



SAHRC Charter of Children's Basic Education Rights

2012

SAHRC

Charter of Children's Basic Education Rights

The right of children to basic education

2012

Foreword

Commissioner Lindiwe Mokate, South African Human Rights Commission, South Africa

The right to a basic education is a constitutionally protected right that is unequivocally guaranteed to all children in South Africa. It is considered a central facilitative right that is not qualified by expressions such as 'available resources', 'progressive realisation', or 'reasonable legislative measures' which are applicable to other socio-economic rights enshrined in our Constitution.

The South African Human Rights Commission has a constitutional mandate to monitor the realisation of the right to a basic education in South Africa. Monitoring this right has not been made easy by the absence of a common and consolidated statement on the scope and content of the right to basic education. The courts have avoided specifying the content of socio-economic rights, including the right to a basic education.

Debates among human rights practitioners, including academics, identified the Commission as an independent body with the necessary human rights mandate to embark on and lead a consultative process that would culminate in the development of a Right to Basic Education Charter.

It has increasingly been recognised at an international level that national human rights institutions are best placed to determine the monitoring indicators for economic and social rights due to their independent nature and knowledge of local conditions.

The Charter is a culmination of an extensive engagement process and research by the Commission and stakeholders. It aims to provide a common legally grounded planning, monitoring and advocacy framework that is child-centred and recognises the interconnectedness of human rights. Whilst the Commission intends using the Charter as a monitoring tool, it can also be potentially used by all relevant stakeholders in their advocacy work.

The Charter provides a statement of the various obligations of the State to ensure the realisation of the right to basic education; notes key shortcomings and inequities; revisits commitments made to address the gaps in achieving quality education; and the key role-players are identified.



In the Charter there is acknowledgement of the progress that has been achieved by the democratic government in addressing the grossly inequitable and racially determined apartheid education policies. Despite all these achievements, huge challenges remain in this sector, and they impact most negatively on the poor and vulnerable in our society thus reinforcing the existing inequality patterns.

The Charter provides a benchmark of where we are in terms of fulfilling the right to a basic education and where we need to go to ensure that every child receives a quality education.

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South African Human Rights Commission Charter of Children's Basic Education Rights, 2012

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Message of Support

Aida Girma, UNICEF Representative, South Africa

Section 29 of the South African Constitution enshrines the right to education and defines the positive responsibilities of the state in this respect. The section states, "Everyone has the right to a basic education, including adult basic education."

It is a common assertion that education is the basis for development, and therefore a country like South Africa desiring to foster its development is concerned with the long-term investment in the education of her people as articulated in the Constitution excerpt above. This includes the right to access to education by children with disabilities and investment in early childhood development from birth to school-going age. South Africa is progressing well towards the achievement of the MDG two (universal access to primary education) currently at 99.6% and at about 89% for transition to secondary education (EMIS 2011). However, there are challenges in the provision of quality education — the Annual National Assessment results in 2011 show an average of 35% and 28% pass in literacy and numeracy respectively for Grade 3 learners.

As a government South Africa prioritizes education, with education receiving 5.6% of GDP and 22% of the national budget. The development of the basic education rights charter provides the South Africa Human Rights Commission with an invaluable tool to provide oversight and support the monitoring of quality basic education in the South African context. In UNICEF, as articulated by the Convention on the Rights of the Child, we are cognizant that the right to education is a fundamental right. Civil, political, economic and social rights can be effectively exercised by individuals when they have received a certain minimum education, without which their access to such rights remains illusory and theoretical.

Today, in South Africa as in many other countries globally, we are increasingly faced with serious problems such as: poverty and illiteracy; the widening gap between rich and poor; proliferating acts of violence; and social exclusion, with high numbers of children living below the poverty line. The right to education is invaluable in a bid to eradicate poverty and tackle these challenges. It is my hope that this charter will contribute to renewal of, and re-commitment, to quality basic education for all children in South Africa.

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ACRONYMS AND ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child	NCPR	National Child Protection Register
ANA	Annual National Assessments	NEEDU	National Education and Evaluation Development Unit
ASIDI	Accelerated Schools Infrastructure Delivery Initiative	NEIMS	National education infrastructure monitoring system
CEDAW	Convention on the Elimination of all forms of Discrimination against Women	NRSO	National Register for Sex Offenders
DBE	Department of Basic Education	NSNP	National School Nutrition Programme
DHET	Department of Higher Education and Training	PDOU	Planning and Delivery Oversight Unit
DSD	Department of Social Development	QLTC	Quality Learning and Teaching Campaign
DPME	Department of Performance, Monitoring and Evaluation	SACMEQ	Southern and Eastern Africa Consortium for Monitoring Educational Quality
DOH	Department of Health	SADC	Southern African Development Community
DHA	Department of Home Affairs	SAHRC	South African Human Rights Commission
DWCPD	Department of Women, Children and People with Disabilities	SASA	South African Schools Act
EFA	Education for All	SIAS	National Strategy on Screening, Identification, Assessment and Support Strategy
FET	Further Education and Training	UD	Universal Design
GDP	Gross Domestic Product	UDHR	Universal Declaration on Human Rights
ICERD	International Convention on the Elimination of all forms of Racial Discrimination	UNCRC	United Nations Convention on the Rights of Children
ICSECR	International Covenant on Social Economic and Cultural Rights	UNCRPD	United Nations Convention of the Rights of People with Disabilities

INTRODUCTION

1 The SAHRC's mandate

The South African Human Rights Commission (SAHRC) is mandated to:¹

- promote respect for human rights and a culture of human rights;
- promote the protection, development and attainment of human rights; and,
- monitor and assess the observance of human rights in the Republic.

It has developed the Charter of Children's Basic Education Rights in South Africa for use in fulfilling this mandate.

2 Basic education: A legal and developmental priority

Legal and development instruments recognise basic education as both a fundamental human right and a developmental priority.

On the legal front, the Universal Declaration of Human Rights (UDHR) (1948), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) (1969), the United Nation's (UN) Convention on the Elimination of Discrimination against Women (CEDAW) (1979), the United Nation's Convention on the Rights of the Child (UNCRC) (1989), the Convention of the Rights of Persons with Disabilities (CRPD) (2006), the African Charter on the Rights and Welfare of the Child (ACRWC) (1989), and the Constitution of the Republic of South Africa (1996) recognise the right to basic education. The Constitution elevates the status and urgency of the right. It makes the right to basic education immediately realisable; it is not, as in the case of a number of other socio-economic rights, made subject to progressive realisation within available resources (*Governing Body of Juma Masjid Primary School and another v Essay N.O.*, 2011) (*Section 27 and 2 Others v Minister of Education and Others*, 2012).

On the development front, UNESCO's Education for All (EFA) (2000), the UN's Millennium Development Goals (2000), the African Union's New Partnership for African Development agenda (2001), and the Southern African Development Community's (SADC) Regional Indicative Strategic Development Plan recognise the fundamental link

between the right to education and sustainable social and economic development. In addition, they require special and focused measures to secure the education rights of the most marginalised children. More locally, access to quality education enjoys priority status on the national development agenda. Education was identified as an Apex Priority in the 2008 presidential State of the Nation Address; it featured prominently in the National Medium Term Strategic Framework (The Presidency, 2009); and improving the quality of basic education was identified as one of the 12 priority development outcomes on which government will focus between 2010 and 2014 (Department of Basic Education: Delivery Agreement for the Basic Education Sector, 2010). Most recently, the National Development Plan 2030, which maps out South Africa's development trajectory for the next two decades, places quality basic education at the centre of the realisation of the dual national goals of reducing poverty and inequality. It specifically targets improving the quality of education and equalising educational opportunities for children marginalised through apartheid policies, including black African children, girl-children and children with disabilities (National Planning Commission, 2012).



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South Africa has responded to these imperatives by developing a host of education policies with a strong equity focus. These have, in the main, sought to address the inequitable apartheid policies which excluded most black children, children with disabilities and children living in rural areas from access to quality education. Some of the policies include:

- those targeting poverty, such as the pro-poor funding allocations and the “No-Fee” schools provided for in the National Norms and Standards for School Funding (2006) (as amended) which have seen learners in poor quintiles receive more funding than learners in wealthy areas;
- the Language in Education Policy (1997) which sought to address language barriers by promoting home language teaching and learning;
- Education White Paper 6: Special Needs Education (2001) and the Screening, Identification, Assessment and Support Strategy (SIAS) (2008), which committed to the development of an inclusive education system for children with disabilities and other learning barriers;
- the National Framework for Quality Education in Rural Areas (2007) which focused on improving the quality of education in rural schools; and,
- the Accelerated Schools Infrastructure Delivery Initiative (ASIDI) and the Quality Improvement, Development, Support and Upliftment Programme, which sought to improve infrastructure and access to quality teaching and learning materials in under-resourced schools.



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The education budget has increased progressively over the last decade to support these policies, and amounted to approximately 6% of the Gross Domestic Product (GDP) in 2011. Consequently, South Africa has seen improvements in access to education and funding equity to benefit previously disadvantaged children. Since 1994 enrolment rates have improved, reaching 98% in Grades 1-9 and 83% in Grades 10-12 in 2011 (Department of Basic Education, 2011). Whilst many children with disabilities remain excluded, by 2011 there was a substantial increase (20%) in the number of children with disabilities aged 15-17 years attending school, and an even larger increase of more than 51% for children aged 16-18 years (Department of Basic Education, August 2011). Equity in school funding has improved substantially. A higher per capita amount is paid for black children living in poverty than for other groups, and priority has been given to the provision of school books, teacher support materials, equipment and school meals in poor schools. In 2011 more than 8 million children benefited from the “No-Fee” policy and approximately 10 million children benefited from the National School Nutrition Programme (NSNP) (Statistics South Africa, 2012). Moreover, on average, class sizes have improved, with many falling below internationally prescribed limits, and the number of qualified teachers increased from 65% in 1994 to almost 94% in 2009 (Department of Basic Education, 2011a).

Despite these developments, there is a shared recognition, as articulated by the Minister of Education in 2011, that “the challenges confronting us remain substantial” (Department of Basic Education Annual Report, 2011). Challenges include equalising access for the vulnerable groups of children that remain disproportionately excluded from school, such as children with disabilities and children in rural areas. An estimated 476 000 children with disabilities of school-going age were out of school in 2010 (Department of Basic Education, 2011c). Access to education for children in rural areas is poorer as a result of a number of inequities, including aggravated infrastructure backlogs, insufficient numbers of teachers, poorer access to learning and teaching support materials, ongoing language barriers, higher levels of household poverty and consequent lower educational outcomes among learners in these areas (Department of Basic Education, 2011e) (Spaull, 2011). More generally, high drop-out rates and consequent low rates of completion of basic education, sporadic daily attendance rates, and most significantly, the poor quality of education and the inefficient use of educational resources, are features of the current education system. These challenges present themselves along racial and socio-economic fault lines, and continue to drive the high levels of inequity, poverty and patterns of under-development that mark the national legal and developmental landscape. In short, the poor quality of education and educational outcomes, especially for poor, rural black children, remains one of the key development impediments facing South Africa in 2012 (National Planning Commission, 2011).



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The problems with quality are starkly illustrated by the poor educational outcomes of children in South Africa. In 2011, numeracy and literacy levels at Grades 3 and 6 were extremely low. Only 20% of Grade 3s had adequate grade-appropriate literacy skills, and only 12% had grade-appropriate numeracy skills. 12% of learners in Grade 6 had adequate grade-appropriate literacy skills, and only 9% had the necessary numeracy skills (Department of Basic Education, 2010d). In addition, the number of learners that pass their final year exams is low. In 2009, only 60% of learners passed their National Senior Certificate examinations. This has since increased to 73% in 2011 (Department of Basic Education, 2011a). The pass rate is even lower in subjects such as mathematics and science. The number of learners passing mathematics in their final examinations dropped from 133 505 in 2009 to 104 033 in 2011 (The Presidency, DPME, 2012).

A comparative review of regional educational data collected by the Southern and Eastern Africa Consortium for Monitoring Educational Quality (SACMEQ) confirms not only that South Africa performs poorly in comparison to other SACMEQ countries, but also that it provides education of a much poorer quality to the majority of black and rural children living in poverty in comparison to their wealthier white, coloured and Asian peers (SACMEQ III, 2010) (Department of Basic Education, 2011a). In sum, after 17 years of progressive educational policies and programmes, "South Africa remains a tale of two schools: one which is wealthy, functional and able to educate students, while the other is poor, dysfunctional, and unable to equip students with the necessary numeracy and literacy skills they should be acquiring in primary schools" (Spaull, 2011).

3 The multiple causes of the failure of basic education rights

Numerous commentators such as Spaull, Strasburg and Taylor recognise that a variety of underlying factors drive the poor quality of education and educational outcomes. These include social and economic factors such as poverty and low literacy levels and low levels of formal education in children's families; insufficient levels of educational support at home; insufficient school infrastructure and basic services at schools such as water, sanitation and electricity; lack of learning resources and materials such as libraries, laboratories and text books; the cost of schooling; poorly trained teachers and insufficient subject knowledge by teachers; and lack of access to early childhood education, amongst others (Centre for Development and Enterprise (CDE), 2011) (Spaull, 2011) (Strasburg, Meny-Gibent, & Russell, 2010) (Taylor, 2011).

