

REPORT: DELIVERY OF PRIMARY LEARNING MATERIALS TO SCHOOLS





FINAL REPORT OF SAHRC INVESTIGATIVE HEARING

*Monitoring and Investigating the Delivery of Primary Learning Materials to Schools
Country-Wide*

**In an "Own-Initiative Investigation" of the South African Human Rights
Commission"**

and

The Department of Basic Education	First Respondent
The Department of Education: Free State	Second Respondent
The Department of Education: Gauteng	Third Respondent
The Department of Education: KwaZulu-Natal	Fourth Respondent
The Department of Education: Western Cape	Fifth Respondent
The Department of Education: North West	Sixth Respondent
The Department of Education: Mpumalanga	Seventh Respondent
The Department of Education: Northern Cape	Eighth Respondent

Acknowledgements:

Panellists:

Commissioner Lindiwe Mokate: Full Time Commissioner at the SAHRC

The South African Human Rights Commission is the national institution established to support constitutional democracy. It is committed to promote respect for, observance of and protection of human rights for everyone without fear or favour. The Commission was inaugurated on 2 October 1995 under the Human Rights Commission Act 54 of 1994 and as provided for by the Interim Constitution of 1993 and later the final Constitution of 1996.

Commissioner Janet Love: Part Time Commissioner at the SAHRC and Director of the Legal Resources Centre

The Legal Resources Centre (LRC) is South Africa's largest public interest, human rights law clinic. Established in 1979, we use the law as an instrument of justice for the vulnerable and marginalised, including poor, homeless and landless people. The LRC has four offices in Cape Town, Durban, Grahamstown and Johannesburg.

Professor Ann Skelton: Director of the Centre for Child Law and UNESCO Chair For Education in Africa

The Centre for Child Law is based in the Law Faculty at the University of Pretoria. The official launch of the Centre was held in October 1998. The Centre contributes towards establishing and promoting the best interests of children in our community through education, research, advocacy and litigation.

SAHRC Staff

The Contribution of Lindiwe Khumalo, Pandelis Gregoriou, Isaac Mangena, Karam Singh, Yuri Ramkissoon, Faraaz Mahomed, Nicole Breen and Ntombenhle Ngwane.

The views expressed in this report do not necessarily reflect those of the Centre for Child law, SAHRC or the Legal Resources Centre.

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1. Introduction

- 1.1 This document is the final report on the proceedings of an investigation undertaken by the South African Human Rights Commission (Commission or SAHRC) on the delivery of primary learning materials to schools.
- 1.2 In investigating the delivery of primary learning materials to schools, the Commission convened a hearing in terms of section 9(1)(c) of the Human Rights Commission Act, 54 of 1994 (HRC Act).
- 1.3 Following an initial investigation, an interim report was released by the Commission for public comment in April 2013. Submissions were then made by interested parties, and these parties were then invited to give oral testimony before the Commission's panel.
- 1.4 The current report documents the process followed and, in its concluding section, presents findings and recommendations.

2. Background

- 2.1 Historically, South African learners have not enjoyed adequate access to learning materials. A study by the Southern and Eastern Africa Consortium for Monitoring Educational Quality (SACMEQ III) found that, in 2007, the average Grade 6 learner was in a school where 45% of the learners had Reading books and 36,4% had Mathematics textbooks.¹

¹Moloi, MQ and Chetty, M. (2010). The SACMEQ III Project in South Africa: A Study of the conditions of schooling and the quality of education. Pretoria: Department of Basic Education/SACMEQ.

2.2 A number of studies indicate that provision of appropriate textbooks can dramatically improve educational outcomes.² Moreover, a study by Glewwe, Kremer and Moulin indicates that, where textbooks of the appropriate quality are not provided, systemic inequalities and social exclusion may actually be perpetuated.³

2.3 In October 2009, the National DBE (DBE) published the Report of the Task Team for the Review of the Implementation of the National Curriculum Statement, which introduced the Curriculum and Assessment Policy Statements (CAPS) to facilitate the development and distribution of new textbooks and workbooks, broadly termed Learning and Teaching Support Material (LTSM).

2.4 In accordance with CAPS, the relevant materials were to be introduced to schools in the following order:

2.1.1.2011: Grades 1-3 and Grade 10

2.1.2.2012: Grades 4-6 and Grade 11

2.1.3.2013: Grades 7-9 and Grade 12

2.5 In an affidavit submitted in the case of *Section 27 and Others v Minister of Education and Another*, curriculum expert B J Wilson-Thomas indicates that:

*The CAPS curriculum was introduced in response to teachers' requests for more clarity and detail ... The intention of the CAPS curriculum is to provide clear pacing and sequencing of the curriculum content and more explicit elaboration of content to support a richer interpretation of broad curriculum statements.*⁴

² See Fuller, B. (1986). *Raising School Quality in Developing Countries: What Investments Boost Learning?* The World Bank, Washington D.C. and Lockheed, ME & Hanushek, E. (1988). *Improving Educational Efficiency in Developing Countries: What Do We Know? Compare 18, 1 : 21-38.*

³Glewwe, P, Kremer, M & Moulin, S. (2007). *Many Children Left Behind? Textbooks and Test Scores in Kenya.* Working Paper of the National Bureau of Economic Research.

⁴Expert Affidavit of B J Wilson Thomas in *Section 27 and Others v Minister of Education and Another* 2013 (2) SA 40 (GNP)

- 2.6 The implementation of the new curriculum has been beset with considerable difficulties arising from lack of delivery or late delivery of textbooks and workbooks to learners, or the delivery of the incorrect learning materials.
- 2.7 The right to education is one of the central focus areas for the Commission's work, as evidenced by previous work undertaken on the subject, including the Charter on Children's Basic Education Rights. As such, the challenges in the delivery of primary learning materials have been of interest and concern to the Commission.
- 2.8 In 2012, media reports suggested that there were major shortcomings in textbook delivery in the Limpopo Province. Following these media reports, a civil society campaign led to litigation and several court orders, and a number of task teams investigating and reporting on the matter were set up.
- 2.9 Following these reports and an enquiry from Parliament that requested information on whether the Commission was investigating this matter, the Commission decided to investigate whether similarly-situated schools in the other provinces were having the same challenges.
- 2.10 The Commission proceeded to engage with its Provincial Offices to obtain reports on the status of delivery of learning materials. However, the information received from the relevant provinces was not consistent due to challenges associated with data collection.
- 2.11 The Commission determined that a uniform approach which addressed conditions in each province should be undertaken.
- 2.12 A decision was taken that the Commission would convene a hearing in terms of section 9(1)(c) of the HRC Act to gather more information. The purpose of these proceedings was to obtain relevant information from public officials to determine whether this component of the right to basic education was being realised across the country.

3. Summary of Proceedings

- 3.1 The Commission, acting in terms of its enabling legislation, undertook an investigative hearing into the delivery of primary learning materials across the nine provinces of the country.
- 3.2 The hearing, which was inquisitorial in nature, requested that the Members of the Executive Councils (MECs) of the respective Provincial Departments of Basic Education (PEDs) appear before the Commission, make submissions and present documentation to assist the Commission to establish the extent of the challenges related to the provision of LTSM , leading to findings and recommendations to redress shortcomings.
- 3.3 This investigation is undertaken in the knowledge that the Commission did not have the resources to conduct any direct survey of schools although some individual school reports and information through separate site visits added to the knowledge of the panel. The information provided by the MECs and PEDs was not subjected to any independent verification.
- 3.4 The submissions requested from PEDs were set out in a schedule of seven key questions. These included requests for data on:
 - a. The number of schools in the province, including the number of section 21 (or self-governing) schools;
 - b. The process employed by schools in the procurement of primary learning materials;
 - c. The success of the method employed;
 - d. Major challenges faced in the delivery of primary learning materials;
 - e. The steps taken by the PED to overcome these challenges;
 - f. The mechanisms employed by the DBE and the PED to monitor and assess the delivery of primary learning materials; and
 - g. Any steps taken to address the interests of learners with disabilities.

h. The need for the Commission to further invoke its powers in securing the co-operation of the North West Province.

3.5 The panel received submissions and heard oral testimonies from representatives of the DBE, and the PEDs from the Western Cape, Northern Cape, Mpumalanga, KwaZulu-Natal, Gauteng and the Free State. Given that the Eastern Cape and the Limpopo Provinces are under National Administration in terms of section 100(1) of the Constitution⁵, the Commission indicated that the representatives from the DBE would present on their behalf, although the offices of these MEC's were invited to attend and supplement this testimony.

3.6 There was one non-compliant party in this matter, namely, the office of the MEC for Basic Education in the North West Province. They did not appear before the Commission despite being given no less than three opportunities to do so. They also failed to submit documents until after the proceedings had been closed. The information that was eventually submitted was also disparate and ultimately did not assist the Commission in its investigation.

3.7 In order to ensure that the findings of the Panel represent a balanced view of the issues, a resolution was taken that an interim report would be drafted and released to the public and the parties to the hearing before the Commission made conclusive findings. The report was also sent to the Portfolio Committee for Justice and Constitutional Development.

