematics and Science Study*, 2019.

Right2Know 'Your Right to Protest: Understanding the Regulation of Gatherings Act, arrests and court processes', 2015.

South African Human Rights Commission 'Joint Media Statement – SA Human Rights Commission meets with Cornwall Hill College' (04 June 2021).

Statistics South Africa 'Education Series Volume VII: Children's education and well-being in South Africa', 2018.

Faranaaz Veriava 'Makangwane Secondary School: A lesson in treating learners with dignity', *Daily Maverick* (15 January 2020).