4 Recent developments to better realise the right to education

The Department of Basic Education (DBE) is acutely aware of these shortcomings. It has, in response, in addition to the numerous pro-equity education laws promulgated over the last fifteen years, introduced an array of innovations in the period 2010-2012. These include:

- a review of the National Curriculum Statement as well as the publication of the National Policy Pertaining to the Programme and Promotion Requirements of the National Curriculum Statement Grades R-2 (2011) and the National Protocol for Assessment Grades R-12 (2011);
- the introduction of Annual National Assessments (ANA) as part of an integrated learner assessment strategy to facilitate regular testing of learners against international benchmarks and the use of results to remedy gaps and inadequacies;
- a new Strategic Planning Framework for Teacher Education and Development in South Africa (2011) which makes provision for revised minimum qualifications, support to educators, and incentives to attract young quality educators into the sector;
- the development and distribution of literacy and numeracy learning and support materials such as workbooks and text books, including the translation of these into Braille for blind children;
- programmes such as the Accelerated Schools Infrastructure Delivery Initiative (ASIDI) for improved infrastructure development;
- improved planning, monitoring and evaluation against quality-focussed indicators in the form of the long-term Action Plan to 2014: Towards the Realisation of Schooling 2025;

- the establishment of coordinating, evaluation and planning units such as the Planning and Delivery Oversight Unit (PDOU) with the mandate to improve coordination between the national and provincial departments, and the National Education Evaluation and Development Unit (NEEDU) which will review the status of education policies, implementation, coordination and quality of educational inputs and outcomes (Department of Basic Education, 2011b) (Department of Basic Education, 2011a) (Department of Basic Education, 2010) (Department of Basic Education's Quality Learning and Teaching Campaign).



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5 Role of the Charter: A common legal framework to guide and monitor role-players

The SAHRC is mandated to monitor progress made by all organs of State in the realisation of the constitutional rights of children. One of the challenges experienced in fulfilling this role is the lack of a consolidated statement of the scope and content of the right, and correlating obligations, to basic education.

The SAHRC has thus developed this Charter. The Charter will provide a statement of what is required in law (internationally, regionally and nationally) of the State to give effect to the right to all children in South Africa to basic education. The Charter aims to provide a statement of:

- a select number of legal obligations on the State to realise the right to basic education;
- child-focused indicators which would mark the fulfilment of the various obligations;
- the role-players responsible for realisation of the obligations; and,
- the relevant commitments made by the State and recommendations to ensure optimal realisation of the right to basic education for all children in South Africa.

The Charter thus aims to provide a common legally-grounded planning, monitoring and advocacy framework for use by the SAHRC in fulfilling not only its monitoring but also its research, investigative and educational roles in relation to the right of children to basic education.

Moreover, the Charter aims to provide support to all responsible role-players for the further realisation of the right. The government's Quality Learning and Teaching Campaign (QLTC) recognises that the "achievement of quality education for all depends on the actions of members of Parliament, the Basic Education Ministry, provincial members of executive councils, departmental officials, school principals, teachers, learners, parents, school governors and members of the community" (Department of Basic Education, 2008a). The Charter serves as an informational and advocacy tool to aid this wide range of stakeholders to know their rights and responsibilities. The information in the Charter will provide:

- an indication of what children, their parents and other caregivers may expect of the education system;
- an educational tool for parents and caregivers as to the role they may be required to play to enable children to enjoy their right to basic education;

- a planning and educational tool for schools, principals and teachers on what their obligations are vis-à-vis children, and hence what their rights are vis-à-vis the departments of Basic Education to enable them to meet their obligations to children;
- a summative planning and monitoring tool for the departments of Basic Education as to their respective obligations;
- a planning tool for institutions of higher learning and the DBE on their roles and responsibilities in relation to improving the quality of teachers, teaching and learning in the classroom;
- an information tool for other relevant departments such as Finance and Women, Children and People with Disabilities (DWCPD), the Departments of Performance, Monitoring and Evaluation (DPME), Health, Water, Sanitation and Local Government on their obligations and how these may be fulfilled;
- an information tool for Members of Parliament to aid in their legislative development role and oversight role in respect of implementation and budgeting by the national and provincial departments of Basic Education;
- a planning, educational, monitoring and advocacy tool for civil society (including trade unions, NGOs, CBOs, research and other academic institutions);
- a planning and monitoring tool for development partners and donors on the interventions that should receive priority funding and technical support to realise the legal and developmental basic education obligations of the State.

6 The scope of the Charter

Section 29 (1) (a) of the Constitution recognises the right of everyone to “basic education, including adult basic education”. Article 1 of the World Declaration on Education for All defines basic education as an education which provides “essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decision, and to continue learning” (UN CESCR. General Comment No. 13, 8 December 1999). In addition, basic education includes fundamental education for adults who have not yet had their basic learning needs satisfied (UN CESCR. General Comment No. 13, 8 December 1999).

There are various vehicles for the delivery of basic education. These include early child education, primary, secondary and further education and vocational training, and adult basic education and training. The World Declaration on Education for All views



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primary education as the main vehicle for “the basic education of children outside the family”, and secondary education as the primary vehicle for the “completion of basic education and consolidation of the foundations for life-long learning and human development” (UN CESCR. General Comment No. 13, 8 December 1999).

Thus, not only children but adults enjoy the right to basic education, and it extends beyond schooling. This Charter will, however, primarily focus on the rights of children to basic education through pre-primary, primary and secondary schools which the DBE is expressly mandated to realise. This does not mean that the SAHRC does not recognise the right of adults to basic education or the obligations on the State to deliver basic education through vehicles other than schools, such as Further Education and Training (FET) colleges.

The State’s obligations include the duty to respect, protect and fulfil the rights of children to basic education (UN CESCR. General Comment No. 13, 8 December 1999). Within this continuum, this Charter will endeavour to provide a detailed Statement of what these obligations entail in the context of South African children and in the context of international, regional and national commitments.

7 The 4A legal framework

Katarina Tomaševski, the former UN Special Rapporteur on the right to education, constructed what is known as the 4A framework which maps out the scope and nature of the obligations on the State to fulfil the right to education as guaranteed by international laws (Tomaševski, 2002). The 4A Framework stipulates that to meet the prescribed legal standards, State action must ensure that education is:

1. *Available*: This requires that the State provide:
 - a. a government-funded education system;
 - b. adequate infrastructure; and,
 - c. trained teachers able to provide an education.
2. *Accessible*: This requires that the State ensure that:
 - a. education is not discriminatory;
 - b. education is made accessible to all by addressing economic and physical barriers; and,
 - c. positive steps are taken to include the most marginalised communities and children.
3. *Acceptable*: This requires that:
 - a. the content of education is non-discriminatory;
 - b. the content is culturally appropriate;
 - c. education is of a sufficiently high quality; and,
 - d. the school environment is safe.
4. *Adaptable*: This requires that education is:
 - a. flexible and able to respond to the different needs of children; and,
 - b. able to respond to the changing needs of society (Tomaševski K. , 2001) (UN CESCR. General Comment No. 13, 8 December 1999) (Right to Education Project, 2010).

This Charter will be premised on the 4A framework, given that it is legally grounded in international law, that it recognises the multiple dimensions of the right to education, that it recognises the inter-connectedness of the right to education and other rights, and that it recognises that multiple organs of state are responsible for the realisation of the right to education.

The framework not only surfaces the common elements and obligations implicit in the various international legal instruments, but is also child-centred. It requires that “[w]hen considering the appropriate application of these “interrelated and essential features”,

the best interests of the student shall be the primary consideration” (UN CESCR. General Comment No. 13, 8 December 1999).

Moreover, the 4A Framework emphasises and echoes the priority education goals and objectives of the South African education system — access, equity, quality and efficiency (Department of Basic Education, 2011).

8 The substance of the right: Indicators marking progress and success

Tomaševski recognised that there was a need to develop the 4A framework further so as to translate the right to basic education into “a language that can be understood and applied in education statistics”. She thus developed a body of indicators to provide substantive direction to guide States on the steps and outcomes necessary to realise the various components of the right. Her objective was to develop a holistic framework for guiding role-players in fulfilling the right to basic education (Tomaševski, 2002).





The Right to Education Project (a joint Global Campaign for Education, Amnesty International and Action Aid initiative) continued the work started by Tomaševski and developed a comprehensive and inclusive set of Education Right Indicators to evaluate compliance with the various obligations linked to the right to basic education (Right to Education Project, 2010).

The 4A framework and these indicators together provide a holistic framework that combines the legal and developmental educational imperatives on the State.

Moreover, both the 4A framework and accompanying indicators emphasise the attainment of equality in education. They recognise that the right to equality is essential and that the 4A's must be realised not only for the majority of children but especially for children previously excluded from enjoying their full right to education. This means that planning, budgeting and reporting on education obligations within this framework will require an express and conscious indication of the measures and successes made in ensuring the 4As for children living in poverty, with disabilities, refugees and unaccompanied minors, those living in rural areas, the girl child, and others.

For these reasons, the SAHRC Charter will be premised on the 4A Framework and expanded Education Right indicators. The Framework and indicators have, however, been specifically shaped, through a process of research and consultation with education stakeholders in South Africa, to articulate national legal and developmental educational priorities, objectives, and obligations that will meet the unique situation in South Africa. A list of stakeholders that participated in the development of this Charter is provided in Annexure A.

9 Choice of indicators

There is a vast array of possible indicators that could be chosen to assess the realisation of the right to basic education for children in South Africa. The indicators in the Charter have been specifically selected to align with international and regional obligations as well as, so far as possible, the development commitments made by the State and the DBE to address historically patterns of inequity in South Africa.

One of the purposes of the Charter (and the choice of indicators which will contribute to achieving this purpose) is to support improvements in the realisation of the right to education through the development of a framework that will facilitate ongoing monitoring and advocacy. Through the choice of indicators that are rooted in law and the national development context, the Charter will at one and the same time provide a road map that the State is required (and has already committed) to follow, provide a framework for an annual evaluation of the progress that has been made on this journey, and provide guidance on the way forward to complete the journey.

10 SAHRC process for conducting the annual evaluation

The annual process that will be followed by the SAHRC to measure progress against the Charter will include a review of the national and provincial data sources generated by, inter alia, Statistics South Africa and the DBE as well as reports submitted to the SAHRC by the DBE in fulfilment of its statutory reporting obligations. This will be supplemented, where relevant, by research conducted by academic institutions and NGOs. In addition, the SAHRC will engage with representatives from parent associations, teacher unions, school governing bodies, learners and NGOs. Where it is deemed necessary, the review process will include public submissions.

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1. Available Education

Basic education must be made available by the State to all children. “Availability of education refers to what must be in place before the right is accessed” (South African Human Rights Commission, 2006). This requires that the State develops and funds a pre-primary, primary and secondary education system and that there are trained teachers and adequate infrastructure to support the delivery of education (Right to Education Project, 2010) (Tomasevski K., 2001).

This obliges the State to take legislative, administrative and other steps to ensure a national education system that:

- 1 Is founded on an overarching national recognition of the right to education.²
- 2 Provides early childhood education.³
- 3 Makes primary education universal and compulsory for all children.⁴
- 4 Makes different forms of secondary education generally available to all children.⁵
- 5 Ensures the provision of functional educational institutions in sufficient quantity.⁶
- 6 Ensures the provision of sufficient, qualified and available teachers.⁷
- 7 Ensures the provision of teaching and learning support materials and equipment.⁸
- 8 Ensures the availability of sufficient funds to sustain the availability of schooling.⁹



1.1 National recognition of the right to basic education

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
Legally recognise, respect, protect and promote the right to basic education. ¹⁰	National and provincial policies and laws are enacted that guarantee, respect, protect and fulfill the right to basic education of all children. ¹¹	<ol style="list-style-type: none"> 1 Section 29(1) of the Constitution of the Republic of South Africa (1996) provides that “[e]veryone has the right to basic education”. 2 The right is immediately realisable. It is not subject to progressive realisation within available resources (Governing Body of Juma Masjid Primary School and another v Essay N. O., 2011) (Section 27 and 2 Others v Minister of Education and Others, 2012). 3 Thus, in moving forward to fill the gaps as measured against the Charter, the State must act without delay. 	<p>National Assembly</p> <p>National Council of Provinces</p> <p>National and provincial departments of Basic Education</p>

1.2 Provide early childhood education

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>1 Provide universal early childhood education for children through centre- and school-based stimulation and development programmes.¹²</p> <p>2 Make early childhood education compulsory.</p>	<p>1 National policies and laws that universalize early childhood development (ECD) by obliging the State to ensure the provision of at least two years of early childhood education or pre-school for all children.</p> <p>2 National policies and/or laws that make at least two years of pre-school (Grade R plus one more year) compulsory.¹³</p>	<p>1 The National Development Plan: 2030: Our Future-Make it work (2012) places the highest priority on ensuring two years of ECD exposure before Grade 1 in order to meet national developmental goals.¹⁴</p> <p>2 Whilst various policies commit the DBE to providing universal access to one year of pre-school (known as Grade R) through the public school system (including the White Paper on Early Childhood Education (2001) and the Delivery Agreement for Outcome 1: Improved quality of basic education; Action Plan to 2014: Towards the Realisation of Schooling 2025 (2010)), there is no comparable commitment to make it compulsory.</p> <p>3 The South African Schools Act (SASA) (1996) and associated ECD legislation should be amended to:</p> <ul style="list-style-type: none"> a make the universal Grade R year compulsory; and, b universalise and make one additional year of early childhood education compulsory for all children from the age of 4 years. [National and provincial departments of Basic Education] 	<p>National and provincial departments of Basic Education</p> <p>Department of Social Development</p> <p>National Assembly and the National Council of Provinces.</p>

1.3 Make primary education available and compulsory

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>1 Make primary school compulsory for all children, including children with disabilities, through laws that ensure that "neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education".¹⁵</p>	<p>1 A national law that imposes an obligation on duty-bearers to ensure that all children within a determined age-range are enrolled at and attend primary school and oblige systems to monitor and enforce compliance.¹⁷</p>	<p>1 Section 3(1) of the SASA (1996) makes primary and lower secondary schooling compulsory for all children between the ages of 7 and 15 years (or until the completion of Grade 9, whichever occurs first). It obliges every parent to ensure that every learner for whom he or she is responsible attends school every day during the compulsory phase. In addition, the Policy on Learner Attendance (2010) obliges schools to monitor daily attendance of learners and take supportive action where they are unlawfully absent.</p>	<p>The Minister of Basic Education</p> <p>The national and provincial departments of Basic Education</p> <p>The Department of Social Development</p> <p>Schools and principals</p>