⁵ S100(1) of the Constitution of the Republic of South Africa, Act 108 of 1996 states, "*When a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation. including-*

(a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and

(b) assuming responsibility for the relevant obligation in that province to the extent
(i) maintain essential national standards or meet established minimum standards necessary for the rendering of a service;
(ii) maintain economic unity;
(iii) maintain national security; or
*(iv) prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country **as** a whole."*

- 3.8 Following the release of the interim report, the Commission allowed submissions from three interested parties: EduSolutions, The Teacher's Union of South Africa (OUSA) and Section 27. The Commission elected to convene a final sitting of the panel and hear oral testimony from these parties.
- 3.9 The panel sought to both identify key areas of concern and to make recommendations where appropriate. The investigation was not intended to be retrospective in nature (that is, looking at the mistakes made in procurement processes past), but constructive, with a view to ensure that, going forward, the right to basic education can be realised.
- 3.10 Though the scope of this investigation was limited to the procurement and delivery of primary learning materials to schools, it became apparent that a number of the challenges were more systemic in nature. A good example of this is the issue of poor communication between government and other relevant stakeholders. This meant that, while the panel's recommendations addressed specific challenges, larger contextual and organisational issues require further attention.
- 3.11 The recommendations included the following:
- 3.11.1 That a national independent audit be undertaken to determine precisely where lapses in service delivery lie and that such an audit may need to be repeated;
 - 3.11.2 That a separate investigation be undertaken with regard to learners with disabilities particularly in the context of 'mainstreaming' children with disability into regular schools;
 - 3.11.3 That the creation of a uniform system for electronic tracking is facilitated and that it is ensured that such a system is capable of providing on-going monitoring and a national overview for comparative purposes. It should also be ensured that the

intellectual property rights involved in the development of the system reside with the DBE;

3.11.4 That all circulars and other documents be sent out well in advance so as to deal with issues of lack of consensus between schools and government;

3.11.5 That external service providers be monitored closely in order to ensure accountability and transparency.

4. Mandate of the Commission

4.1 The Commission is an institution established in terms of section 181 of the Constitution. The Commission and other institutions created under Chapter 9 of the Constitution are described as "*state institutions supporting constitutional democracy*". In terms of section 184(1) of the Constitution, the Commission is specifically mandated to: promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in South Africa. Section 184(2)(a) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country.

4.2 The HRC Act further supplements the powers of the Commission. In addition to other powers, duties and functions, the Act confers powers on the Commission to carry out investigations concerning the observance of human rights in South Africa. The aforementioned proceedings were convened under the provisions of section 9(1)(c) and 9(1)(d) of the Act, which state:

9. (1) Pursuant to the provisions of section 116(3) of the Constitution the Commission may, in order to enable it to exercise its powers and perform its duties and functions-

(c) require any person by notice in writing under the hand of a member of the Commission, addressed and delivered by a member of its staff or a sheriff, in

relation to an investigation, to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation: Provided that such notice shall contain the reasons why such person's presence is needed and why any such article or document should be produced; (own emphasis added)(d) through a member of the Commission, administer an oath to or take an affirmation from any person referred to in paragraph (c), or any person present at the place referred to in paragraph (c), irrespective of whether or, not such person has been required under the said paragraph (c) to appear before it, and question him or her under oath or affirmation in connection with any matter which may be necessary in connection with that investigation.

- 4.3 The Act further provides for criminal sanctions in the event that a party to such a proceeding refuses to co-operate with an investigation of the Commission. This provision is located in section 18, which states:

18. A person who-

(a) without just cause refuses or fails to comply with a notice under section 9(1)(c) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 9(1)(d) or refuses to answer any question put to him or her under section 9(1)(d) or refuses or fails to furnish particulars or information required from him or her under that section; ...shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months. (Own emphasis added)

- 4.4 The Commission is further empowered by its Gazetted Complaints Handling Procedures which prescribe that the Commission is entitled, *inter alia*, to conduct hearings under a variety of circumstances.

5. Legal Framework of Primary Learning Materials Supply to Schools

There has been no contestation either on the part of the Commission, the respondents in the matter or any other interested party as to what the state is obliged to provide. It is, therefore, submitted that the provisions articulated below be seen as common cause for the purposes of this document.

5.1 International Law

5.1.1 The right to basic education is contained in a proliferation of international instruments. Collectively, they create, *inter alia*, the following obligations on the part of government:

- a. Primary education must be universal and free and secondary education must be made generally available and accessible to all.⁶
- b. No person should be deprived of access to education of any type or at any level, and no group of persons shall be limited to education of an inferior standard.⁷
- c. Education must meet standards and conditions required for the fulfilment and enjoyment of this right.⁸
- d. States Parties are obliged to actively pursue the development of schools and material teaching conditions.⁹
- e. States Parties must make education available to the maximum extent of available resources.¹⁰
- f. States Parties must ensure people with disabilities have equal access to education. This includes facilitating alternative modes of communication.¹¹

⁶ Article 28(1)(a) of the United Nations Convention on the Rights of the Child; Article 13(1) of the International Covenant on Social, Economic and Cultural Rights; Article 26(1) of the Universal Declaration of Human Rights; Article 4 of the UNESCO Convention Against Discrimination in Education

⁷ Article 1 of the UNESCO Convention Against Discrimination in Education

⁸ Article 4 of the United Nations Convention on the Rights of the Child; Article 2 of the International Covenant of Economic Social and Cultural Rights

⁹ Article 13(5)(e) of the International Covenant of Economic, Social and Cultural Rights

¹⁰ Article 4 of the United Nations Convention on the Rights of the Child; Article 2 of the International Covenant on Economic, Social and Cultural Rights;

¹¹ Article 24 of the United Nations Convention on the Rights of Persons with Disabilities; Article 23(3) of the United Nations Convention on the Rights of the Child

5.1.2 Of particular relevance to the realisation of the right to basic education, is General Comment 13 to the International Covenant on Social, Economic and Cultural Rights. It comprehensively delineates the obligations of government in this regard in paragraphs 46 and 47 which state that:

“46. The right to education, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.

47. The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realise the right themselves by the means at their disposal.”

5.2 Constitutional Law

5.2.1 The constitutional provision relied upon is section 29(1)(a) which sets out the right to basic education.¹²

5.2.2 Insofar as schools in certain parts of the country have not had primary learning materials made available to them, it is submitted that the right to substantive equality and non-discrimination under section 9 of the Constitution is also of relevance in this matter.¹³

¹² s29(1)(a) of the Constitution of the Republic of South Africa

¹³ Section 9 of the Constitution states that,

5.2.3 Given that those affected by this matter are, in the overwhelming majority children, it is also necessary to apply section 28(2) of the Constitution- that is that *“best interests of the child are of paramount importance in every matter concerning the child.”*¹⁴

5.2.4 As illustrated below, certain PEDs outsource components of the procurement and delivery process. It may, therefore, be said that section 217(1) of the Constitution is important to consider. It states:

“When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, just, transparent, competitive and cost-effective.”

5.3 Interpretation of Constitutional Rights: Case-law

5.3.1 In evaluating the content and nature of the right to basic education, it is important to note the principles articulated by the court in *Governing Body of the JumaMusjid Primary School and others v Essay NO & Others* (JumaMusjid). The court confirmed that:

1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

¹⁴ Section 28(2) of the Constitution of the Republic of South Africa

“Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be “progressively realised” within “available resources” and subject to “reasonable legislative measures.” The right to basic education may be limited only in terms of a law of general application which is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.”¹⁵

5.3.2 With regards, specifically to delivery of primary learning materials, the courts have articulated in *SECTION 27 and 2 Others v Minister of Education and Another* that

“Most societies, ours included, place a high premium on education. Not only is it a means by which individuals are able to fulfil their potential, it also provides in a wider sense the basis for development and upliftment. Accordingly in the context of International Human Rights Law, and increasingly in the context of National Legal Systems, it is not a privilege, but a right, creating with it duties and obligations and where the right is violated, activating the needs to craft appropriate remedies.¹⁶

Accordingly I conclude on this aspect that the provision of learner support material in the form of textbooks, as may be prescribed, is an essential component of the right to basic education and its provision inextricably linked to the fulfilment of the right. In fact, it is difficult to conceive, even with the best of intentions, how the right to basic education can be given effect in the absence of textbooks. On that basis, it must accordingly follow that given [the DBE]’s own goals and indicators in its annual performance plan and its target setting of 100% in respect of workbooks and textbooks for the entire school year, that failure to provide textbooks, somewhat midway through the academic year would prima facie constitute a violation of the right to basic education.”¹⁷

¹⁵ 2011(8) BCLR 761 (CC) para 37

¹⁶ 2013 (2) SA 40 (GNP) para 1.

¹⁷ *Ibid* para 24-25.

5.4 National Legislation

5.4.1 Section 21 of the South African Schools¹⁸ (Schools Act) states,

(1) "Subject to this Act, a governing body may apply to the Head of Department in writing to be allocated any of the following functions:

...

*(c) to purchase textbooks, educational materials or equipment for the School"*¹⁹

5.4.2 This had the effect that these "self governing" schools could procure their own materials in some of the provinces; subject to the titles contained within the National Catalogue.