1.3 Make primary education available and compulsory *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>2 Legislate the ages of compulsory attendance for learners with disabilities.¹⁶</p>	<p>2 A national law stipulating the ages of compulsory attendance for learners with disabilities.¹⁸</p>	<p>2 The ages stipulated in section 3(1) do not apply to children with disabilities. Section 3(2) of the SASA provides that the Minister must, by notice, determine the ages of compulsory attendance for learners with special educational needs.</p> <p>The Constitution (1996) and the UNCPRD guarantee the right of children with disabilities to equal enjoyment of the right to education. More specifically, article 24(2)(a) of the UNCPRD guarantees their right to compulsory education.</p> <p>As at 2012, this right has been frustrated by the failure to determine the ages of compulsory attendance for learners with disabilities. The Minister is urged to take the prescribed action without delay.</p>	



1.4 Make secondary education generally available to all children

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>Make secondary education in its different forms, including through secondary schools and vocational education, generally available to all children.¹⁹</p>	<ol style="list-style-type: none"> 1 A public education system that makes available different forms of secondary education, including secondary school and vocational training. 2 Secondary education is available for all children with disabilities.²⁰ 	<ol style="list-style-type: none"> 1 The current system makes secondary education available through schools and colleges. The senior phase (Grades 7-9) of the General Education and Training (GET) band is provided at schools and is the responsibility of the DBE. The Further Education and Training (FET) band includes Grades 10-12 at schools (the senior secondary phase) and vocational programmes at further education and training (FET) colleges. Responsibility for the FET band is shared by the DBE (Grades 10-12 at schools) and the Department of Higher Education and Training (DHET). 2 Whilst the current public education system makes secondary education available through both schools and FET colleges, Taylor argues that there is scope for improvement through the introduction of an additional certificate programme after Grade 9.²¹ The DBE should engage with, consider and publish its consideration of the feasibility of this proposal. 3 Secondary schooling options are very limited for children with moderate to severe disabilities in special needs schools. Most special needs schools go no further than Grade 9, whereafter children are referred to schools of skills which are also very limited in number.²² The DBE and the DHET should take pro-active measures to realise the right of children with moderate to severe disabilities to secondary education as guaranteed by article 24(2)(b) of the UNCRPD through the provision of secondary education at special schools and by making more vocational training options available for them. 	<p>National Department of Basic Education</p> <p>The Department of Higher Education and Training</p>

1.5 Provide sufficient, safe, functional educational institutions

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>Provide sufficient schools and classrooms to accommodate all children at pre-primary, primary and secondary levels of education in classes of a size amenable to providing an enabling learning and teaching environment.²³</p>	<ol style="list-style-type: none"> 1 All children from Grades R-12 are accommodated in a school from the start of the school year. 2 All schools have the minimum number of classrooms required to adequately accommodate all learners to create an enabling learning and teaching environment: <ol style="list-style-type: none"> a Primary schools with 135-310 learners have: 1 Grade R classroom and 7 classrooms; b Primary schools with 311-620 learners have: 2 Grade R classrooms and 14 other classrooms; c Primary schools with 621-930 learners have: 3 Grade R classrooms and 21 other classes; d Secondary schools with 200-400 learners have: 10 classrooms; e Secondary schools with 401-600 learners have: 15 classrooms; f Secondary schools with 601-1000 learners have: 25 classrooms.²⁴ 3 All children from Grade R-12 are accommodated in a class that does not exceed the prescribed learner: teacher ratio, which is: <ol style="list-style-type: none"> a 1:30 for Grade R; b 1:40 for all other Grades.²⁵ 4 There is equal compliance with prescribed class sizes across the nine provinces. 5 All schools provide adequate space for every learner with a disability (2,4 square metres) to support effective teaching and learning.²⁶ 	<ol style="list-style-type: none"> 1 The most recent data provided by the DBE indicates that the average class reduced in size from 38 in 2008 to 29 in 2010. Whilst this reflects a substantial improvement, there is provincial variation in class sizes, with children in provinces with high poverty levels, such as the Eastern Cape and Limpopo, continuing to be taught in overcrowded classrooms.²⁸ In 2010 a substantial number of primary and secondary schools had average class sizes well in excess of the prescribed 40 learners. Six percent of schools had an average class size in excess of 60. The majority of these were in the Eastern Cape and Limpopo. Ten percent of schools had average class sizes exceeding 50; 40% of schools had class sizes above the 40 norm.²⁹ 2 In addition, a large number of public school Grade R classes are overcrowded. A three-province study in 2011 found that 55% of classes exceeded the 30:1 learner-teacher ratio.³⁰ 3 The DBE has committed to addressing all backlogs. It is constructing 49 new schools, with priority being given to marginalised communities, scheduled for completion on 31 August 2012. The schools include small and medium-sized primary schools that include Grade R spaces, science laboratories, multi-media centres, rainwater tanks, ablution facilities, assembly and play areas.³¹ 4 Education White Paper 6 (2001), together with the National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010) and its accompanying Guidelines, oblige the DBE to ensure access for all children with disabilities by "providing adequate spaces to support teaching and learning". Whilst the guidelines specify the physical space that is required per child, there is no specification for the appropriate number of learners per class in the case of children with disabilities. This will vary, depending on the needs of the learners in question. Schools and the provincial departments of education are urged to take these varying needs into account in determining class sizes in schools accommodating learners with disabilities and other barriers to learning. 	<p>National and provincial departments of Basic Education.</p> <p>Schools</p> <p>Department of Public Works and Administration.</p>

1.5 Provide sufficient, safe, functional educational institutions *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>1 Ensure all schools have essential and basic services including safe structures, fencing, ventilation, lighting, safe potable water, adequate and hygienic sanitation, electricity, and information communication technology so as to create a safe and enabling learning and teaching environment.³²</p> <p>2 Ensure that all schools and school infrastructure comply with Universal Design (UD) standards for children with disabilities to ensure equal access to, and the enjoyment of, all school facilities and buildings.³³</p>	<p>1 All public ordinary schools comply with the infrastructure standards for basic services outlined in the National Policy for the Equitable Provisioning of the Enabling School Physical Teaching and Learning Environment (2010) and the Guidelines Relating to Planning for Public School Infrastructure (2012) through:</p> <ul style="list-style-type: none"> a the eradication of all mud structures and other unsafe buildings; b the provision of a safe basic potable water supply to all schools; c the eradication of plain pit and bucket latrines and the provision of sanitation facilities that promote health and hygiene standards; d the provision of perimeter fencing; e the provision of a reliable and safe source of electricity; and, f the provision of a form of connectivity for communication and a telephone, fax machine and PA system.³⁴ <p>2 All public schools comply with UD standards to ensure accessibility to all school buildings and facilities for children with disabilities through, for example, the provision of ramps, automated doors, accessible toilets, and technologies.³⁵</p> <p>3 The DBE develops, legislates and implements national education infrastructure norms and standards, which include UD infrastructure standards for learners with disabilities, for an enabling teaching and learning environment. The norms require all provincial departments of Basic Education to align their plans and budgets with the prescribed norms and standards.³⁶</p>	<p>1 The National Policy for the Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010) recognises that infrastructure is critical to quality learning and teaching and good educational outcomes, and that “[e]quity in the provision of an enabling physical teaching and learning environment is ... a constitutional right and not just a desirable state” (Paragraph 2.6.1).</p> <p>2 In 2011/2012 there were significant infrastructure backlogs and provincial inequities in the rate of access to basic services and UD infrastructure at public schools. The situation is worse in provinces with high poverty levels and which are predominantly rural, such as the Eastern Cape, KwaZulu-Natal (KZN), and Limpopo. Of the 24 793 ordinary public schools:</p> <ul style="list-style-type: none"> a 496 are unsafe mud structures; b 2402 have no water. (1 152 are in the Eastern Cape, 1580 are in KZN, and 200 in Limpopo, Mpumalanga and the Free State Province lack this basic amenity); c 913 have no sanitation facilities and substantially more use pit latrines — the largest numbers of schools without adequate sanitation are in the Eastern Cape and KZN; d 2730 have no fencing — half of the schools with no fencing are in the Eastern Cape and 473 are in KZN; e 3544 have no electricity (1 152 are in the Eastern Cape and 1580 are in the KZN); f 409 schools have no communication facilities; and, g only 3167 have internet access.³⁷ <p>3 The National Policy for the Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010) specifically seeks to ensure and equalise provisioning of infrastructure across all the provinces.³⁸ In order to ensure provincial equity, the policy commits the national DBE to develop national norms and standards for the physical teaching and learning environment. It provides that these norms will explicitly define what constitutes minimum and optimum provisioning, and obliges all provinces to comply with the minimum norms. The policy commits to the adoption of norms and standards by the end of the 2010/2011 financial year.³⁹</p>	<p>National Department of Basic Education.</p> <p>The national Department of Basic Education’s Planning and Delivery Oversight Unit.</p> <p>Provincial Departments of Basic Education working together with local government.</p> <p>Presidential Infrastructure Coordinating Committee</p> <p>Department of Public Works and Administration</p> <p>Local government</p>

1.5 Provide sufficient, safe, functional educational institutions *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
	<p>4 All provincial departments of Basic Education allocate and spend their full annual infrastructure budgets in line with the national DBE's Improvement Plan.</p> <p>5 Data on levels of compliance with infrastructure standards and facilities for children with disabilities at all public schools are collected and reported on by the DBE nationally and provincially as part of its annual school infrastructure monitoring and reporting processes.</p> <p>6 The Presidential Infrastructure Coordinating Committee develops, monitors implementation of, and reports on a national school infrastructure plan aimed at filling provincial and district-level school infrastructure gaps and inequities.</p> <p>7 The provincial differences in the rate of public school access to safe school structures, water, sanitation and electricity and infrastructure and facilities for children with disabilities do not exceed 10%.</p> <p>8 The National and Provincial Parliamentary oversight committees call for, and comment on, at least two departmental reports per year, on infrastructure budgets, expenditure, backlogs, plans to address backlogs and the state of infrastructure for all children, including children with disabilities.</p>	<p>Draft norms and standards were developed in 2008. However, they have never come into effect. Instead, on the instruction of the Council of Education Ministers in 2012, they have been converted and downgraded in legal status to a set of guidelines.⁴⁰</p> <p>The Guidelines Relating to Planning for Public School Infrastructure (2012) provide that a "school environment will not meet basic safety requirements where there is "a lack of access to potable drinking water and sanitation facilities", "toxic substances in the school environment", "extremely unsafe building structures that could collapse on top of learners", and "inadequate fencing".⁴¹ In addition, a number of basic services are recognised as essential for meeting the "minimum functionality requirements", including ablution facilities and electricity.⁴²</p> <p>As such, the Guidelines provide direction to all provincial departments on the necessary basic services that ought to be provided. However, the downgrading of the norms into guidelines potentially frustrates the realisation of the key equity objective of the policy, given the weaker legal status of guidelines. The National Planning Commission notes that, whilst the content of the Guidelines is sound, they ought to be legislated to ensure that they are adhered to: "Legislated guidelines will help to ensure they are not deliberately ignored by officials involved in planning, constructing and improving school infrastructure."⁴³</p> <p>It is thus critical that National Uniform Minimum Norms and Standards for School Infrastructure be legislated and implemented as required by the governing policy.</p> <p>4 The National DBE is keenly aware of the backlogs in the provisioning of basic services at schools, and announced an Accelerated Schools Infrastructure Delivery Initiative (ASIDI) in its 2011 - 2014 Strategic Plan. In terms of this programme, it has committed to:</p> <ul style="list-style-type: none"> a Eradicate all 496 mud schools by 2014. Fifty will be eradicated by 2011/12; 100 by 2013/14; and 346 by 2013/14. b Supply potable water to 1257 schools by 2014; 188 will be serviced by 2011/12 and 1069 by 2012/13. 	

1.5 Provide sufficient, safe, functional educational institutions *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
		<p>c Supply electricity to 878 schools by 2014, with 164 receiving electricity by 2011/12 and 714 by 2012/13.</p> <p>d Supply adequate and hygienic sanitation facilities to 868 schools by 2014. Three-hundred-and-fifty-four schools will have sanitation by 2011/12 and 514 by 2012/13.⁴⁴</p> <p>5 ASIDI is supported by two dedicated infrastructure grants. The first is the Education Infrastructure Grant of R5.498 billion in 2011/12, increasing to R6.207 billion in 2013/14. The second is the School Infrastructure Backlogs Indirect Grant of R700 million for 2011/12, increasing to R5.189 billion in 2013/14.</p> <p>6 The DBE reported in February 2012 that significant delays in procurement processes for basic services had held back the realisation of the 2011/12 targets and resulted in significant under-expenditure of allocated budgets in the Eastern Cape and Limpopo provinces.⁴⁵ The 2012 parliamentary analysis of the Department's budget notes with concern that only 63% of the total adjusted Basic Education budget of R9,1 billion allocated for infrastructure backlogs in 2010/11 was spent.⁴⁶ The expenditure was significantly lower in the Eastern Cape, where only 24% of the infrastructure budget was spent. In addition, in the Eastern Cape and Limpopo, lack of fiscal discipline resulted in the frustration of policy priorities and deepened inequity in these provinces.⁴⁷</p> <p>In its briefing to Parliament in February 2012, the Department recognised these challenges and reassured the Portfolio Committee on Basic Education that "sufficient plans are in place to ensure improved delivery in terms of progress and expenditure on the [ASIDI and other] programme[s] and that set targets are met".</p>	

1.5 Provide sufficient, safe, functional educational institutions *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
		<p>7 The 2012 Parliamentary education budget analysis calls on Parliament to rigorously monitor the performance and progress of the national and provincial departments' delivery and financial management, especially:</p> <ul style="list-style-type: none"> a the implementation of the Education Infrastructure Grant; b progress made in inclusive education; c measures that have been put in place to assist provinces to remedy the concerns raised by the Auditor-General in 2011; d measures in place to improve provincial fiscal discipline; and, e strengthened provincial monitoring and evaluation systems that will ensure performance and spending. <p>8 In addition, improvements in the planning and equitable delivery of infrastructure has received national priority attention in the Presidential Infrastructure Coordinating Committee's National School Build Programme. The nationally coordinated programme will be "driven by uniformity in planning, procurement, contract management, provision of basic services, replacement of inappropriate school structures, and addressing basic service backlogs. In addition, [it will] address national backlogs in classrooms, libraries, computer labs and admin buildings."⁴⁸</p> <p>9 It is not possible, in 2012, to assess the adequacy of infrastructure against UD standards for children with disabilities as the current infrastructure monitoring system (NEIMS) does not collect and report on information on the level of infrastructure in place to meet the needs of learners with disabilities. The DBE is urged to strengthen the NEIMS system to monitor levels of UD compliance at all schools.</p>	

1.6 Provide sufficient teachers that are qualified and available to teach

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>Provide a sufficient number of teachers.⁴⁹</p>	<ol style="list-style-type: none"> 1 All learners are in classes that fall within the prescribed age-appropriate learner: teacher ratio: <ol style="list-style-type: none"> a Grade R: 30:1 b Other: 40:1 2 All allocated teacher posts are filled, especially in rural areas. 	<ol style="list-style-type: none"> 1 The DBE recognises that many schools have overcrowded classrooms. It acknowledged that in 2011 about 15% of public school classes have more than 50 learners.⁵⁰ A key reason for overcrowding is the insufficiency of teachers. 2 The new Strategic Planning Framework for Teacher Education and Development in South Africa (2011) makes provision for revised minimum qualifications, support to educators, and incentives to attract young quality educators into the sector. 3 The DBE has committed to improving the number of teachers in rural areas through more effective implementation of the policy for better pay for teachers in rural areas. In addition, it has committed to revise the policy on teaching posts to ensure a closer match between demand and supply. 4 In order to remedy the shortage of Grade R teachers, the DBE should consider the development of provincial staffing plans that identify the numbers of teachers required, as well as a comprehensive training strategy and implementation plan for Grade R educators with short, medium and longer-term targets.⁵² 	<p>National and provincial departments of Basic Education.</p>
<ol style="list-style-type: none"> 1 Ensure teachers are qualified to teach all learners with different learning abilities.⁵³ 2 Ensure that all teachers are appropriately qualified and equipped with the necessary skills to teach learners with disabilities.⁵⁴ 	<ol style="list-style-type: none"> 1 All teachers (including Grade R teachers) have the minimum qualifications prescribed in the National Qualifications Framework Act No. 67 of 2008: Policy on the Minimum Requirements for Teacher Education Qualifications (2011). 2 All teachers at rural primary schools teaching multi-grade classes have been trained in multi-grade teaching strategies as required by the Policy on the Minimum Requirements for teacher Education Qualifications (2011). 	<ol style="list-style-type: none"> 1 Even though there was a vast improvement in the number of qualified teachers between 1990 and 2008 (from 53% to 94, 4%), in 2012 there are a number of inadequacies regarding the qualifications and competencies of teachers to teach all learners, including those with disabilities.⁵⁷ 2 The gains made in the number of qualified teachers may be reversed with the introduction of the revised Policy on the Minimum Requirements for Teacher Education Qualifications in 2011. 	<p>National and provincial departments of Basic Education</p> <p>DHET</p> <p>Tertiary institutions such as universities and teacher training colleges</p>

1.6 Provide sufficient teachers that are qualified and available to teach *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
	<p>3 All teachers are trained on inclusive education, to identify and address barriers to education, and are trained in curriculum differentiation for multiple learning levels within one grade as required by White Paper 6 (2001), the Policy on the Minimum Requirements for teacher Education Qualifications (2011), and the National Strategy on Screening, Identification, Assessment and Support (SIAS) (2008).</p> <p>4 All teachers of deaf and blind children and children with multiple disabilities have received specialist training in appropriate teaching strategies and sign language, and teachers in special needs schools hold specialist qualifications, as required by the Policy on the Minimum Requirements for Teacher Education Qualifications (2011).</p> <p>5 All unqualified teachers are in the process of upgrading their qualifications as per the legally prescribed minimum qualification norms.</p> <p>6 All teachers undergo regular evaluations to determine levels of curriculum knowledge and competence for the subjects they are teaching and receive regular support to improve areas of weakness.⁵⁵</p> <p>7 Ninety percent of teachers attain a minimum standard in anonymous and sample-based assessments of their subject knowledge.⁵⁶</p>	<p>3 Whilst improvements have been made in the number of qualified teachers, the same progress has not been made in ensuring the adequate training and qualifications of teachers to teach learners with disabilities. By 2011, only 5000 district and school based officials had received training on SIAS and only 200 officials had been trained in visual and hearing impairment to support 66 schools.⁵⁸</p> <p>4 Even though there was a vast improvement in the number of qualified teachers between 1990 and 2008, there was not a corresponding improvement in learner performance. This disjuncture reveals "a sharp distinction between qualifications and competence".⁵⁹ The evidence indicates that the majority of teachers know little more about the subjects they teach than the children they teach; some teachers know even less.⁶⁰ A study conducted by JET Education services in 2008 in 268 schools in eight provinces found that only 53% of Grade 4 maths teachers answered a simple fraction question based on the Grade 6 curriculum correctly. In 2009, only 72% of the Grade 5 maths teachers got the same question correct.⁶¹ The full extent of the problem is not accurately documented as teachers are not regularly tested on content knowledge and competency levels. There has been resistance amongst some teachers to the introduction of testing.</p> <p>5 A number of recommendations have been made to address these inadequacies, including:</p> <ul style="list-style-type: none"> a The implementation of a meaningful and effective programme of ongoing in-service training for content-focused professional development and pre-service programmes for teachers. Taylor notes that the introduction of the DBE's Integrated Strategic Planning Framework for Teacher Education and Development for South Africa 2011-2025, which is aimed at improving the theoretical and practical competence of the new teacher and improve the in-service component of initial teacher training, "is likely to have a positive influence on the quality of new teachers entering the system".⁶² b The introduction of regular testing of teachers in the subjects that they teach to determine levels of knowledge and competence.⁶³ 	

1.6 Provide sufficient teachers that are qualified and available to teach *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
		<p>c The National Planning Commission recommends that the DBE consider introducing a system of teacher professional certification which will allow for regular monitoring and upgrading of teacher competencies and subject knowledge (2012).</p> <p>6 Taylor (2011) and others have expressed concern with the resistance that organised labour has shown to the professionalisation of teachers and the introduction of effective monitoring and management systems.</p> <p>The DBE and others recognise that the introduction of a system for monitoring and improving teacher content knowledge and competence depends on overcoming teacher trade union resistance to this development.⁶⁴</p> <p>Given the obligation on the State to prioritise the best interests of the child in the event of competing interests, the DBE is obliged to negotiate an agreement with all stakeholders that recognises the centrality of the best interests of the child. The DBE is urged to implement educator monitoring, testing and support measures, preferably through a negotiated agreement with the unions, which will create a strong legal foundation for holding all educators accountable to their teaching obligations and commitments.</p> <p>7 The DHET and tertiary institutions have a key role to play in building the competencies of teachers as prescribed. For example, universities and other tertiary institutions are required, in terms of the Policy on the Minimum Requirements for Teacher Education Qualifications (2011), to develop qualification programmes that comply with the minimum qualification requirements.</p> <p>In 2012, only three teacher-training programmes are available for training teachers of deaf children at the Free State University, the University of the Witwatersrand and UNISA. There is an urgent need for more programmes to be offered at more universities.</p>	

1.6 Provide sufficient teachers that are qualified and available to teach *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>Ensure teachers are in the classroom teaching learners and covering the curriculum.⁶⁵</p>	<ol style="list-style-type: none"> 1 All learners have a qualified teacher present and teaching in class for seven hours per day every school day.⁶⁶ 2 The curriculum for each grade is completed in the teaching year. 3 A management and monitoring system is implemented to ensure teachers are present, teaching and completing the curriculum.⁶⁷ 	<ol style="list-style-type: none"> 1 Various studies note that in 2011/12 the South African education system is marked by high levels of teacher absenteeism and late-coming. The problem is most pronounced in schools in the lowest four quintiles, although many schools in the highest quintile experience the problem too.⁶⁸ In addition, when teachers are at school, they spend only half their time, or less, in class teaching.⁶⁹ Not surprisingly, therefore, often teachers reach the end of the year without having covered the curriculum.⁷⁰ 2 The problem has been aggravated by inadequate management and monitoring systems. However, a revitalised management and monitoring system is being developed at various levels, including district level and through national structures like the Planning and Delivery Oversight Unit (PDOU) and the National Education Evaluation and Development Unit (NEEDU). The PDOU and NEEDU have been established to support delivery of the improved curriculum and other policies designed to improve the quality of teaching and learning. The PDOU has been set up to improve curriculum delivery and learner achievement through strengthened support through and by district offices. The NEEDU has been established in terms of the National Education Evaluation and Development Unit Act (2011) as an independent evaluation and oversight body tasked with reviewing and making recommendations relating to poor educational practices and develop the capacity of teachers.⁷¹ 3 The Department has committed to ensure that, through these innovations, basic management processes will be followed, and to improve the frequency and quality of the monitoring and support services provided by district offices to schools. More specifically, it has undertaken to introduce a new system to monitor schools and teachers through district-level visits to the school at least once a year to check on curriculum progress and quality of teaching. 	<p>National and provincial Departments of Basic Education</p> <p>Organised labour in the education sector</p> <p>Schools, principals and teachers</p>

1.6 Provide sufficient teachers that are qualified and available to teach *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
		<p>4 The DBE has also implemented a Strategic Planning Framework for Teacher Education and Development (2011) to improve teacher capacity and practices. In addition, it has begun a process of supporting and collaborating with teacher unions on teacher professional development.⁷³</p> <p>5 Teachers have pledged to “be punctual, enthusiastic, well prepared for lessons and of sober mind and body” and principals have committed to “monitor teacher attendance”.⁷⁴</p> <p>6 The National Planning Commission recommends that each school develop its own monitoring and evaluation plan for each year that should map out its goals for the academic year. Performance indicators should include the rate of improvement on ANA results, curriculum coverage, teacher and learner attendance. These should be monitored and regular reports provided to parents (2012, page 311).</p>	



1.7 Provide sufficient teaching and learning support materials and equipment

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>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.⁷⁵</p>	<ol style="list-style-type: none"> 1 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:⁷⁶ <ol style="list-style-type: none"> a a standardised workbook for literacy and numeracy,⁷⁷ b one textbook of their own for every subject;⁷⁸ c wall charts; d number and phonic friezes; and,⁷⁹ e basic learning materials, meaning at least one exercise book to write in, a pen or pencil, and a ruler.⁸⁰ 2 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.⁸¹ 3 The materials and texts are properly used to ensure effective teaching and learning. 	<ol style="list-style-type: none"> 1 Historically, South African learners have not enjoyed access to core text- and workbooks. The SACMEQ III (2010) study found that, in 2007, on average only 45% of learners had reading books and 36% had mathematics textbooks. 2 The DBE has recognised and responded to the need for textbooks and related teaching and learning support materials through its "3T" campaign which focuses on Texts, Time and Teaching. It has prioritised the development and delivery of textbooks and numeracy and literacy workbooks for all learners in Grades 1-9. In addition, the DBE has committed to translating workbooks into Braille for all blind learners at special schools.⁸³ 3 As in the case of infrastructure, in 2012 there is significant inequity in access to adequate workbooks and textbooks, with poorer provinces experiencing the greatest shortages.⁸⁴ Learners with disabilities are prejudiced by the fact that, whilst workbooks are translated into Braille, textbooks are not translated. In addition, in 2011, "books, magazines and puzzles were available in [only] about 70-75% of public school Grade R classes".⁸⁵ 4 Where materials such as textbooks are provided, they are not used appropriately.⁸⁶ 5 The SACMEQ III study emphasised that effective participation in learning activities depends on each learner having at least one exercise book to write in, one pen or pencil and a ruler. The study found that only 82% of Grade 6 learners had this essential package. In other words, in 2007, one in five learners did not have access to basic learning materials. The rate of access varied across the provinces, with the lowest number (67%) recorded in the Eastern Cape and the highest in Limpopo (93%).⁸⁷ <p>Similarly, the 2011 PETS study found that, whilst Grade R facilities at public schools were better equipped than their community-based counterparts, a significant number lacked essential learning and teaching support materials:</p> <ol style="list-style-type: none"> a 4% did not have chairs; b 12% did not have tables; 	<p>National and provincial departments of Basic Education</p>

1.7 Provide sufficient teaching and learning support materials and equipment *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
	<p>4 In addition to the above, all Grade R classes are to have the following basic minimum package of learning and support materials and equipment deemed necessary to enable "a school to carry out the prescribed curriculum without obstacles":</p> <p>a indoor equipment — scissors, floor mat, paint and brushes, wax crayons, paper, 10 story books, paper glue, teacher resource book (poetry/rhyming), 1 pack of shapes, 1 set of blocks, 6 pegboards, and 3 balls;</p> <p>b outdoor equipment — balls, skipping ropes, balance beam and bean bags.⁸²</p>	<p>c 39% did not have a blackboard;</p> <p>d 32% did not have playblocks;</p> <p>e 12% did not have crayons; and,</p> <p>f 36% did not have paper.</p> <p>6 The DBE has committed to developing a Minimum School Bag Policy which will describe and require the provision of the minimum quantity and quality of learning and teaching materials required by all learners.⁸⁹ It has not as yet developed the policy. It is urged to do so in order to secure the equitable provision of essential teaching and learning materials to all learners across all provinces.</p> <p>7 The National Policy for the Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010) obliges the provision of "basic facilities that enable [schools] to carry out [their] core functions of teaching and learning. Examples include textbooks and basic supplies of fundamental teaching aids like rulers."⁹⁰ As in the case of infrastructure, the policy commits to the development of national norms and standards which will prescribe minimum levels of LTSMs.</p> <p>These have not been developed. Instead, the Guidelines Relating to Planning for Public School Infrastructure (2012) have been developed and stipulate that a "school environment is considered to be meeting the minimum functionality requirements...if it....[has] textbooks and basic supplies of the most important teaching aids".⁹¹</p> <p>In order to strengthen the framework regulating the equitable provision of essential LTSMs, the Minister of Basic Education is urged to adopt national norms and standards which include a minimum basic package of essential teaching and learning support materials.</p> <p>The DBE has committed to engage in ongoing and in-depth reviews with regard to how effectively workbooks are being used in classrooms.⁹²</p>	