5.5 The DBE Action Plan to 2014: Towards the Realisation of Schooling 2025

5.5.1 The Action Plan is a statement of goals surrounding the right to basic education. It contains twenty-seven goals, five of which have been earmarked as priority areas for the period to 2014. These priority areas reflect aspects of a negotiated charter known as the Delivery Agreement 2010, which was signed by *inter alia* the Minister for Basic Education and the President. Aspects pertaining to primary learning materials are reflected in goal 19, which states that government has the obligation to:

*"Ensure that every learner has access to the minimum set of textbooks and workbooks required according to the national policy... This goal is one of 5 goals reflecting the emphasis in the Minister's Delivery Agreement"*²⁰

¹⁸ Act 84 of 1996

¹⁹ Section 21

²⁰ Action Plan to 2014: Towards the Realisation of Schooling 2025, DBE, 2012, p124

5.5.2 In its response to the “problem statement” posited in the text of this document - where issues surrounding availability of such materials were raised, government’s response was as follows:

“The 2008 OECD review stressed that, providing good learning materials, such as textbooks to learners in sufficient quantities is one of the best ways to realise the aims of the national curriculum. This is a view that is very much shared by government. In fact, access to the full set of required learning materials for every learner can be regarded as non-negotiable. The financial and other difficulties relating to the provision of learning materials are, in fact, low relative to those associated with most other interventions. This strengthens the argument for considering access to learning materials as an intervention that can succeed in making a difference in the short to medium term. Of course learning materials should be understood not only as encompassing the materials that learners themselves should have access to, but also the teacher guides that accompany these materials that assist the teacher to utilise them effectively in the classroom.”²¹

There are a variety of reasons why learners do not have the materials they should have. The department may not have delivered the materials it was supposed to deliver or the school may not have bought the materials it was supposed to buy with the funding it received from the department. Funding that was supposed to arrive from the department may not have arrived. It is important to keep in mind that, because of the way the funding policy works, many schools buy materials themselves, using funds received from the department. For instance 30% of schools buy textbooks in this way. Materials may not be available because they are not well looked after (so next year’s learners are unable to use them) or because of crime (which could involve theft between learners). Government is working on all these problems.”²²

²¹ *ibid*

²² 19 *supra* p125

*Finding an ideal solution is not easy, however, due to a number of complexities. Decentralisation of textbook procurement to schools was found to push the price of books up, as economies of scale are not attained. Centralised procurement of textbooks can increase the risk of corruption if the right checks and balances are not in place. Moreover, it is important to distinguish between the decentralisation of procurement and the decentralisation of choice. A practice that is followed in some provinces is for schools to choose books from a list, but for the department to procure the books. One option that government is exploring is the recommendation, made in 2010 by the Ministerial Task Team on LTSMs (learning and teaching support materials), that a national procurement agency be established to overcome the problems that have been experienced with province-level procurements. The Task Team also recommended that lists of approved textbooks must all be national (as opposed to the current provincial system), and that the range of options be narrowed down, partly through more stringent selection criteria”.*²³

5.6 The DBE Guidelines Relating to Planning for Public School Infrastructure

5.6.1 As articulated in the Minister’s foreword to this document:

*“The objective of this policy is to guide the provision of an enabling physical teaching and learning environment that is sustainable and equitable for all learners in South Africa, as well as to ensure that future investments are aligned with this definition.”*²⁴

While the document relates to all infrastructural components in education, the following specifically relates to the provisioning of primary learning materials to schools:

²³ *ibid*

²⁴ Guidelines Relating to Planning for Public School Infrastructure, DBE, 2012

“5.4. Subjects, matters relating thereto and teaching requirements will rank high amongst priority needs for the provision of school infrastructure, furniture, equipment, books and instructional materials.”²⁵

“A school environment is considered to be meeting the minimum functionality requirements referred to in paragraph 6.1.2 if it meets the basic safety requirements as contemplated in paragraph 6.1.1, as well as having –

6.4.1. classrooms;

6.4.2. ablution facilities;

6.4.3. electricity;

6.4.4. textbooks; and

6.4.5. basic supplies of the most important teaching aids.”²⁶

5.7 The SAHRC Charter on Children’s Basic Education Rights

5.7.1 On 31 January 2013, the Commission launched the Charter on Children’s Basic Education Rights (Charter). The Charter provides a consolidated statement of the various legal obligations of the state and other stakeholders to realise this fundamental human right. It is a comprehensive, legally-grounded, child-rights-focused baseline upon which the Commission and other stakeholders can work. Given the advocacy potential of the Charter, it draws extensively on international legal and developmental instruments, regional instruments and national constitutional obligations. The Charter is a result of extensive consultation with various stakeholders. It prescribes, *inter alia*, that the state has an obligation to:

“provide basic learning and teaching support materials (LTSM) and equipment such as stationery and textbooks in a timely fashion to all learners including appropriate materials for learners with disabilities”²⁷

²⁵ *Ibid* p6

²⁶ *Ibid* p7

²⁷ SAHRC Charter on Children’s Basic Education Rights, 2013 p29

5.7.2 It provides further that:

“All learners from Grades R-12 have a basic minimum package of learning support materials from the start of the school year to ensure effective learning of literacy and numeracy, including:

*A standardised workbook for literacy and numeracy,
one textbook of their own for every subject;”²⁸*

5.7.3 Finally, it indicates that:

“All blind learners have access to workbooks and textbooks in Braille, and they and other learners with disabilities have access to other forms of alternative communication.”²⁹

This provides a comprehensive synopsis of what is required from the state in ensuring the realisation of this element of the right to basic education and is indeed the basis from which the Commission has worked in this process.

5.8 Commentary: Report of the 2012 Presidential Task Team

5.8.1 In the wake of the 2012 textbook crisis in Limpopo, Professor Mary Metcalfe was appointed to conduct an independent verification of the progress of the delivery of textbooks to schools in Limpopo. The focus of the Commission’s investigation was decidedly different in that it was national in scale, and is intended to focus on the current situation, rather than the *status quo* in 2012- taking cognisance of the fact that a considerable amount of work has been undertaken in the interim period. Nevertheless, the report included recommendations extending beyond the situation in this province, with a view to finding sustainable solutions regarding the procurement and delivery process. Pertinent recommendations include the following:

²⁸ 15 *supra*

²⁹ 15 *supra*.

- a. There should be comprehensive auditing of the delivery processes and government reports should be double-checked for accuracy and completeness;
- b. There must be better communication between the DBE, stakeholders and Limpopo Schools;
- c. All officials involved in the procurement process should undergo training to capacitate them to handle this process properly;
- d. More work must be done to improve the entire chain of LTSM delivery; and
- e. Proper records of procurement of LTSM must be kept, even in the case of outsourcing certain functions under this system. Where functions are outsourced, the performance of service providers must be closely monitored.³⁰

5.8.2 It is notable that the DBE has accepted the recommendations made by Professor Metcalfe and her team.

6. Procedures of the SAHRC Hearing

6.1 Composition of the Panel

- 6.1.1 Commissioner Lindiwe Mokate, responsible for the rights of children and basic education at the SAHRC: Chairperson;
- 6.1.2 Commissioner Janet Love, National Director at the Legal Resources Centre and part time Commissioner at the SAHRC: Panellist;
- 6.1.3 Professor Ann Skelton, Professor of Law at the University of Pretoria and Director of the Centre for Child Law: Panellist.

³⁰Report of the Presidential Task Team established to investigate the non-delivery and/or delays in the delivery of Learner Teacher Support Material (LTSM) in Limpopo Schools, dated 21 September 2012.

6.2 Terms of Reference

6.2.1 To receive information and to hear evidence from the respondents and other relevant parties relating to the status of delivery of primary learning materials in schools across the country;

6.2.2 To analyse evidence brought before the panel;

6.2.3 To make appropriate findings;

6.2.4 For the Commission to make recommendations.

6.3 Nature and Structure of the Proceedings:

6.3.1 As indicated, the proceedings were inquisitorial in nature. Representatives were invited to assist the panel with the provision of relevant information to arrive at a fair reflection of the challenges associated with the distribution of learning materials. The respondents were obliged to make written submissions as well as oral presentations.

6.3.2 Each respondent had 15 minutes in which to present. Due to time constraints, only salient and key issues were highlighted. The panel could then pose a series of questions, seek clarity or further information arising from the submissions.

6.3.3 Before making submissions, respondents were invited to take an oath or affirmation in the manner of their choosing.

7. Summary of Submissions

The submissions made by Respondents before the panel were guided by a set of questions. The following reflects the answers given by the respondents in the form of oral and written submissions.

7.1 Schools in the province and their section 21 status

7.1.1 All provinces provided this information, with the exception of the Northern Cape, Limpopo and the North West. The latter did not provide any information at all. A summary of the information provided is included in the table below:

Schools in each province with section 21 status:

<i>Province</i>	<i>No. of schools</i>	<i>Section 20</i>	<i>Section 21</i>
EC	5547	141	5406
FS	1428	591	941
GP	2058	162	1896
KZN	5986	285	5701
LP	4056	Not Provided	Not Provided
MP	1791	0	1791
NC	Not Provided	Not Provided	Not Provided
NW	Not Provided	Not Provided	Not Provided
WC	1458	356	1102

7.2 The process employed in obtaining textbooks for learners in the past two years

7.2.1 From the submissions received, it is evident that three main systems of procurement of textbooks exist: a centralised procurement system, a school-based procurement system, and a hybrid procurement system.

- a. A province may elect to centralise the procurement process; meaning that the PED procures textbooks for all schools; even those who may be considered “self-governing” in terms of section 21(c) of the South African Schools Act (as set out above under “Legal Framework”).
- b. The provinces that use a school-based procurement model are Mpumalanga, Northern Cape, Free State, Western Cape and Limpopo. In this instance, while schools are afforded the opportunity to select which books they would like to order and the Department transfers funds directly to the service provider.
- c. A province may elect to utilise a hybrid procurement system. In this instance, funds are transferred to the section 21 or self-governing schools, which then procure books themselves. Gauteng, the Eastern Cape and KwaZulu-Natal have adopted this approach. It is important to note that the Eastern Cape and KwaZulu-Natal PEDs gave self-governing schools the option to opt into the centralised procurement model.

7.2.2 Some provinces elect to outsource the facilitation of their chosen procurement process to a 3rd party, known as a management agent. This kind of service provider was noted in the submissions of the Eastern Cape, Northern Cape, Mpumalanga, KwaZulu-Natal and Limpopo.

7.2.3 It is important to note that the competencies for the delivery of workbooks and the delivery of textbooks differ. The former is a competency of the DBE, while the latter is dealt with by PEDs. This means that the provinces do not take responsibility for the procurement and delivery of workbooks to schools.

7.2.4 Warehouses/Depots are used to store textbooks in the interim period between procurement and delivery. This is clearly observable in the Free State, Eastern Cape, Gauteng, Limpopo, Mpumalanga and the Northern Cape. This may be managed by a service provider, or administered by a department official. From the information provided, it is not clear exactly when books were delivered directly from publishers and when they were housed elsewhere before delivery.

7.3 The success of the procurement and delivery process

Whilst some challenges were noted, as detailed below, PEDs and, where applicable, the DBE, suggested to the Commission that the processes in place were successful. It was their contention that adequate provisions were made for procurement of materials and that the procedures followed during the distribution cycle were sufficiently thorough. Some provinces reported more significant challenges than others. A more detailed account is provided in 7.5 below.

7.4 Delivery of textbooks at the end of the 2012 school year and at February 2013

The following represents the data furnished to the Commission by the PEDs and the DBE:

Province	% of Books Delivered as at Dec 2012	% of Books Delivered at Feb 2013
Eastern Cape	95%	*
Free State	100%	98%

Gauteng	99% ³¹	100%
KwaZulu Natal	100.0%	99.46 %
Limpopo	99%	99.7%
Mpumalanga	100%	100%
Northern Cape	*	98%
North West	N/A	N/A
Western Cape	100%	100%

*Data either not provided, or not intelligible.³²

7.5 Major challenges encountered by schools in obtaining textbooks

7.5.1 Certain challenges were observable in a number of provinces, most notably the following:

- a. Not all schools managed to make accurate projections of the number of learners that would enrol in each grade in the following year. In some instances the problem lies with the school's capacity. However, in the light of last minute enrolments and changes of subject choices, some variance appears to be part of what the system needs to cope with but is currently not capable of. This appears to have been a challenge across the country.
- b. Schools placed their orders late, or with errors or did not place orders at all.
- c. Schools (in particular school principals) did not ensure that the materials that were delivered were correct. The dependence on a system whereby receipt

³¹ This province made a distinction between section 21 schools (approximately 98%) and non-section 21 schools (100%).

³² The Commission is still in the process of determining whether a follow-up is required.

of an order is signed off at the time of delivery appears to be unrealistic in terms of the detail. In other words, the principal can confirm and sign that a quantity of books was received. However, he/she would need to go through a much more thorough review in order to confirm that all of the books ordered for all of the grades and subject choices were properly delivered.

- d. Schools did not adhere to budgetary allocation or directives issued to them. As a result, books were not delivered.
- e. Schools ordered books that were not in the approved catalogue. This was noted in particular in the Northern Cape and Limpopo. This may have occurred as the choices on the catalogue have been reduced over time in order to enable the supply system to be improved.
- f. The CAPS Catalogue was released late in 2011, meaning the process of LTSM distribution has to be delayed as well
- g. Certain titles were unavailable when schools were required to order.
- h. Unforeseen circumstances such as heavy rains and service delivery strikes were cited as factors impeding the process of delivery.
- i. The DBE indicated that the payment of salaries usurps a considerable portion of the Department's budget; even sometimes money allocated to the provision of LTSM.
- j. As indicated above, the DBE is responsible for the procurement and delivery of workbooks to schools. Provinces reported delays in delivery of these workbooks. Given that the DBE is responsible for performing this function, challenges to monitoring delivery were also reported by PEDs.

- k. There has been a significant impact on the textbook distribution system for small publishers (particularly in relation to reduced options provided by larger suppliers) and local distributors (particularly in relation to central purchasing and distribution).

7.5.2 A lack of credibility and authenticity of the data around books presented challenges to the monitoring and tracking processes. There were also challenges that seemed endemic to particular provinces:

- a. The Eastern Cape indicated that they had particular difficulties in facilitating compliance on the part of section 21 schools. The schools refused to allow the Department to procure books centrally. There were also problems with section 21 schools failing to pay publishers, both in the current year and in previous years. This led to the late delivery of orders and a refusal by service providers to grant further credit to schools.
- b. In Limpopo, in 2012, the issues that arose were largely budget-related. The problem became apparent when the CAPS process began in 2011. The representatives for this province noted that there were also problems surrounding the delivery process that was in place until 2012. This involved books being transported from a central to a district warehouse. This process was difficult to track and led to the incident where textbooks were dumped. In addition, new schools or schools which had changed their medium of instruction were not all captured on the existing LTSM distribution database, which also posed a challenge to both procurement and delivery processes. The Limpopo PED acknowledged that a number of their challenges also arose from a lack of verifiable data. It was noted in the oral submissions that teachers have adopted a “work to rule” mode of operation, which the PED suggested was obstructive to efforts aimed at improving efficiency.³³

³³ When asked to qualify the meaning and effect of this “work to rule” process, the DBE seemed uncertain of what it entailed. It was indicated to the Commission that the effect of its implementation, however, has been obstructive in nature.

- c. In KwaZulu-Natal, a number of section 21 schools also refused to comply with the directives of the PED. The Federation of School Governing Bodies (FEDSAS) furnished the letter of demand to the Department claiming that the relevant 2012 Circular was unlawful. The Department indicated that it had responded to FEDSAS, but that the situation had taken some time to resolve and had resulted in delays.

7.6 Steps taken by the DBE and PEDs to resolve challenges and deliver LTSM timeously

7.6.1 Certain steps taken were common to a number of a number of provinces. These appeared to have been taken in response to an injunction from national government to deal with the crisis of the time, and were not conveyed as steps that implied on-going changes or additions, which are constantly changing:

- a. A “mopping-up” process was undertaken by all provinces to ensure that shortages or other deficits were remedied and that books are delivered to schools that did not receive them at the scheduled time.
- b. As indicated above, electronic systems were implemented to increase efficiency of the process. This was done in the Western Cape, the Northern Cape, Mpumalanga and Gauteng. Others indicated that they were investigating the implementation of such a system.
- c. Follow-ups were made where schools had defaulted in performing duties associated with placement of orders or where shortages had been reported.
- d. Call Centres were established to report shortages, particularly in the Free State, Limpopo and the Eastern Cape.

- e. Requests were made or directives were given to section 21 schools that they allow government to centrally procure books (as illustrated in Question 2 above).

7.6.2 Other, additional steps, were taken in individual provinces in order to respond to the immediate challenges that had become apparent:

- a. The Gauteng PED made an additional R100 million available when it became apparent in 2011 that the budgeted amount was not sufficient to cover the costs of the CAPS textbooks.
- b. The Limpopo PED elected to change the process of procurement. A decision was taken to appoint one person to examine and administer the entire distribution chain and to implement a textbooks tracking system.
- c. The Eastern Cape PED unilaterally converted defaulting self-governing schools to the centralised procurement model indicating that they believed that otherwise learners would be prejudiced when schools did not comply. It should, however, be noted that, while this may have been the explanation of the province, the results of centralisation may not have brought about improvements for learners
- d. In the Northern Cape and the Eastern Cape, the submissions indicated that, where schools ordered books that were not in the catalogue, the PEDs unilaterally made corrections to these orders so that the schools would be supplied with the correct books.
- e. The Mpumalanga PED implemented a system where principals were held accountable for failing to order books timeously or correctly. When

questioned about these mechanisms, it was indicated that the disciplinary process employed entailed the principal being placed on notice- that further action would be taken should the offence be repeated within 6 months.

7.7 Textbook delivery in each province, as reported by Provincial Departments

7.7.1 It was stated to the Commission that, in order to standardise provincial textbook functions and to provide oversight and support to provinces, the DBE developed and disseminated the Basic Education Sector Management Plan for the Procurement and Delivery of Textbooks. Part of The National Department's oversight role requires the provinces to submit provincial plans that are aligned to the National Plan and for them to report against such plans to ensure timeous delivery of textbooks. The plans are developed annually, though it was clear from the evidence provided that not all provinces adhered to this standard. The following observable trends exist among the provinces:

- a. Some PEDs make use of different electronic systems to record and to monitor the status of delivery of primary learning materials (the Western Cape, Mpumalanga, the Northern Cape and Gauteng).
- b. PEDs receive delivery status reports on a regular basis.
- c. Officials from PEDs visit schools and report on delivery of textbooks and workbooks.
- d. There is a requirement that delivery notes/delivery slips are signed on delivery and then sent to the PED. Such notes are able to confirm that a delivery was made but, in practice, do not currently confirm that all the correct books were or were not received.
- e. The Free State, Limpopo and Eastern Cape provinces have established call centres for the reporting of shortages or non-delivery.