1.7 Provide sufficient teaching and learning support materials and equipment *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>Provide basic learning and teaching support infrastructure, furniture and equipment to provide an enabling teaching and learning environment for all learners, including learners with disabilities.</p> <p>This includes the provision of physical teaching and learning spaces, such as science laboratories, computer laboratories, workshops and other specialised teaching spaces; and spaces that support teaching and learning, such as libraries, school halls, media rooms, counselling centres; and sports facilities.⁹³</p>	<ol style="list-style-type: none"> 1 All ordinary public schools have sufficient desks and chairs to accommodate all learners. 2 All schools and learners have access to a school library that is: <ol style="list-style-type: none"> a adequately and age-appropriately stocked; b takes the form of one of the models provided for by the National Guidelines for School Library and Information Services; and, c maintained by a qualified librarian.⁹⁴ 3 All schools have a Whole School Library Developmental Plan governing the provisioning of a comprehensive Library and Information Service for learners and educators.⁹⁵ 4 All public schools have: <ol style="list-style-type: none"> a a stocked science laboratory;⁹⁶ b a stocked computer laboratory/classroom/media room;⁹⁷ c at least one sports field for soccer or rugby, and at least one for netball or volleyball;⁹⁸ and, d a meeting hall.⁹⁹ 5 All schools provide adequate assistive devices, infrastructure and furniture that allows for ease of access and movement to support teaching and learning for learners with disabilities.¹⁰⁰ 	<ol style="list-style-type: none"> 1 The Policy for the Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010) and accompanying guidelines (2012) require the provision of libraries, science laboratory facilities, computer rooms and sports grounds. Moreover, they oblige the departments of Basic Education to prioritise schools in the poorest quintiles. 2 Despite this policy directive, there are significant backlogs and inequities in the provision of learning and teaching support infrastructure. In 2011, 79% of schools had no library. Whilst 21% had a library, only 7% of these were stocked. Similarly, 85% of schools had no laboratories; 77% of schools had no computer centres, and of the 23% that had a computer centre, only 10% were stocked. Seventeen percent of schools had no sports facilities in 2011.¹⁰¹ <p>As in the case of the other infrastructure backlogs, the position is much worse in poorer provinces. For example, in the Eastern Cape, 90% of schools had no library, and in KwaZulu-Natal and Limpopo, 80% and 93% of schools did not have a library in 2010/11. The situation is similar in relation to access to science laboratories, computer rooms, counselling centres and sports facilities.¹⁰²</p> 3 The DBE has committed to remedy these backlogs by providing either media centres or libraries in all schools, to promoting mini-libraries in classrooms, and to establishing computer centres in schools by 2020.¹⁰³ In the medium-term it has committed to provide 80% of schools with library information services by 2014/15.¹⁰⁴ In the short-term, it has committed to provide libraries or media centres fulfilling certain minimum standards in an additional 20% of schools that do not, as at 2009, have libraries.¹⁰⁵ 4 The Draft School Sport Policy for Schools in South Africa (November 2011) commits to the provision, at each school, of a "structured programme for recreational and educational sport and to mobilise resources for the implementation thereof".¹⁰⁶ 	<p>National and provincial departments of Basic Education</p> <p>Department of Public Works</p>

1.8 Provide and spend sufficient funds to make and keep schooling available

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>Ensure sufficient allocation of the public fiscus for ECD.¹⁰⁷</p>	<p>70% of the per-learner cost allocated for Grade 1 learners by the DBE is allocated to Grade R learners.¹⁰⁸</p>	<p>1 Whilst the allocation of funds for Grade R in sites attached to public schools doubled between 2007/8 and 2009/10, the per capita amount allocated to Grade R learners in 2009/10 was less than half the R7826 allocation for primary and secondary learners.¹⁰⁹</p> <p>2 The DBE has committed to ensure that:</p> <ul style="list-style-type: none"> a all schools are funded at the least, at the minimum per learner levels; b that the funds will be used transparently and effectively; c that the amount to be paid to individual schools will be published on the internet.¹¹⁰ <p>These commitments must be equally applicable to Grade R funding.</p>	<p>Provincial departments of Basic Education.</p>
<p>1 Ensure sufficient allocation of the national budget to realise the right to basic education.</p> <p>2 Ensure sufficient allocation of funds to the provincial departments of Basic Education and the efficient expenditure of national and provincial funds to provide the necessary school infrastructure, equipment and learning and support materials.¹¹¹</p>	<p>1 The national education budget is 9% of the national GDP.¹¹²</p> <p>2 All provinces allocate sufficient funds to ensure the availability of adequate infrastructure at all schools and all spend their budgets within the allotted financial year.</p> <p>3 All provinces allocate sufficient budgets for the purchase of assistive devices and other supportive infrastructure for learners with disabilities and spend these within stipulated budget periods.</p>	<p>1 In 2011/12 the national allocation to basic education is almost 6% of GDP. The system is marked by provincial variations in the allocation of budgets and high levels of under-spending, especially on capital and infrastructure budgets.¹¹⁴ In addition, transfers to many schools by provincial departments are characterized by inefficiencies and delays.¹¹⁵ Similarly, there is provincial variation in the budgets allocated and under-spending of budgets for the purchase of assistive devices and other supportive infrastructure for learners with disabilities.¹¹⁶</p> <p>2 The DBE has committed to ensure that:</p> <ul style="list-style-type: none"> a all schools are funded at the least, at the minimum per learner levels; b that the funds will be used transparently and effectively; and, c that the amount to be paid to individual schools will be published on the internet.¹¹⁷ 	<p>National and provincial departments of Basic Education</p> <p>The national Planning and Delivery Oversight Unit</p>

1.8 Provide and spend sufficient funds to make and keep schooling available *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
	<p>4 All schools receive funding timeously from the provincial departments of Basic Education so as to enable proper operation, maintenance and administration of the school and realization of its obligations to learners.</p> <p>5 The distribution of the education budget between personnel and non-personnel costs is 80:20.¹¹³</p> <p>6 The PDOU reports annually on provincial expenditure and delivery on policy priorities such as infrastructure and workbooks, and on remedial measures for improved fiscal discipline in provincial departments of Basic Education.</p>	<p>3 The DBE has committed to coordinating the procurement of assistive devices for schools by provinces until 2014 to ensure equity of access for learners with disabilities and expenditure of allocated budgets.¹¹⁸</p> <p>4 In addition, the DBE established the national PDOU in 2011 "with a view to promoting a more direct and interventionist relationship between the national level on the one hand, and provinces and districts, on the other".¹¹⁹ This unit will work closely with the provincial departments to oversee and address problems of under-performance and under-expenditure of capital and goods and service budgets.¹²⁰</p>	



2. Accessible Education

Education must be accessible to all children. Meaningful access to education requires more than just getting through the school gates. It requires that learners access, remain in and complete their schooling. This requires that the State take the necessary legislative, administrative and other steps to ensure that the education system does not actively or passively exclude any children. The first step is for the law to make enrolment, attendance and completion compulsory. However, the law cannot be enforced, and parents and learners cannot be expected to comply with the law, if their circumstances bar them from doing so. This places a further obligation on the State to identify and address barriers that prevent children from accessing the education made available to them (Tomaševski K., 2004). The obligation is thus two-fold. “Accessibility requires that the system is non-discriminatory and accessible to all, and that positive steps are taken to include the most marginalized” (Right to Education Project, 2010).

Thus, the State is obliged to outlaw discrimination within the education system and put in place adequately funded policies, laws and programmes to identify and address barriers to education. It is obliged to:

- 1 ensure universal access at an appropriate age, progression through the system and completion of education cycles by all children;¹²¹



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- 2 prohibit discrimination on the grounds of disability, health status, gender, race as well as geographical location, and actively promote the inclusion of vulnerable children;¹²²
- 3 address economic barriers to education by making primary education free and secondary education progressively free;¹²³
- 4 address physical barriers to schools, such as distance and access for children with disabilities; and,¹²⁴
- 5 address administrative obstacles such as onerous documentation requirements.¹²⁵

2.1 Ensure access, retention, progression through, and completion of education cycles

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
Ensure that all children have access to, are retained at, and complete pre-primary and primary school, especially those that are marginalised. ¹²⁶	<ul style="list-style-type: none"> 1 Every child entering Grade 1 has participated in an accredited Reception year by 2014.¹²⁷ 2 100% of children within the compulsory age band, 7-15, are enrolled at school. 	<ul style="list-style-type: none"> 1 In 2011, pre- and primary enrolment, attendance and retention rates were low, especially for children subject to multiple vulnerabilities. 2 The DBE has committed to ensuring 100% Grade R access for all five-year-olds by 2014.¹²⁸ This was not achieved by 2011 when the Grade R enrolment rate was 78,3%, with much lower rates in poor provinces such as the North West (66,8%).¹²⁹ 	<p>National and provincial departments of Basic Education</p> <p>Department of Social Development</p>

2.1 Ensure access, retention, progression through, and completion of education cycles *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
	<p>3 100% of the following vulnerable children aged 7-15 are enrolled at school:</p> <ul style="list-style-type: none"> a Children with disabilities; b Children who are orphaned (double or single); c Children living in poverty; d Children living with their grandparents; e Children living with someone other than parents or grandparents; f Children involved in child labour (both domestic and for economic gain). <p>4 100% of children within the compulsory age band attend school on a daily basis.</p> <p>5 100% of children remain enrolled until they complete their compulsory cycle.</p>	<p>3 The DBE has committed to achieving a 99% enrolment rate for children aged 9-15, and to ensure that children remain effectively enrolled until they turn 15.¹³⁰ In 2011, 2% of children within the compulsory age range (7 to 15 years) were out of school.¹³¹ Children living in poverty, with a disability, orphans, children living with non-relatives and children involved in child labour were disproportionately represented in the out-of-school population.¹³²</p> <p>4 For many of those that are enrolled, daily attendance remains a challenge. The high rate of absenteeism (7,4%) is caused by, inter alia, illness, family responsibilities, poverty, transport inadequacies, and violence.¹³³</p> <p>5 Only 87% of 16-year-olds had completed primary school in 2009. Whilst retention rates are good for children in Grades 1-6, drop-out rates increase from Grade 7 upwards. In 2007/2008, drop-out rates for children in Grades 1 and 2 were 1% and below. For children in Grades 3-6 it varied from 0,3 to 1,5%. Thereafter it increased to 2,7% in Grade 7, to 3,8% in Grade 8, and to 6,5% in Grade 9.¹³⁴</p> <p>6 The DBE's pro-poor policies have succeeded in improving and maintaining enrolment rates for the majority of children in the compulsory age range.¹³⁵ UNESCO observes that as progress is made towards near-universal enrolment, attention must turn to including those who are most marginalized and hardest to reach.¹³⁶ South Africa now faces the challenge of ensuring the implementation of its compulsory education policies for the most marginalised children — children living in extreme poverty, children living with disabilities, and children experiencing other multiple vulnerabilities.</p> <p>7 The DBE has developed a range of programmes aimed at monitoring enrolment and attendance and addressing some of the underlying causes of absenteeism and early drop-out.</p>	<p>School principals</p> <p>Teachers</p> <p>Parents/caregivers</p> <p>Learners</p>

2.1 Ensure access, retention, progression through, and completion of education cycles *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
		<p>8 One of the more recent innovations to aid in the identification of learners at risk of dropping out is the Policy on Learner Attendance (2010). It provides standard processes for recording, managing and monitoring learner attendance, with the obligation on principals to identify learners who are frequently absent, to establish the cause of such absenteeism, and to facilitate access to support for the learner to overcome the underlying difficulties.</p> <p>9 In addition, the LURITS system, which covered 50% of schools in 2011, is a national computerised data and information management system which records the attendance and drop-out patterns of children. This system should be expanded to cover 100% of schools.</p> <p>10 Receipt of the Child Support Grant (CSG) is linked to school enrolment and attendance.¹³⁷ The Social Assistance Act No. 13 of 2004 (as amended) requires that the caregiver of a child between the ages of 7 and 18 receiving the CSG ensures that the child is enrolled at and attending school. If the child is not enrolled or does not attend school, the Director General (DG) of the DSD must, in consultation with the national DBE, initiate a social-worker investigation and take steps to ensure that the child is enrolled at and attends school. It does not require the termination of the grant.</p> <p>The Minister of Social Development recently committed to “more forcefully applying the conditions starting with an extensive communication campaign to create awareness about the importance of these conditionalities”. Moreover, the DSD has “signed a protocol with the DBE to confirm school enrolment and attendance of children in receipt of the CSG and the Foster Care Grant (FCG)”.¹³⁸</p> <p>11 In addition, the Department has identified the National School Nutrition Programme (NSNP), the extension of the “No-Fee” school policy, its workbook project, and the provision of more full-service and special schools to accommodate learners with disabilities as key interventions to improve enrolment, retention and repetition rates.¹³⁹</p>	