- f. Mpumalanga, the Northern Cape and KwaZulu-Natal have established LTSM task teams.
- g. Certain provinces make use of a particular service provider known as a management agent to facilitate the delivery of LTSM to schools.
- h. Gauteng and KwaZulu-Natal conduct surveys to establish whether schools have received textbooks and workbooks. The DBE does sample surveys at national level.

7.8 Information provided with specific reference to LTSM for children with special needs

7.8.1. Information regarding arrangements that provinces had made for learners with special needs reflected the following:

- a. All PEDs and the DBE noted that there were shortages across the country for learners who required either additional forms of LTSM or who required that textbooks and workbooks be placed in a different format. Where books were available, it was consistently reported that the range of appropriate materials was very narrow.
- b. The DBE indicated that it had introduced a comprehensive programme to address the quality of education and support for learners with visual impairment in both ordinary and special schools. It does not appear that this has been implemented in full.
- c. The DBE indicated that it has delivered prescribed works and selected mathematics textbooks for grades 10-12 in braille and large print to all 22

special schools for visually impaired children over the past 18 months. It indicated further that a process of adapting workbooks into braille and large text formats had begun. In addition, it has initiated a process whereby representatives from schools for the visually impaired selected books from the National LTSM Catalogue to be made into master-copies for both braille and large text format.

- d. Limited specific remedial arrangements to deal with the LTSM and other needs of visually impaired children and children with other disabilities who have been mainstreamed into ordinary schools were reported on. It did emerge that such children and their schools face a number of challenges including having appropriate LTSM materials.
- e. The DBE indicates further that it has engaged with the Department of Arts and Culture and the Department of Women, Children and People with Disabilities in order to address capacity problems experienced in the Braille printing sector.
- f. Several provinces accord special schools section 21 status so that they are able to make orders specific to their particular needs.

7.8.2 PEDs reported having taken particular steps to ensure that learners with special needs could benefit from LTSM:

- a. The Gauteng PBE provides assistive devices (including software, remedial programmes and other resource packages) to Full Service (ordinary) Schools. Special schools also receive additional funding (known as “top slicing”) in order to ensure that learners can derive benefit from going to school.

- b. The Western Cape PED has provided e-braille portable computers to 2 special schools for the blind.
- c. In instances where materials have not been delivered, teachers at schools are creating the materials or adapting materials themselves, particularly in the Northern Cape.

7.9 Additional relevant information

During the course of the proceedings, the panellists posed a number of general questions arising from submissions made. One of the key issues raised by the panel was the intellectual property rights arrangements made in respect of electronic procurement systems. This related to the fact that certain PEDs had appointed management agents, which had implemented such a system. The panel inquired about why the use of an electronic procurement system was not employed in all provinces.

8. Summary of Submissions Provided by Interested Parties

8.1 Following the release of the interim report and the period for public comment, the following parties made submissions to the panel:

8.1.1 EduSolutions: a private company and a service provider to 4 of the provinces, *inter alia* the procurement and delivery processes. They provide an end-to-end management service to PEDs.

8.1.2 The South African Teacher's Union (SAOU): an education trade union with membership in public schools nationwide.

8.1.3 SECTION 27: a public interest law centre that seeks to influence, develop and use the law to protect, promote and advance human rights. One of their priority areas is the right to basic education in the Limpopo province. Their involvement in the LTSM crisis in Limpopo predates that of the Commission. Notably, they were the first applicant in the three 2012 court applications referred to above.

8.2 Although the third parties who made submissions are considerably diverse in nature, there were common trends in each of their submissions, notably the need for improvement of monitoring and accountability in the procurement and delivery process. Each indicated that government relies on inaccurate data and that this was reflected in their submissions to the panel, and the third parties claimed that the situation illustrated by these departments and reflected in the interim report did not reflect the situation on the ground. Each stressed the importance of greater transparency at each stage in the process and accurate record-keeping. They highlighted the need for better planning.

8.3 The following is a brief summary of the information provided by those who responded to the Commission's call for comments.

8.4 The following issues were brought up in all 3 submissions

8.4.1 Obstacles in reporting:

8.4.1.1 There were several obstacles outlined in the submissions regarding reporting of textbook shortages. These range from intimidation, non-payment and under-payment and the absence of norms and standards, to poor communication infrastructure. In addition, duty-bearers who are tasked with providing LTSM to schools have no incentive to report accurately, because they are aware of:

- a. The absence of a systemic and rigorous process for the monitoring and audit of LTSM provision; and
- b. The lack of verifiable data that could either confirm or contradict the picture provided through self-reporting.

8.4.2 Concerns regarding the accuracy of data:

8.4.2.1 There was concern over the accuracy of the data provided in relation to the provision of textbooks. For example, it emerged in the course of the 2012 Limpopo textbooks investigation that the DBE and the PDBE did not have accurate data on the number of schools and learners in Limpopo. Inaccurate statistics affect many aspects of the delivery of quality basic education, including LTSM. It is impossible to accurately and effectively deliver LTSM if it is not known how many schools and learners require these resources.

8.4.2.2 It was thus recommended by stakeholders that the SAHRC request information on the monitoring systems used by the DBE and the PEDs, to enable a full assessment of their accuracy, quality and efficacy; and that the figures provided should be audited on a sample basis so as to ensure validity and the accuracy of the LTSM Performance report. Furthermore, that an independent verification of textbook delivery going forward would be crucial to ensuring that this core component of basic education is realised in full and on time.

8.4.3 Challenges to the procurement of textbooks:

8.4.3.1 It was posited that there was sufficient funding available for the procurement of LTSM for the 2012 academic year before and during the national intervention in the Limpopo province. However, other factors impacted negatively on the timely procurement of LTSM. This

was perhaps because of a lack of insight into the complexities of accessing rural areas.

8.4.3.2 Other notable challenges included the fact that the change in syllabus had a significant negative impact on small and emerging publishers, as only a limited group of providers were selected as suppliers of textbooks. Some publishers resorted to giving schools discounts as incentives for procuring from them. PEDs were also not given guidelines on how to implement discounts and channel the funds into distribution. This led to provinces running out of money.

8.4.3.3 Furthermore, stakeholders cited the tendency on the part of PEDs to disregard legislation and a lack of an ethos of accountability as significant barriers to efficient provision of LTSM. They contended that this was coupled with lack of recourse, response and action when corruption or irregularities were reported. Moreover, poor financial planning and management in the part of the PEDs was attributed to lack of competence, skills and capacity in conjunction with a general lack of monitoring or oversight by provincial treasuries.

8.5 The following issues were specific to the individual submissions:

8.5.1 Submissions of EduSolutions:

8.5.1.1 EduSolutions develops systems providing for an end-to-end service to four provinces, including the electronic system used by three of the four provinces. This system was developed and then offered to PEDs. Departments have the option to purchase the system outright (which they have not elected to do) as EduSolutions indicated that PEDs did not spend money on the development of the system.

- 8.5.1.2 It is not possible to say whether the system can effectively interface with any national system that the DBE may decide to implement. Thus far, payments made mainly constitute user-fees which have been paid in order to make use of this system. EduSolutions, as part of their “end to end” management process, also charges fees for management, warehousing and distribution.
- 8.5.1.3 The elements of the management process are to collate data, clean it and package it. Government can access any of this data at any time should it feel the need to do so. However, it appears that the data itself remains the property of EduSolutions.
- 8.5.1.4 One of the points highlighted by EduSolutions was the lack of monitoring mechanisms, particularly in self-governing schools. There is a need nationally for a credible, empirical monitoring and reporting system for LTSM. The system will have to be designed by the DBE, with provinces under obligation to report on the same performance measures, at the same time annually. EduSolutions also noted challenges in extending the system into rural areas.
- 8.5.1.5 EduSolutions recommended the following:
- a. For purposes of completing the work that was started by the SAHRC panel, it was recommended that all parties involved in the entire LTSM procurement-distribution value chain be approached to make submissions and provide responses to a neutrally developed set of questions aimed at establishing the most efficient model and method of procurement and delivery in the province, their value add in the process, identification of the bottle-necks and challenges as well as recommendations. The

submissions process could be followed by an LTSM Provision Indaba at which the different models are presented and interrogated.

- b. There are a number of challenges associated with the move towards central procurement that is currently being mooted by the DBE. These are explored elsewhere in this report.
- c. Further analysis is required to understand the procurement models that are used by different PEDs to determine the capacities required as well as the cost implications of these requirements – this analysis has not been done.
- d. It is recommended that steps taken to address challenges encountered by Provinces, be packaged in a manner that shows a relationship between the corrective actions that were taken in response to a particularly distinct challenge. This will ensure that the SAHRC gets useful comments to the draft report.

8.5.2 Submissions of The SAOU

8.5.2.1 The SAOU highlighted the principal steps that comprise the LTSM procurement and distribution process. They highlighted the core challenges encountered by the current system. Examples included the following:

- a. In some PEDs e.g. Limpopo and Eastern Cape, schools are sometimes only provided with catalogues on the day before books have to be ordered, or on the day itself.

- b. Education authorities sometimes place documentation and notices on relevant websites, but not all schools have access to internet facilities in order to receive this information.

8.5.2.2 The SAOU submitted that the LTSM procurement and distribution process relies on a combination of provincial and national initiatives. A defective procurement and distribution process impacts on learner performance as learners are unable to start work at the beginning of the year/term. Moreover, it stated that non-delivery/ late delivery of materials is problematic as there is limited time available to prepare for classes. This impacts negatively on learner assessment processes as it delays information transfer needed from textbooks.

8.5.2.3 The following allegations were made by the SAOU:

- a. Agricultural Technology and Agricultural Management Practices have yet not received books to date for Grade 10 and 11 (this was as of the date of hearing);
- b. DBE agreed to providing workbooks where textbooks could not be delivered;
- c. Workbooks for Grade 10 have not been adequately distributed; and No LTSM has been provided for Grade 11 in the aforementioned subjects.

8.5.2.4 Accountability within the system is key to the successful delivery of LTSM. Therefore the principal should be held accountable as well as district officials, PEDs and DBE officials. Accountability should be clearly defined and a suitable system put in place to measure human error.

8.5.2.5 The SAOU made the following recommendations:

- a. The SAOU has received various complaints that shortages were not filled and, even though they were reported to the monitoring committee, complaints were not addressed. It, therefore, recommended that every complaint be followed up individually;
- b. When a complaint is received, written feedback should be provided along with timelines for implementation to rectify the problem;
- c. It is unacceptable that the Limpopo PED unilaterally limits the choice of textbooks to 3 out of the 8 considered acceptable. The consequence is that learners whose needs are not accommodated within the enforced selection have to buy their own textbooks at the expense of the school. This discriminates against language minorities and runs counter to the Minister's directive that every child should have a textbook voluntarily chosen from the wide range provided. It is, therefore, recommended that the entire range of catalogued books be made available;
- d. Deliveries not made in 2012 were not topped up in 2013. Report back from schools indicated that schools had to accommodate this process at their own expense. This places an unnecessary financial and administrative burden on individual schools, and requires the urgent attention of the PED; and
- e. The SAOU submitted that this enquiry should not be limited to the current LTSM catalogue (textbooks and workbooks) but should be extended to include consumables needed for subjects with a

practical assessment as well as licences needed for computer related subjects (i.e. Computer Application Technology, Information Technology and Turbo CAD).

8.5.3 Submissions of SECTION 27

8.5.3.1 Section 27 asserted that the SAHRC's role in intervention must build on the findings and recommendations of the verification team led by Prof. Mary Metcalfe and the Presidential Task Team appointed to investigate textbook delivery in Limpopo. Aspects of this report are set out above. It was submitted that the SAHRC should have questioned the DBE and the PED as to what steps have been taken to implement the recommendations made by the Task Team in the ten months since they were made.

8.5.3.2 SECTION 27 highlighted certain findings outlined in the Metcalfe report. These included:

- a. Causes of non-delivery and delays in delivery of LTSM were:
 - Poor planning and management;
 - Failure to place orders timeously; and
 - Negligent abdication by the PED of its responsibilities regarding the management and maintenance of the procurement process resulting in a failure to prioritise the procurement of textbooks.
- b. The Director-General of the DBE and the string of successive administrators failed to act decisively to alleviate the problem.
- c. A recommendation that the Public Service Commission investigate the role of:
 - The Director-General of the DBE;

- The Head of Department at the DBE and the Chief Financial Officer of the Limpopo PED; and
- The provincial head of finance.

8.5.3.3 SECTION 27 submitted that any investigation into textbook procurement and delivery must include an investigation into the relationships between EduSolutions, the DBE and the PEDs and the impact that this may have had on service delivery. SECTION 27 indicated that the SAHRC would be the appropriate institution to manage the process and should be tasked with monitoring progress in textbook delivery going forward, until systems are put in place to ensure reliable and accurate monitoring and reporting by the PEDs themselves. In addition, SECTION 27 agreed to provide further particulars of the independent verification measures undertaken. These were subsequently received taken into consideration. They are reflected in the recommendations.

8.5.3.4 Since considerations surrounding the procurement and delivery of Braille textbooks and workbooks are unique, Section 27 recommended that SAHRC should undertake a separate investigation into this issue.

9. Analysis of Evidence

9.1 INTRODUCTION

9.1.1 Most of the observations of this panel were not intended to be limited to challenges inherently related to the immediate crisis surrounding primary learning materials, but rather to identify systemic issues that relate to the procurement and distribution of LTSM. Issues of mismanagement, poor communication, a lack of consensus between stakeholders, historic and perpetuated unfair discrimination

against learners with disabilities and other concerns are not unique to the availability of appropriate learning materials, but rather appear to pertain to the sector in general.

9.1.2 The panel has confined itself to making detailed recommendations only in respect of issues falling within the Terms of Reference, and only as they relate directly to procurement and delivery of primary learning materials to schools. Where difficulties around the availability of education in a broader sense were brought to the fore by the proceedings, these were not directly addressed as they were not within the scope of the present investigation. Regardless, the Commission hopes that duty-bearers will take cognisance of these macro-level concerns as well, and find effective means of integrating them into processes required to facilitate an overhaul of the problematic aspects of the education system.

9.1.3 This section serves to set out the most notable challenges observed by the panel in its receipt of both oral and written evidence.

9.2 THE NEED FOR AN INDEPENDENT NATIONAL AUDIT OF THE LTSM PROCUREMENT AND DELIVERY PROCESS

9.2.1 In the course of its investigation, the Commission has noted the presence of several factors undermining the transparency and accountability of the procurement and delivery processes. These include inadequate reporting and monitoring mechanisms including around the following:

- a. In instances where shortages had come to the attention of the Departments, it was not always clear how this kind of monitoring was done, whether all the shortages were recorded, or how all of them were addressed;
- b. Difficulty in tracking the spending patterns of PEDs , as well as schools;
- c. Apparent uncertainty as to how many schools there are in certain provinces, what their medium of instruction is and how many learners there are;

- d. Follow-up of allegations of corruption and mismanagement of processes by both provincial government and third parties;
- e. Expenditure by provinces on IT systems that cannot necessarily interface with a national monitoring system;
- f. Allegations of non-payment of norms and standards funds;
- g. Inadequate datasets, statistics and record-keeping;
- h. Inadequate mechanisms for monitoring the procurement and delivery processes undertaken by section 21 schools;
- i. In instances where shortages had come to the attention of the PEDs, it was not always clear how this kind of monitoring was done, whether all the shortages were recorded, or how all of them were addressed.

9.2.2 There are massive disparities between provinces in terms of the level of sophistication of the process, resulting in varied levels of efficiency.

9.2.3 Certain PEDs seem better able than others to manage the funding apportioned to them.

9.2.4 There appears to be a vast disparity between what government has reported to have been delivered, and reports received from stakeholders operating on the ground.

9.2.5 There is a lack of clarity as to whether all schools received "top-ups" as required.

9.2.6 There is a lack of clarity as to whether deficits emanating from the 2012 crisis have all been rectified throughout the country otherwise the consequences have an on-going knock-on, negative effect.

9.2.7 The DBE has indicated that one of the biggest challenges by all 9 provinces in the procurement and delivery of LTSM relates to the budget. The amount allocated for the payment of salaries consumes a significant portion of the

budget, sometimes depleting that which was allocated for LTSM. This is particularly evident in connection with the payment of temporary teachers. This is clearly a complex aspect of this process that needs to be critically analysed.

- 9.2.8 Although Government Departments have claimed that their rates of delivery are extremely high, upon analysis, this does not appear to correspond with the rate of receipt of primary learning materials. In part, this is because schools order on the basis of their enrolment rates of the year preceding the year of delivery of the relevant materials. Therefore, if the number of children in the school changes upon the commencement of the year or as a result of subject changes including those arising from results of the previous year, there will automatically be deficits to address.

9.3 THE NEED FOR A SEPARATE INVESTIGATION INTO THE SITUATION OF CHILDREN WITH DISABILITIES

- 9.3.1 The Commission notes with great concern the failure in general of both the DBE and PEDs to respect, protect and fulfil the rights of learners with disabilities and believes that the challenges of mainstreaming have not been properly incorporated. In terms of LTSM, notable challenges include:
- a. Significant challenges to blind or partially-sighted learners in accessing primary learning materials;
 - b. No apparent coherent plan outlining the process for converting learning materials into Braille; and
 - c. Difficulty in obtaining materials in a format that can be converted to Braille or to other formats which blind learners can utilise.

9.3.2 It is the observation of the panel that these difficulties emanate from a broad range of systemic issues. These include:

- a. Lack of data sets and statistics which speak directly to the learning needs of children with disabilities;
- b. Lack of adequate sensitisation of educators and indeed government officials as to what these children require in order to learn in an enabling environment;
- c. Insufficient attention paid to children with disabilities living in rural and impoverished areas; and
- d. Lack of co-ordination within government as to how these challenges should be addressed.

9.3.3 Regarding challenges outlined above, it is clear that procurement and delivery of learning materials for children with special needs appears to be severely lacking in strategic direction. There does not appear to be sufficient guidance from the DBE, which in turn has given rise to a somewhat haphazard approach by the PEDs.

9.3.4 While there is a clear need to address this situation, it is submitted that this hearing did not allow for proper examination of these issues. The kind of reform required to address the systemic problems which lead to service delivery challenges are simply too broad for this investigation to adequately explore. It is the view of the panel that a separate investigation into how such learners are situated and how to ameliorate the inherent discrimination to which they are subjected must necessarily be undertaken.