2.1 Ensure access, retention, progression through, and completion of education cycles *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>Ensure that secondary school is generally accessible to all children. ¹⁴⁰</p>	<ol style="list-style-type: none"> 1 100% of children completing primary school enroll at secondary school.¹⁴¹ 2 80-90% of learners complete their secondary schooling and obtain either their National Senior Certificate or an FET college certificate.¹⁴² 	<ol style="list-style-type: none"> 1 Secondary education is not compulsory, but is universally available to all children in South Africa. This has not, however, translated into universal accessibility, which is evident from the substantial increase in the drop-out rate in the secondary education phase, especially in the senior secondary phase. As mentioned previously, the drop-out rate increases from Grade 7 and peaks in Grades 10 and 11 at 11,5%.¹⁴³ In consequence, only 83% of children aged 16-18 years were enrolled in 2011, compared to 98% of children aged 7-15 years. Only 40% of those who remain enrolled complete their schooling and graduate with a National Senior Certificate. Only 1% complete the secondary education at an FET college.¹⁴⁴ In short: "South Africa loses half of every cohort that enters the school system by the end of the 12 year schooling period."¹⁴⁵ 2 The DBE has introduced a number of interventions to improve enrolment and retention of learners at secondary school level. These include the extension of: <ol style="list-style-type: none"> a the National School Nutrition Programme (NSNP) to quintile 2 and 3 secondary schools; and, b the no-fee school policy to additional schools.¹⁴⁶ 3 Gustafsson (2011) recommends that the DBE's policies should, in addition, include interventions to address financial constraints faced by secondary learners, such as the cost of books, stationery and transport. In addition, he argues that teenage pregnancies must be addressed as they are the cause of 50% of girls dropping out. With regard to the latter recommendation, a strategy for the prevention and management of teenage pregnancy has been developed. It is to be presented to the Director General for approval in 2012, and is discussed in more detail under item 2.2 below.¹⁴⁷ 4 In addition, a number of innovations have been introduced to improve FET colleges so that more learners can access secondary education through alternative educational institutions. (These innovations are outside of the scope of this Charter as they fall within the mandate of the Department of Higher Education and Training (DHET)). 5 The National Planning Commission (2012) recommends a more systemic solution to improving the rate of access to, and completion of, secondary education. It recommends that "compulsory education should be extended to successful completion of Grade 12 in basic education or the equivalent level in the post-school sector". 	<p>National and provincial departments of Basic Education.</p>

2.1 Ensure access, retention, progression through, and completion of education cycles *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
Ensure that children progress through the grades at the appropriate age. ¹⁴⁸	<ol style="list-style-type: none"> 1 Only 5% of learners repeat grades.¹⁴⁹ 2 85% of children aged 9 at the start of the year have completed Grade 3.¹⁵⁰ 3 75% of children aged 12 at the start of the year have completed Grade 6.¹⁵¹ 	<ol style="list-style-type: none"> 1 Repetition rates are high amongst learners in South Africa. At 9%, the rate is higher than in other developing countries (5%).¹⁵² It is higher in the secondary phase. In Grades 1-3 it averages 7%, compared to 16-17% in Grades 10 and 11.¹⁵³ 2 The DBE recognises that this is caused by the failure of learners to acquire the necessary skills during the foundation phase. For this reason it has focused its energy on improving the quality of inputs (such as literacy and numeracy workbooks for Grades 1–6) and the quality of literacy and numeracy outcomes for learners in Grades 3, 6 and 9.¹⁵⁴ This is discussed in greater detail under the "Acceptability" heading below. 	<p>The national and provincial departments of Basic Education</p> <p>Schools</p> <p>Parents/caregivers, learners</p>

2.2 Prohibit discrimination on the grounds of disability, health status, gender, race as well as geographical location and actively promote the inclusion of vulnerable children

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
Ensure that education and related policies effectively outlaw discrimination on all internationally prohibited grounds, and include effectively children with disabilities, girls (including those who become pregnant), and children of refugees. ¹⁵⁵	<ol style="list-style-type: none"> 1 Education laws prohibit the exclusion of children from school on the internationally and nationally prohibited grounds of discrimination, including gender, race, disability, health status, language, ethnicity, geography, etc. 	<ol style="list-style-type: none"> 1 Numerous policies prohibit discrimination of learners on the prescribed ground within the education system. For example, the South African Schools Act No. 58 of 1996 (section 5) and the Admission Policy for Ordinary Public Schools Act No. 27 of 1996 (sections 7 and 9) prohibit discrimination in school admission policies. In addition, they guarantee admission to lawfully resident non-South Africans residents, as well as learners with special education needs, such as learners with a disability or who are chronically ill or living with HIV, and prohibit discrimination against children because of an inability to pay school fees. 2 Learners living with HIV or AIDS may not be discriminated against in terms of the current National Policy on HIV/AIDS for Learners and Educators in Public Schools.¹⁵⁶ 3 In terms of the Measures for the Prevention and Management of Learner Pregnancy (2007), schools may not expel or otherwise unfairly discriminate against learners that become pregnant. 	<p>National and provincial departments of Basic Education working together with the DSD, DOH and DHA.</p> <p>Schools, principals and teachers</p> <p>Learners, their parents and caregivers</p>

2.2 Prohibit discrimination on the grounds of disability, health status, gender, race as well as geographical location and actively promote the inclusion of vulnerable children *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
	<p>2 All children with disabilities, refugee children, children affected by HIV and AIDS and girls who become pregnant while teenagers are enrolled, attend and complete their primary and secondary schooling cycles.</p> <p>3 Children do not discriminate against their peers on the grounds of their HIV status.</p>	<p>4 Despite these measures, 10% (476 000) of children with disabilities are out of school. Higher rates are observed in some provinces. For example, 27% in the Northern Cape, 15% in the North West and 12% in Gauteng and Limpopo.¹⁵⁷ Only 53% of 16-18 year olds with a disability attended an educational institution, leaving 47% out of school. Many children of refugees are barred from enrolling at schools.¹⁵⁸ Six percent of out of school learners aged 7-18 were not at school in 2009 because of pregnancy.¹⁵⁹</p> <p>5 The SACMEQ III study found that 8,3% of learners would stigmatize their peers infected with HIV.¹⁶⁰</p> <p>6 The DBE has committed to improving implementation of the relevant policies by, inter alia, increasing full service schools to accommodate learners with disabilities to at least one per district by 2014.¹⁶¹</p> <p>7 In addition to the allocation of additional budgets by national and provincial departments of education for building special schools or developing ordinary public schools to accommodate diversity, the DBE should embark on a collaborative recruitment drive with the Departments of Social Development, Health and Home Affairs to identify and ensure all children with disabilities and all refugee children are in schools from as early an age as possible. In addition, it should implement awareness-raising campaigns publicising the education rights of refugee children and the requirements for admission, together with a complaints mechanism to report cases of exclusion to the Department.¹⁶²</p> <p>8 In terms of the Measures for the Prevention and Management of Learner Pregnancy, 2007, schools must encourage pregnant learners to continue with their education before and after the birth of the baby. These Measures are, however, to be replaced by a revised Strategy and Regulations for the Prevention and Management of Teenage Pregnancy which are expected to be released in 2012.¹⁶³</p>	

2.3 Address economic barriers to education by making primary education free and secondary education progressively free

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>Make primary education free for all children by eliminating school fees, as well as addressing associated costs such as the cost of school uniforms, transport, stationery, extra-mural costs, school lunches, etc.¹⁶⁴</p>	<ol style="list-style-type: none"> 1 Primary schooling is free at all public schools. 2 All public schools for children with disabilities do not charge school and related fees.¹⁶⁵ 3 All children benefiting from a social grant are fully exempted from paying school fees at primary school.¹⁶⁶ 4 All children living in poverty attending a primary school that charges fees are fully exempted from paying school fees. 5 No child is unable to attend a primary school due to an inability to pay fees.¹⁶⁷ 6 No child is excluded from school or punished due to an inability to pay school fees.¹⁶⁸ 7 No child is excluded from school, or otherwise punished due to an inability to pay other education costs such as uniforms, stationery, or extra-curricular costs, etc. 	<ol style="list-style-type: none"> 1 In 2012 South Africa does not have a free primary education policy. The majority of children living in poverty do not pay fees because of the current no-fee and school fee exemption policies. All schools in quintiles 1, 2 and 3 are no-fee schools. Learners that attend quintile 4 and 5 schools may qualify for a school fee exemption in terms of the Amended National Norms and Standards for School Funding (2006). Depending on their caregivers' levels of poverty, they may qualify for either a full or partial fee exemption. Children receiving the CSG, a FCG, or who are in the care of kin and have no visible means of support, automatically qualify for a full exemption. In addition, learners in primary schools in quintiles 1, 2 and 3 receive daily food in terms of the NSNP. 2 The reach of the no-fee and exemption policies is extensive. Almost 80% of schools benefit from the no-fee policy, and in 2011, 55.6% of learners did not pay tuition fees.¹⁶⁹ 3 However, the policies do not provide for universally free primary education. In addition, they are inadequately designed and implemented so as to exclude a number of poor students enrolled at quintile 4 and 5 schools.¹⁷⁰ <p>In 2008/9, 25% of children in quintile 1 schools and 46% in quintile 2 schools in households surveyed in the greater Johannesburg area were paying fees, despite the fact that they were all no-fee schools. One percent of learners participating in the study had been expelled from school because their households could not afford to pay school fees and other costs such as uniforms.¹⁷¹ In addition, there have been reports of schools failing to facilitate access to exemptions for poor children and of children receiving the CSG or other grants not automatically receiving a school fee exemption.¹⁷²</p> 4 The DBE has recognised some of the challenges in the design and implementation of the current no fee and school fee exemption policies. It has committed to: <ol style="list-style-type: none"> a reviewing the use of the quintile system as a means of allocation of schools as no-fee schools; 	<p>The national and provincial departments of Basic Education</p> <p>Schools</p> <p>School governing bodies and principals</p> <p>Parents and caregivers</p>

2.3 Address economic barriers to education by making primary education free and secondary education progressively free *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
	<p>8 The NSNP reaches all children living in poverty</p>	<p>b ensuring that all children who receive the CSG do in fact get exempted from school fees as per current policy requirements; and,</p> <p>c compensating fee-charging schools that provide school fee exemptions to poorer learners.¹⁷³</p> <p>There is, however, contrary to clear international legal obligations, no commitment as at 2012 to make all primary schools free.</p> <p>5 Whilst the DBE makes provision for assisting children with the cost of tuition fees through its no-fee and exemption policy, there is, in 2012, no comparable policy to subsidise the cost of school uniforms and transport. The cost of these essentials serve to bar children from school.¹⁷⁴ The Portfolio Committee on Basic Education has recommended that appropriate policies be developed to secure subsidisation of these costs.¹⁷⁵</p> <p>6 Whilst the NSNP reaches close to 10 million children, it is nonetheless only available in primary schools in quintiles 1-3 and in secondary schools in quintile 1. There are however no measures or commitments in place to facilitate access to school nutrition for poor learners in quintiles 4 and 5.</p>	
<p>Make secondary education progressively free and have a time-bound plan in place to achieve this goal.¹⁷⁶</p>	<p>1 The State has committed to making secondary schooling progressively free and has developed a time-bound plan to realise the goal.</p> <p>2 All secondary school learners living in poverty and attending a public school do not pay school fees and receive support to cover associated school costs.</p> <p>3 Secondary school learners living in poverty have access to the NSNP</p>	<p>1 The drop-out rate is higher at secondary level and the primary reason for premature cessation of studies is lack of fees.¹⁷⁷</p> <p>2 To address the poverty barrier, the DBE has committed to address implementation problems related to the school fee exemptions as well as the targeting gaps brought about through classification of no-fee schools based on their quintile categorisation. (These were discussed in more detail in the previous table).</p> <p>3 In addition, the DBE has committed to expanding the NSNP to all secondary schools in quintiles 2 and 3.¹⁷⁸ However, no commitments have been made to facilitate access to school nutrition for poor learners attending quintile 4 or 5 secondary schools</p>	<p>The national and provincial departments of Basic Education</p> <p>Schools</p> <p>School governing bodies and principals</p> <p>Parents and caregivers</p>

2.4 Address physical barriers to schools such as distance and access for children with disabilities

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>Address the barrier presented by physical distance to schools through scholar transport and other interventions.¹⁷⁹</p>	<ol style="list-style-type: none"> 1 All learners living more than 5 kilometres from school that cannot afford to pay transport costs have access to either free or subsidized transport or hostel accommodation.¹⁸⁰ 2 The national school transport policy recognises and makes special provision for the additional transport and safety needs of very young learners, learners with disabilities, and learners in rural areas. 	<ol style="list-style-type: none"> 1 "For many learners, especially in rural South Africa, access to education is hampered by the long distances they have to travel between home and school."¹⁸¹ The Department recognises that 19% of learners take more than 30 minutes to walk to school.¹⁸² Learners in remote rural and farming areas have reported walking up to 34 kilometres per day.¹⁸³ 2 The National Policy for the Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010) commits to providing alternatives and to implementing these on a pro-poor basis where "ease of physical access to schools is not financially feasible". Proposed alternatives include the provision of transport and the provision of hostels.¹⁸⁴ 3 The Guidelines Relating to Planning for Public School Infrastructure (2102) make provision for "either transport or hostel accommodation on a progressively phased and pro-poor basis" for learners that have to walk more than 5 kilometres to school.¹⁸⁵ 4 The DBE has indicated that a Hostel Policy was finalised in 2010 and a draft presented to departmental management for consideration. In addition, discussions are taking place between the Minister of Basic Education and the Department of Transport around a national Draft Learner Transport policy.¹⁸⁶ 5 It is important that the policies in development: <ol style="list-style-type: none"> a Make provision for affordable and safe transport for all learners with additional needs and vulnerabilities, including very young learners, learners with disabilities, and children living in rural areas. Transport is prohibitively expensive for learners with disabilities because of their special needs and, for many, special schools are very far from their homes. Moreover, the quality and availability of transport for them is poor.¹⁸⁷ b Children living in rural areas are especially vulnerable to the dangers and risks of long distances. A five-kilometre walk for a child in a rural area is often more dangerous than for their urban counterparts, given the lack of tarred roads, poor security due to dense vegetation, dangerous animals and other factors.¹⁸⁸ 	<p>National and provincial departments of Basic Education</p> <p>Departments of Public Works</p> <p>Department of Transport</p>

2.4 Address physical barriers to schools such as distance and access for children with disabilities *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
Ensure that children with disabilities enjoy physical access to schools. ¹⁸⁹	All public schools provide facilities that enable access to the school premises for children with disabilities, including ramps, accessible toilets, signage drop-off zones, accessible transport and other technical support. ¹⁹⁰	<ol style="list-style-type: none"> 1 Physical access to schools for learners with disabilities is a problem. In 2009, 97% of public schools did not have facilities such as ramps, elevators and disability-abled toilets.¹⁹¹ 2 White Paper 6 (2001), together with the National Policy for the Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010) and its accompanying Guidelines (2012), oblige the DBE to ensure access for all children with disabilities by "providing adequate spaces and resources to support teaching and learning". The policy further provides that infrastructure and furniture must allow for ease of access and movement and seating. The Guidelines for Full Service Schools require that all such schools must be accessible. 3 For further statistics and comments, see the discussion under the "Availability" heading, under item 1.5 — "Provide sufficient, safe, functional educational institutions", dealing with the sufficiency of schools, school spaces and infrastructure for children with disabilities. 	<p>National and Provincial departments of Basic Education</p> <p>Department of Public Works</p> <p>Department of Transport</p> <p>Schools and Principals</p>

2.5 Address administrative barriers to schools

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
Ensure that administrative requirements such as documentation requirements for admission do not bar children from school. ¹⁹²	<ol style="list-style-type: none"> 1 Education laws prohibit discrimination on the grounds of lack of documents. 2 No child is denied access to school on the basis of lack of access to documents. 	<ol style="list-style-type: none"> 1 Although documents such as birth certificates are required for admission to a public school, the Admission Policy for Ordinary Public Schools (2006) and the South African Schools Act (2006) require that children who lack these be provisionally registered until their documents can be obtained. 2 Despite this provision, in 2012, children of refugees continue to be barred from enrolling, often because they lack the necessary documents.¹⁹³ 3 The DBE should, together with the DHA and DSD, engage in an awareness-raising campaign about the rights of all children to be admitted, regardless of their documentation status. 	<p>National and provincial departments of Basic Education</p> <p>Department of Home Affairs and Social Development</p> <p>Schools</p>

3 Acceptable Education

The curriculum, teachers, teaching methods, educational outcomes and teacher and learner behaviour must be acceptable.