9.4 THE NEED FOR THE DBE TO STREAMLINE PROCUREMENT AND DELIVERY OF WORKBOOKS IN THE RESPECTIVE PROVINCES (PARTICULARLY IN RURAL AREAS)

9.4.1 Workbooks have been cited in the DBE's Sector Plan as a vital part of the CAPS syllabus. The Commission believes that the addition of workbooks to

the LTSM “package” provided to schools is a positive change which will ultimately benefit both learners and educators alike. That said, it does not appear that the machinery of national government lends itself particularly well to the effective and timeous distribution of these materials- particularly in rural areas. If the DBE is to orchestrate this process, they should ensure that this is done with the co-operation and assistance of organs of state at provincial and district level. From the information received by the panel, it is not always clear how the DBE approaches the delivery of workbooks to rural schools.

9.5 THE NEED FOR CONSENSUS BETWEEN SCHOOLS AND GOVERNMENT DEPARTMENTS IN ORDER TO PREVENT DELAYS

9.5.1 Certain provinces have elected to adopt a centralised model of procurement and delivery, even in respect of self-governing Section 21 schools. This means that although schools are given the opportunity to make selections, requisite funds are not disbursed to them. In some cases, as indicated above, notwithstanding the indication by a school of its preference for own procurement, the relevant PEDs facilitate procurement and delivery of textbooks. This is generally communicated by way of a circular. In certain provinces, schools and their governing bodies have agreed to this. In other provinces, in particular the Eastern Cape and KwaZulu-Natal, schools have objected to conceding these competencies to the PED. This conflict has led to delays in the procurement process. It is essential that this impasse is resolved and that a framework is developed to avoid similar disagreements in future.

9.6 THE URGENT NEED TO STRENGTHEN COMMUNICATION INFRASTRUCTURE

9.6.1 In the Metcalfe Report, outlined above, emphasis was placed on the link between poor communication mechanisms and deficits in service delivery. It is difficult to see how schools without email access, telephones and fax machines can be expected to receive and comply with communications from PEDs and district offices. While the ambit of this investigation is confined to the procurement and delivery processes, it is submitted that there is an inextricable link between the capacity of schools to communicate and their ability to discharge their obligations regarding ordering, delivery, verification and reporting of shortages. Indeed, in the submissions of the provinces, communication with rural schools seemed at best fragmented and disparate.

9.6.2 The panel has noted that the officials making submissions at the hearings, generally speaking, could not provide a cohesive synopsis of how they communicated with stakeholders or if communications reached all stakeholders. Given the impact that this can have on the facilitation of LTSM distribution processes, and the frustration of processes that can come about in their absence, it is important that clear and coherent channels are opened to facilitate dialogue. This refers both to physical channels of communication, such as the improvement of communication infrastructure in schools, and the necessary fostering of positive and productive relations between stakeholders (such as convening of regular meetings).

9.7 THE NEED TO CREATE A NATIONAL LTSM ELECTRONIC SYSTEM CAPABLE OF INTERFACING WITH EXISTING PROVINCIAL SYSTEMS

9.7.1 The provinces which make use of electronic systems seem to have been able to avoid many of the challenges associated with the procurement and delivery process. The benefits of such a process are clear- the margin of error is reduced, data becomes more accessible, verification of orders against delivery becomes more efficient. In the course of the hearing, representatives of the DBE indicated that the development of a national system would be beneficial. The DBE has claimed that an electronic system

exists for other aspects of the education system, but that most provinces were not making use of it.

9.8 THE NON-COMPLIANCE OF NORTH WEST PROVINCE

9.8.1 As indicated above, the North West PED has not co-operated with this investigation. Although the Commission wishes to obtain the requisite information from this province, it was not in a position to indefinitely leave the proceedings open. The decision to convene a hearing centred largely on the need to expeditiously obtain the information. The failure of the North West PED to appear before the panel or to timeously furnish the Commission with the information required has meant that these findings have been made without consideration of the situation of children in this province.

9.8.2 The North West PED has demonstrated a clear lack of political will to co-operate with the Commission. This is an unacceptable failure to co-operate and amounts to a breach of the MEC's constitutionally entrenched mandate. The Commission will continue to pursue this matter with the relevant authorities. At the time of writing, no further action has been taken relating to the lodging of the complaint with the SAPS.

9.9 THE NEED FOR EFFECTIVE DISCIPLINARY MECHANISMS FOR DEFAULTING, NEGLIGENT SCHOOLS AND PRINCIPALS

9.9.1 Multiple claims have been made by PEDs that school principals fail to order books timeously, or not at all. Similarly, claims have been made that human error sometimes leads to incorrect orders and deliveries. It seems that provinces do not have adequate mechanisms in place to hold these officials accountable. In the Mpumalanga Province, for instance, it was indicated that principals are disciplined for not complying with instructions and/or deadlines regarding the ordering of books, but the disciplinary mechanisms in place did not seem to adequately address the problem. In instances where schools

default and do not place orders, the learners attending these schools do not receive books. This has the effect that learners (who largely attend a particular school out of geographic or socio-economic necessity) are prejudiced because of the actions of the institution they attend.

- 9.9.2 In general, the Commission has noted that the limitations in the corrective measures currently being followed when principals do not order books timeously, or wilfully fail to report shortages or incorrect deliveries, the Commission recommends that each of the nine provinces begin in earnest holding such principals to account. This process should involve consultation and collaboration with the South African Council of Educators ("SACE").

9.10 THE NEED TO ENSURE EQUALITY REGARDING SELECTION OF BOOKS

- 9.10.1 A competency of the DBE is to develop a catalogue of books from which schools can choose. Each subject has a maximum of 8 books. The Limpopo PED has unilaterally reduced the selection down to 3 books per subject. This is due to budgetary constraints. The PED has indicated that this decision was taken by a committee of experts. The DBE indicated that other provinces, such as Gauteng and the Western Cape, also reduced the number of books from which schools can choose by evaluating which are the most popular.
- 9.10.2 Choice of materials is not a question falling directly within the purview of this investigation. It is nevertheless an important question and one which could greatly influence the autonomy with which teachers carry out their work and also the quality of education with which children are provided. It is the view of the Commission that it is necessary to examine this issue further through a future process to:
- a. Verify how books are selected from the national catalogue in each province;
 - b. The range of choices offered to schools in each province; and
 - c. Independent assessment as to the impact of these directives.

9.11 THE NEED TO ENSURE THAT THE DISPARITIES OF 2012 AND 2013 DO NOT AFFECT FUTURE LEARNERS IN THESE GRADES

9.11.1 As indicated in the introductory section of this report, the CAPS process entailed a “phasing in” of new LTSM, with certain grades receiving the new materials in 2012 and others in 2013. What was not made clear from the submissions of the respondents was whether any deliveries not made to schools in 2012 were subsequently made in 2013. This is an important point of clarity, because it is not the same books that have been delivered over the last two years. If a school, for instance, did not receive Grade 10 books in 2012, it remains unclear as to whether such grades were ever furnished with textbooks.

9.12 THE NEED TO REGULATE AND MONITOR THE ACTIONS OF PRIVATE SERVICE PROVIDERS

9.12.1 As illustrated above, numerous provinces outsourced the LTSM procurement and delivery process to a service provider or management agent. Although the panel was able to hear from EduSolutions, the service provider awarded the tender to perform this function in four of the provinces, not much light was shed on how Government monitors the performance of these institutions, or how they are held accountable when books are not timeously delivered. There is a demonstrable need to ensure that these functionaries conduct their activities in a transparent manner and that clear mechanisms exist to hold them accountable. Regardless of whether Government has elected to deliver a service by way of an independent agent, the responsibility to provide the service remains vested with the DBE and the PEDs.

9.12.2 Given that many of the commitments of PEDs are outsourced, the panel is not in a position to stipulate that these issues are confined only to the LTSM procurement and delivery processes. It was also not practicable, nor within the mandate of the panel, to investigate other avenues where the use of third-party contractors could be the cause of systemic problems within the education system. However, the Commission wishes to emphasise the pressing need to closely

monitor the management of public funds and to ensure oversight of the actions of those contracted to perform functions on behalf of the State.

10 Findings

- 10.1 The Commission makes these findings **without prejudice** to the entitlement of any party, including the Commission, to institute legal proceedings against the respondents on these or a similar set of facts.
- 10.2 South Africa's legal framework unequivocally deems education to be a developmental priority and an unqualified socio-economic entitlement of every person, in particular children. A firmly entrenched prerequisite for the fulfilment of this constitutional and legislative promise is that learners be afforded the requisite tools to effect realisation of this right. This has been confirmed by the courts in, *inter alia*, *Section 27 and 2 Others v Minister of Education and Another*, and expressly articulated by the DBE in its *"Action Plan to 2014: Towards the Realisation of Schooling 2025"* as well as in a range of other policy documents. There has been no contestation from any party who has given evidence before the panel, that provision of primary learning materials to schools is a legitimate and immediately realisable entitlement.
- 10.3 Accordingly, the Commission finds that any instance where schools have not received primary learning materials timeously, or have received the incorrect materials amounts to a violation of the right to basic education set forth in Section 29(1)(a) of the Constitution. Given the widely varied motivations behind lapses in service delivery across the country, the source of this violation is not one of singularity, and may emanate from the DBE, a PED, a particular government official, the principal of a school, or others as the case may be. This is delineated under "Evaluations and Recommendations".
- 10.4 Failure to provide children with LTSM predominantly affects rural or impoverished children. The right to basic education extends to everyone and a system intended

to encapsulate all public schools in a country or a province should do just that- even if the child happens to live in a remote or impoverished area. The effect of a failure of government to adequately provide resources for such schools is plainly retrogressive. It is therefore the finding of the Commission that, to the extent that a nexus can be drawn between failure to deliver primary learning materials to schools timeously and correctly and how or where a child is situated, constitutes an affront to the equality provision of the Constitution.