The right to education “by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. The State is obliged to ensure that all schools conform to the minimal criteria which it has developed, thus ensuring ... education [is] acceptable” (Tomasevski K., 2001) (Tomasevski K., 2004) (UN CESCR. General Comment No. 13, 8 December 1999).

This translates into an obligation on the State to regulate the form and substance of education so as to ensure:

- 1 the provision of quality education through appropriate teaching methods and an appropriate curriculum;¹⁹⁴
- 2 the acquisition by learners of necessary literacy, numeracy and problem-solving skills as measured against international and regional standards;¹⁹⁵
- 3 the curriculum and teaching is linguistically responsive so that language does not become a barrier and is non-discriminatory; and,¹⁹⁶
- 4 a learning environment that is not harmful to children.¹⁹⁷



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3.1 Teaching methods and curriculum are adequate to cultivate basic knowledge and skills

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
Ensure the provision of teaching through methodologies and a curriculum capable of ensuring children acquire the necessary numeracy, literacy and critical skills and competencies. ¹⁹⁸	<ol style="list-style-type: none"> 1 All learners in the foundation and intermediate phases participate in daily reading for enjoyment.¹⁹⁹ 2 All learners in the foundation and intermediate phases participate in daily writing exercises.²⁰⁰ 	<ol style="list-style-type: none"> 1 In 2011, the quality of education provided in Grade R was poor.²⁰² 2 In 2011, primary and secondary teaching practices did not involve daily writing and numeracy skills.²⁰³ An evaluation conducted by the NEEDU found that the majority of evaluated primary schools ignored key components of teaching reading; that reading materials were insufficient; and learners were not given sufficient work in language and mathematics.²⁰⁴ 	<p>National and provincial departments of Basic Education</p> <p>Principals</p> <p>Teachers</p> <p>NEEDU</p>

3.1 Teaching methods and curriculum are adequate to cultivate basic knowledge and skills *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
	<p>3 All learners in the foundation and intermediate phases spend an hour per day practising maths/numeracy, including practising the application of arithmetic exercises.²⁰¹</p> <p>4 The NEEDU conducts annual reviews of compliance with minimum time allocations for assigned tasks and coverage of essential elements of the curriculum.</p>	<p>3 The DBE has committed to improving the quality of Grade R through the distribution of high-quality teaching and learning materials.²⁰⁵</p> <p>4 Furthermore, the revised 2011 Curriculum Statements (CAPS) for all subjects for Grades R-12 are intended to improve both teaching content and methodology.²⁰⁶ The department has committed to training all educators in the new CAPS and to provide ongoing teacher development and monitoring to ensure adherence to minimum teaching inputs in the class at primary and secondary levels.²⁰⁷ (See further comments on the revised CAPS under 3.2 below.)</p> <p>5 The NEEDU has been established to monitor the state of teaching and learning in schools and is required to report and make recommendations with regard to issues such as curriculum quality and compliance.²⁰⁸</p>	

3.2 Education results in the acquisition of skills and capacities linked to basic education

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>1 Ensure that all children acquire the necessary skills and knowledge to achieve the objectives of basic education.</p>	<p>1 An assessment framework is developed and implemented at all schools for the assessment of every individual learner's progress in literacy, numeracy and all other subject areas offered through the national curriculum.²¹⁰</p>	<p>1 The curriculum and assessment framework to measure learner progress was revised through the Curriculum and Assessment Policy Statements for Grades R-12 (2011). The revised CAPS were designed to ensure improved acquisition of the skills and knowledge necessary to achieve the aims of education through appropriate content development and mechanisms for better teaching and learning. The revised curriculum focuses on the acquisition of basic skills such as literacy and numeracy, especially in the early years. It has been made more accessible to teachers through the development of specific content statements for each subject as well as specific statements as to the requisite teaching methodology and time to be spent on each subject area in all education phases.</p>	<p>National and provincial departments of Basic Education</p> <p>Teachers</p>

3.2 Education results in the acquisition of skills and capacities linked to basic education *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>2 Develop and implement learner assessments which are benchmarked against international standards to determine progress of all individual learners as well as progress made by all children in the education system towards attaining basic education goals.²⁰⁹</p>	<p>2 All ordinary public schools make use of differentiated assessments to accurately assess progress made by learners with barriers to learning, including children with disabilities.²¹¹</p> <p>3 A national assessment tool is developed and implemented annually to determine systemic progress towards national targeted educational outcomes in literacy and numeracy (benchmarked against international standards) at different grades, and is designed to monitor the comparable rate of progress across the different provinces and districts, income quintiles, and in rural and urban areas.</p> <p>4 60% of Grade 3 learners perform at the minimum competency levels required for literacy and numeracy according to the ANA.</p> <p>5 60% of Grade 6 learners perform at the minimum competency levels required for literacy and numeracy according to the ANA.</p> <p>6 The results of Grade 6 learners for language and mathematics in the SACMEQ study increase from 495 to 600 or more by 2022.²¹²</p>	<p>2 The curriculum statements are supported by accompanying assessment and promotion standards in the National Policy Pertaining to the Programme and Promotion Requirements of the National Curriculum Statement Grades R-12 (2011) and The National Protocol for Assessment Grades R-12 (2011). In sum: "Each subject in each grade now has a single concise Curriculum and Assessment Policy Statement which provides specific details on what teachers ought to assess on a grade-by-grade and subject-by-subject basis."²¹⁶</p> <p>3 In addition, the curriculum and assessment policies and statements, together with the Guidelines for Responding to Learner Diversity in the Classroom through Curriculum and Policy Statements (2012), require that both the curriculum and assessments be modified in all ordinary public schools to ensure that learners experiencing barriers to learning, including children with disabilities, acquire the necessary knowledge and skills, and that their progress is appropriately and accurately assessed.</p> <p>4 The DBE makes provision for three different kinds of alternative assessments for learners experiencing barriers to education, and has committed to making all three forms available in ordinary public schools.²¹⁷</p> <p>5 The DBE introduced Annual National Assessments (ANA) in 2011. The results of the first assessment point to serious deficiencies in the quality of educational inputs and outcomes in South Africa. In 2011, only 20% of Grade 3 learners had adequate grade-appropriate literacy skills and only 12% had grade-appropriate numeracy skills. On average, just over 30% of learners in Grade 6 in 2011 performed at the requisite level.²¹⁸</p> <p>6 The number of learners that pass their final national senior certificate exam is low. In 2009, only 60% of learners passed. This increased to 73% in 2011. The pass rate is even lower in subjects such as mathematics and science. The number of learners passing mathematics in their final examinations dropped from 133 505 in 2009 to 104 033 in 2011.²¹⁹ In 2011, only 120 767 graduating learners qualified for admission to a bachelor's degree, which was lower than in 2010 when 126 371 qualified.²²⁰</p>	

3.2 Education results in the acquisition of skills and capacities linked to basic education *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
	<p>7 The average Grade 8 scores in the Trends in Mathematics and Science Study (TIMSS) increase to 420 by 2023 and to 500 by 2030.²¹³</p> <p>8 By 2014, 175 000 learners complete secondary schooling with results that make them eligible for a bachelor's programme. This number increases to 300 000 by 2024 and to 450 000 by 2030.²¹⁴</p> <p>9 By 2030, 350 000 and 320 000 learners complete secondary education with mathematics and physical science with results that make them eligible for a bachelor's programme.²¹⁵</p> <p>10 The difference in educational outcomes (as measured through the ANA, National Senior Certificate examinations at the end of Grade 12, SACMEQ and TIMMS evaluations) between children in different provinces, in poor versus wealthier quintiles, and between children in rural and urban areas, is less than 10%.</p>	<p>7 There is a marked inequity in the levels of educational attainment between children living in poverty and their wealthier counterparts, as well as between children living in rural as opposed to urban areas.²²¹ Children living in poorer quintiles and children living in rural areas perform more poorly than their counterparts.²²²</p> <p>8 The DBE has committed to a range of interventions to improve educational outcomes, including:</p> <ul style="list-style-type: none"> a the provision of workbooks for learners in Grades 1-6 for numeracy and literacy; b ongoing teacher training and development; c testing and monitoring of teacher knowledge; d improving the infrastructure and learning and support materials at schools; and, e the introduction of targeted support to districts and schools that have performed poorly.²²³ <p>Many of these interventions are discussed in more detail in previous columns.</p>	

3.3 The curriculum and teaching is linguistically responsive so that language does not become a barrier and is non-discriminatory

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
Ensure that language is not a barrier to learning, through the provision of education in learners' home languages. ²²⁴	<ol style="list-style-type: none"> 1 All children are taught in their home language and receive instruction in an additional language in the Foundation Phase. 2 After the Foundation Phase, all children have the opportunity to choose one of the official languages as their language of teaching and learning, subject to the proviso that realisation of the right depends on what is reasonably practical. What is reasonably practical depends on, inter alia, the availability of resources and the number of learners wishing to be taught in the language in question.²²⁵ 	<ol style="list-style-type: none"> 1 Whilst the majority of children (80%) in the Foundation Phase received instruction in their home language in 2010, 20% (600 000) continued to be taught in another language — primarily English.²²⁶ 2 The DBE has taken a number of measures to improve the implementation of the Language in Education Policy (1997) which, together with the Revised National Curriculum Statement of 2002, requires that Foundation Phase learners are taught in their home language. For example, the DBE is developing guidelines for mother-tongue teaching and learning across the curriculum from Grades R-12. It has piloted a training module which is now in the process of being strengthened. In addition, district officials have been trained in strategies for teaching language across the curriculum.²²⁷ 	<p>National and provincial departments of Basic Education.</p> <p>District officials</p> <p>Schools, principals and teachers</p>

3.4 A learning environment that is not harmful to children

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
Ensure that all children are free from exposure to harmful behaviours at school, such as corporal punishment, bullying and sexual abuse. ²²⁸	<ol style="list-style-type: none"> 1 No children experience violence and/or abuse at school at the hands of a teacher, any other person employed within the education system, or another child. 2 No child is subjected to discipline that harms him or her or takes the form of physical punishment. 	<ol style="list-style-type: none"> 1 The SASA (2006) prohibits all forms of violence and abuse, including the use of corporal punishment at schools. 2 In 2009 the President stated a number of education "non-negotiables". One of these was that there would be no abuse of pupils by teachers. This commitment was furthered through the development of a Code of Conduct for Quality Education, in terms of which teachers committed to "eliminate unprofessional behaviour, such as teacher-pupil relationships ... assault, sexual harassment and other infringements".²²⁹ This echoes the South African Council of Educators Code of Professional Ethics, which prohibits educators from engaging in any form of humiliation and/or any form of physical or psychological abuse. 	<p>The national and provincial departments of Basic Education</p> <p>The South African Council of Educators</p> <p>South African Police Services</p> <p>Departments of Justice and Constitutional Development and Social Development</p>

3.4 A learning environment that is not harmful to children *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
	<p>3 The DBE and/or the South African Council of Educators (SACE), and/or the South African police conclude an investigation into all alleged cases of teacher abuse (including physical and sexual abuse and corporal punishment), support the prosecution of offenders and prevent all further contact between learners and the teacher in question.</p> <p>4 All teachers are screened by schools to determine if their names are recorded in Part B of the National Child Protection Register (NCPR) as a person unsuitable to work with children, in terms of the Children's Act No. 38 of 2005 (as amended), and in the National Register for Sex Offenders (NRSO) as required by the Criminal Law (Sexual Offences and Related Matters) Amendment Act (2007).</p> <p>5 The details of all teachers and other persons employed within the education system convicted of child abuse are registered in Part B of the NCPR and the NRSO as a person unsuitable to work with children as prescribed by the Children's Act No. 38 of 2005 (as amended) and by the Sexual Offences Amendment Act (2007).</p>	<p>3 Despite these measures, in 2009, 19% of children reported experiencing some form of violence at schools.²³⁰ In addition, in 2011, 17.2% of learners experienced corporal punishment at schools in South Africa. This number has increased from 16.8% in 2009, undergoing larger increases in the Eastern Cape, where it jumped from 25.5% to 30.2%, and in Limpopo, where it jumped from 14.6% to 19.3%. The highest levels of corporal punishment are experienced in the Eastern Cape (30.2%), KwaZulu-Natal (22.5%) and the Free State (22.1%).²³¹</p> <p>4 In 2011, the DBE reported on its commitments to implement the following initiatives to improve safety in schools:</p> <ul style="list-style-type: none"> a A collaborative partnership has been developed with the South African Police Service (SAPS) in terms of which 9 000 schools have been linked to police stations. The Department has committed to increasing this number to 25 850 by 2014/15.²³² b Eight thousand Safe School Committees have been established. c A draft School Safety Policy has been developed. d School Management Teams and School Governing Bodies in nine high priority areas where corporal punishment levels are high, have received training on positive discipline and classroom management. e Plans are in development for provinces to support "hot-spot" schools with high levels of corporal punishment and hence a clear need for positive discipline interventions.²³³ f Awareness-raising interventions have been undertaken and targeted at teachers and school management. A further Speak-Out Handbook targeting learners has been developed and distributed to help in the identification, prevention and reporting of sexual abuse. g Future plans include the training of teachers to identify and respond to abused and distressed children.²³⁴ 	<p>Teachers</p> <p>School governing bodies</p> <p>Parents and caregivers</p> <p>Learners</p>

4 Adaptable Education

The education system must be inclusive, flexible and responsive to the different circumstances and learning needs of children. The education system must be sufficiently diverse and flexible so as to be able to meet the needs of children in differing circumstances. This requires the education system to be adaptable (Tomasevski K., 2004) (Tomaševski K., 2001) (Pigozzi).