10.5 The focus of this investigation has predominantly been on children affected by failure to deliver primary learning materials to schools but they are not the only group affected by this state of affairs.

10.6 In terms of the rights enshrined in Section 28(2) of the Constitution, it seems without question that if a child's right to basic education and equality are violated that it cannot be said to be in their best interests. It would appear however, that many of the disputes surrounding the procurement and delivery of primary learning materials have cast this consideration aside; focusing purely on the question of service delivery. It is submitted that given the inherent vulnerability of children in South Africa, this is the incorrect approach to take. Had the best interests of the children truly been taken into account, duty-bearers would have acted with a far greater sense of urgency and greater measure of care in ensuring that this process was properly planned, properly costed and properly executed. In view of this, it is our finding that the rights of children under Section 28(2) of the Constitution have been violated.

11 Recommendations

11.1 In terms of the Preamble to the Human Rights Commission Act, No. 54 of 1994, the Commission is entitled to:

"make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the

promotion of fundamental rights within the framework of the law and the Constitution."

Accordingly, and in light of all available evidence, the Commission tenders the following recommendations:

11.2 In an attempt to understand the full spectrum of the irregularities set out in 10.1.3, The Commission has taken note of the propositions of Section 27, and the content of the Metcalfe Report surrounding the need to appoint an independent audit team. An audit team would be used to determine issues such as:

11.2.1 Whether schools receive their books for the 2014 school year;

11.2.2 Whether delivery was timeous;

11.2.3 Whether mechanisms for reporting of shortages was effective;

11.2.4 Whether shortages remain after the commencement of the school year; and

11.2.5 Whether proactive steps are taken to address disparities in data-collection and verification.

11.3 Due to the multiple challenges outlined above and the widespread nature of the problem, a single investigation by any one organisation would be insufficient. Instead, a multi-disciplinary team would be better situated to extricate the root causes of lapses in service delivery in this regard.

11.4 The Commission takes cognisance of the fact that these challenges may well be apparent in a spectrum of other components of education-related service delivery and, also that the DBE and the PEDs may already have instituted certain checks and balances surrounding the ongoing 2014 process. It is submitted that the DBE- as the organ of state responsible for playing a co-ordinating role in the process- should therefore also provide the Commission with a detailed report as to how they plan to address the lack of monitoring and evaluation mechanisms within the current system as a whole. This should be done no later than 60 days after this report is issued to the Department.

- 11.5 That should the Department be unable to carry out the recommendations in 11.3 that a written plan be submitted to the Commission, the Commission will require a written statement containing detailed reasons, and a plan as to how these aspects of service delivery can otherwise be monitored and assessed. This should be provided no later than 30 days subsequent to the issue of this report.
- 11.6 In order to show that demonstrable progress is being made, at both national and provincial level, the Commission will require that the DBE- as the co-ordinating and custodian Department, furnish the Commission with a proposed plan of action as to how it plans/has planned to address the issue of provision of primary learning materials to children with disabilities. *This should be done within 3 months of the issue of this report.*
- 11.7 That the Department of Social Development, Department of Women, Children and People with Disabilities develop guidelines to address the needs of learners with special needs.
- 11.8 It is submitted that, in order to ensure that the CAPS workbooks reach all children in the relevant grades in the 2014 school year, the DBE, and specifically the office of the Director General and the LTSM Policy Development and Implementation Directorate should embark on a consultative process with PEDs. This should be done with a view to ascertain the best means of ensuring that even the most remote of schools are reached before the start of the school year. In this regard, a progress report should be furnished to the Commission no later than the 30th of June, 2014.
- 11.9 That the DBE ensure that errors compromising the content or quality of the CAPS-aligned workbooks are avoided in future. The Commission recommends that the DBE to furnish the Commission with the following:
- 11.9.1 A report of any supplements distributed to schools during the 2013 school year
- 11.9.2 Samples of workbooks developed for the 2014 school year.

11.10 From the submissions received from EduSolutions, Section 27, and the SAOU, it was clear that there exist significant communication-based disparities between the accounts of stakeholders working on the ground, and those of government departments. In fact, on many issues, such as rates of delivery of LTSM, efficacy of the centralised procurement model, and the nature of the relationships between schools and government, the submissions were diametrically opposed to one another. The scope of this investigation entailed an exhaustive review of information through the receipt of written and oral submissions. It was not possible for the panel, within the scope of their mandate, to investigate each of these allegations. However, it is clear to the panel that a more effective means of information dissemination and complaints handling would significantly improve the ability of all involved to respond adequately and timeously. That urgent investment in improving overall communication and information dissemination is required between PEDs and:

- a. Schools and School Principals;
- b. School Governing Bodies;
- c. Trade Unions;
- d. Civil Society;
- e. Publishers; and
- f. Other Service Providers

11.11 That all circulars, or communications regarding how books are to be ordered, how funding is going to be disbursed and whether the province will centralise the procurement processes should be sent out in the first half of the school year, with copies of these furnished to the relevant provincial office of the Commission at such time as they are circulated. This must be done by the DBE or the relevant PED as the case may be. If there are any disputes between schools, unions, governing bodies and government in this regard, the relevant provincial office of the Commission is to be appraised of the situation immediately so that a way forward can be negotiated. This may involve constructive engagement or mediation, or as a last resort litigation.

11.12 It is unacceptable that delays were caused by lack of consensus between schools and the PEDs in KwaZulu-Natal and the Eastern Cape, leading to delays in learners receiving books. It is integral that adequate consultation takes place prior to the institution of these processes so as not to prejudice children attending schools where consensus is an issue. The Commission therefore recommends that future planning processes be finalised and agreed upon before the process of procurement and delivery of LTSM commences.

11.13 As illustrated, the implementation of an electronic system to regulate the procurement and delivery process is greatly desirable; with benefits for both the DBE and PEDs. As the organ of state responsible for playing a co-ordinating role in the procurement and delivery process, it is submitted that National Government, and specifically the Office of the Director-General, should take steps to investigate the possibility of developing a system that can be used nationally, as well as by provinces still using a paper-based system. This system should also be capable of interfacing with existing systems developed for use by PEDs. It is submitted that the possibility of development of a national electronic system should also be developed to facilitate the procurement and delivery of workbooks. It is further recommended that the DBE indicate to the Commission upon receipt and review of this report, but no later than 4 weeks thereafter, whether it would be in a position to begin developing these systems for future use

11.14 The Commission recognises that the development of such a system requires considerable expenditure and planning. As such, a recommendation in this regard, from a third party cannot be overly-prescriptive. As illustrated, the benefits of such a system are clearly numerous, and would invariably improve the performance of the DBE in performing its co-ordinating role, as well as of the various PEDs which have not yet begun using such a system. It is noteworthy that the relevant technology is already in existence- with the Department having created an electronic system for other purposes, and independent contractors

utilised by the provinces having already created an electronic system for end-to-end management of the LTSM procurement and delivery process.

11.15 Given the ramifications for learners of a principal failing to adequately discharge this obligation, it is our submission that it should be treated as a dismissible offence in terms of the relevant sections of the Employment of Educator's Act 76 of 1998. In this regard, each PED should furnish the relevant provincial office of the Commission with a progress report no later than three months subsequent to issue of this report to facilitate monitoring of this situation. Since the South African Council of Educators is also a power capable of investigating alleged misconduct of educators and principals and imposing sanctions in this regard, it is recommended that they be included in consultations in deriving a way forward.

11.16 PEDs should investigate the allegation that outstanding books still may not have been delivered and furnish the Commission with individual reports each (one per province) as to whether such deficits exist, and what is being done to address them. These reports should be submitted to the Commission no later than 3 months after the issue of this report.

12 Conclusion

12.1 In terms of Articles 26(1)(3) of the Commission's Complaints Handling Procedures the panel must:

"(1) (a) consider the evidence submitted at the hearing in conjunction with all other available information and evidence obtained otherwise;

(b) make a finding on the facts and giving full reasons for the decision reached; and

(c) make a finding regarding remedial action, if necessary.

(2) The Chairperson of the Panel must, at the conclusion of the hearing, summarise the evidence contemplated in (1)(a) and state the finding, including any proposed remedial action.


(3) The finding of the Panel at the hearing is final and is not subject to an appeal as provided for in Chapter 9 of the Procedures."

The Commission is satisfied that these prescribed formalities have been complied with.

12.2 According to Article 26(3) of the SAHRC Complaints Handling Procedures, this finding is not subject to appeal. The Commission will, however, undertake to constructively engage with all parties affected by the recommendations espoused in this document so as to ensure maximum implementation of these recommendations.

It is the sincere hope of the Commission that this investigation and its findings will be of assistance in resolving some of the challenges to the realisation of the right to basic education that is available and accessible to children across the country. It is the Commission's intention to rigorously follow-up all related and subsidiary matters arising from this investigation, and to continue to closely monitor this situation at provincial and national level. Furthermore, the Commission will follow up with all parties in respect of whom recommendations were made, to facilitate their implementation. This report will also be sent to the Portfolio Committee for Justice and Constitutional Development and, as indicated, made available to the public.

Signed at Johannesburg on the 30th day of March 2014



Commissioner Lindiwe Mokate