The education system must:

- 1 be designed and implemented to include children precluded from formal schooling, such as children deprived of their liberty, or working children, and children with disabilities;²³⁵ and,
- 2 promote human rights through the curriculum, such as equality and freedom from gender or HIV-linked discrimination and prejudice.²³⁶



4.1 Include children precluded from schooling and with disabilities

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<ol style="list-style-type: none"> 1 Develop and implement an inclusive basic education system. 2 It must offer a learning environment that recognises, welcomes and accommodates diversity through mainstream classes for children with moderate disabilities and special schools for children with severe disabilities. 	<ol style="list-style-type: none"> 1 All young children between the ages of 4 and 6 years with a disability can access an early childhood development centre and/or programme. 2 All ordinary public schools are physically accessible to, and provide the necessary levels of support, teaching and assessment strategies to accommodate, a diversity of learning needs, especially the needs of learners with disabilities.²³⁸ 3 There is at least one full service public school in every school district.²³⁹ 	<ol style="list-style-type: none"> 1 Education White Paper 6: Special Needs Education (2001) commits the DBE to develop an inclusive education system that will uncover and address barriers to learning and recognise and accommodate a diverse range of learning needs. 2 White Paper 6, and related policies, commit to achieving an inclusive education system through a range of different institutions, including: <ol style="list-style-type: none"> a special schools for children with high-intensive disabilities; b full-services schools to meet the needs of children with moderate disabilities; and, c ordinary public schools equipped with accessible infrastructure and staffed with teachers trained, capacitated and supported to recognise children with barriers to learning, including children with disabilities, and to provide differentiated teaching and assessment of the curriculum 3 Despite these commitments, only 4-5% of children with disabilities attend ECD facilities. The lack of accessible ECD facilities for children with disabilities is aggravated by a number of policy gaps. For example, White Paper 5 on ECD (2001) does not make provision for access to ECD for children with disabilities, no law currently obliges the State to provide or fund ECD services for children 	<p>National and provincial departments of Basic Education</p> <p>Department of Social Development</p>

4.1 Include children precluded from schooling and with disabilities *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>3 All public schools must be designed in all respects, including infrastructure, transport, teacher qualifications and competencies, assessments, and curriculum development, to be available, accessible, acceptable and adaptable for learners with disabilities and other learning barriers.</p> <p>4 Children with severe disabilities must be accommodated in specialised schools with appropriate and adequately resourced infrastructure and appropriately trained teachers.²³⁷</p>	<p>4 All teachers at ordinary public schools, full service and special schools are trained in the National Strategy on Screening, Identification, Assessment and Support Strategy (SIAS, 2008).²⁴⁰</p> <p>5 Sufficient special schools are established in equitable numbers in all nine provinces, especially in rural areas, to accommodate learners with disabilities requiring intensive support.²⁴¹</p> <p>6 Adequately resourced state-funded specialised schools are available to accommodate all learners with severe disabilities.²⁴²</p>	<p>with disabilities, and there is no policy guidance for the development of an inclusive ECD curriculum.²⁴⁴ The DBE is urged, together with the DSD, to develop an inclusive ECD policy.</p> <p>4 The extent to which ordinary public schools have failed to accommodate the needs of learners with disabilities is discussed in detail under the "availability", "accessibility" and "acceptability" headings above. A recent NEEDU evaluation found that in many mainstream schools there was no differentiated teaching to address the learning needs of children with different learning styles and barriers to learning.²⁴⁵ There are insufficient full service schools. There are currently only 94, whereas there should be one in each district.²⁴⁶ Similarly, not all district and school-based officials have been trained in the screening, identification and provision of support to learners with disabilities. Only 5000 district and school-based officials have been trained on Screening, Identification, Assessment and Support Strategy (SIAS) since 2008. In addition, there are not enough special schools or adequate numbers of trained teachers, especially in rural areas.²⁴⁷</p> <p>5 The Department has committed to address these inadequacies by:</p> <ul style="list-style-type: none"> a increasing the number of full service schools to ensure one for each district; and, b increasing the number of schools that have teachers trained in SIAS to 416 by 2014/15.²⁴⁸ <p>6 The education rights of children with severe disabilities have been neglected in South Africa. White Paper 6 (2001) envisages the expansion of access to education for learners with severe disabilities through, inter alia, the upgrading of special schools to provide high quality services for these learners.</p> <p>Despite the goals of White Paper 6 and the protection afforded by the Constitution of the Republic of South Africa, the UN Convention on the Rights of People with Disabilities, and the Children's Act No 38 of 2005 (as amended), the State has failed to recognise, respect and promote the right to education for severely disabled children.</p>	

4.1 Include children precluded from schooling and with disabilities *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
		<p>The Western Cape High Court recently highlighted the State's failure to adequately fund and/or provide equal educational opportunities for severely and profoundly intellectually disabled children. The court ruled that the State's failure to provide publicly funded schools, and its failure to provide comparable educational subsidies, amounted to a breach of the right to basic education. It ordered the State to give effect to these rights by taking the following steps:</p> <ul style="list-style-type: none"> a ensuring that every child with a severe or profound intellectual disability has affordable access to basic education of an adequate quality; b provide adequate funds to organisations which provide education for severely and profoundly intellectually disabled children at special care centres to provide adequate facilities and hire adequate staff; c provide appropriate transport for the children to and from such special care schools; d enable the staff at special care centres to receive proper accreditation, training and remuneration; and, e make provision for the training of persons to provide education to children who are severely and profoundly intellectually disabled. <p>7 In July 2012 the national DBE released a report that provides a synopsis of proposed models of service delivery which are under consideration to address the educational needs of severely disabled learners in the most cost-effective way. These include:</p> <ul style="list-style-type: none"> a exploring the ways in which existing special schools could, within the framework of their role as resource centres, provide outreach services to special care centres; b the establishment of a multi-disciplinary team at the district or circuit level consisting of special needs teachers, psychologists, therapists and social workers who will provide mobile support to care centres; c establishing units at existing special schools at which learners with high-level needs can be accommodated; d the active promotion of the inclusion of children who are out of school in special schools; and, e the expansion of other services to existing care centres.²⁴⁹ <p>The department has committed to costing all of the proposed interventions and to develop a short, medium and long-term implementation plan to respect, protect and promote the right of children with severe disabilities to basic education.²⁵⁰</p>	

4.1 Include children precluded from schooling and with disabilities *(continued)*

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
<p>The education system recognises and accommodates the learning needs of working children.</p> <p>It must ensure access to education for both those with domestic responsibilities which impinge on their education and those who work for remuneration.²⁵¹</p>	<p>All children involved in labour activities (both economic and domestic) attend school and receive support through the education system to attend regularly, remain at school until they complete their education, and cope with their school work.</p>	<ol style="list-style-type: none"> 1 The Basic Conditions of Employment Act (1997) prohibits the employment of children under the age of 15 years and the employment of children in labour harmful to their education. The National Child Labour Programme of Action (2008) requires the DBE to develop and implement programmes for the identification and support of learners with onerous domestic responsibilities. 2 Despite these provisions, in 2010, 34,3% of children that were not attending school were involved in economic activities.²⁵² In addition, no programmes have been developed by the DBE for the identification and support of children with onerous domestic responsibilities.²⁵³ 3 The DBE is urged to develop a comprehensive programme of support for learners bearing onerous domestic responsibilities and who are involved in economic activities that negatively impact on their schooling. 4 The Departments of Labour and Basic Education are urged to work together to develop guidelines regarding onerous domestic responsibilities. 	<p>National and provincial departments of Basic Education</p> <p>Department of Labour</p> <p>Schools and teachers</p> <p>Parents and caregivers</p>
<p>Children deprived of their liberty because they are in conflict with the law must have access to quality education.²⁵⁴</p>	<ol style="list-style-type: none"> 1 All children that are awaiting trial are provided with education. 2 All sentenced children are provided with education. 3 All children of compulsory school age in detention attend educational programmes regularly. 	<ol style="list-style-type: none"> 1 Children who are deprived of their liberty are equally subject to the compulsory education provisions contained in the South African Schools Act. Section 19(1) of the Correctional Services Act No. 111 of 1998 provides that every inmate who is a child and subject to compulsory education must have access to educational programmes. In the case of children not subject to compulsory education, where practicable, they should be allowed access to educational programmes. 2 A survey conducted in 2011 found that, with the exception of a few prisons, unsentenced children are not provided with access to any educational services. It found further that not all sentenced children have access to educational services and that there is variation between correctional facilities, with some facilities not making education available to children sentenced for less than two years.²⁵⁵ 3 The Department of Correctional Services and the DBE are urged to work together to develop and implement an education programme for awaiting-trial children who, on average, spend 70 days in custody. Likewise, urgent action is required to ensure that sentenced children serving less than two years are provided with educational programmes. 4 There should be close monitoring of the quality of, and attendance at, educational programmes by children of compulsory school age in custody. 	<p>Department of Correctional Services</p> <p>National DBE</p>

4.2 Promote human rights through the curriculum, such as quality and freedom from gender or HIV-linked discrimination and prejudice

State's obligations	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
Promote human rights knowledge and observance through the curriculum. ²⁵⁶	Human rights education is taught as part of the school curriculum, including gender rights, the rights of people with disabilities, sexual and reproductive rights, and the rights of people affected by HIV and AIDS.	<ol style="list-style-type: none"> 1 The Life Skills Curriculum includes education on children's rights, gender equity, HIV and AIDS and Drugs and Substance Abuse. The programme is supported by a HIV and AIDS (Life Skills Education) Conditional Grant to develop, implement and manage Life Skills education in line with the National Strategic Plan on HIV and AIDS, policies on HIV and AIDS, curriculum and assessment policy, drug and substance abuse, and gender equity issues.²⁵⁷ 2 The Department has developed a revised Draft Integrated Strategy on HIV and AIDS 2012-2016 with the objectives of: <ol style="list-style-type: none"> a increasing "sexual and reproductive knowledge, skills and appropriate decision-making among learners, educators, school support staff and officials"; and, b mitigating "the impact of HIV by providing a caring, supportive and enabling environment for learners [and] educators in all South African schools".²⁵⁸ 	National and provincial departments of Basic Education. Teachers



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ANNEXURE A: Stakeholders that participated in the development of the charter

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 Centre for Child Law, Ms Karabo Ngidi
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 Creighton Sunflower Health Education and Life Projects, Debbie Rowe
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 Department of Women, Children and People with Disabilities, Ms Lineo Toolo,
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 Equal Education, Coordinator, Mr Doron Isaacs
 Equal Education, Executive Director, Mr Dmitri Holtzman
 Equal Education, Nthuthuzo Nkomis
 Gauteng Department of Basic Education, Chief Education Specialist;
 Policy Development and Implementation, Mr Faizel Peerbhai
 Graeme Bloch
 International Institute for Studies in Race, Reconciliation and Social Justice,
 University of the Free State, Prof André Keet
 Jacaranda FM, Aldrin Sampear
 Katamedia
 Land Use Officer, Ms Thenjiwe Mbatha
 MEC Western Cape Department of Basic Education, Mr Donald Grant
 Ministry of Basic Education, Minister Angie Motshekga, Mr David Hlabane
 Ministry of Performance, Monitoring and Evaluation, Dr Thabo Mabogoane
 Nedbank Foundation, Ms Kone Gugushe
 Nelson Mandela Institute for Education and Rural Development, Executive Director,
 Ms Kimberley Porteus
 Parliament, Chief Researcher, Ms Carmine Rustin
 Patricia Martin, consultant Advocacy Aid
 Portfolio Committee on Basic Education, Chairperson, Honourable Hope Helen Malgas
 Portfolio Committee on Justice and Constitutional Development, Mr Luwellyn Tyrone Landers
 Professor Michael Stein, Harvard Law School Project on Disability
 SABC Radio, Angela Bolowane

SAHCR, Mr Victor Mavhidula
 SAHCR, Ms Vivian John-Langdon
 SAHRC, Ms Chantelle Williams
 SAHRC, CFO, Mr Peter Makaneta
 SAHRC, Chantal Kisoon, Judy Hoolenbach
 SAHRC, Commissioner Adv. Bokankatla Malatji
 SAHRC, Commissioner Education and Children, Ms Lindiwe Mokate
 SAHRC, Deputy Chairperson, Dr P Govender
 SAHRC, Deputy Director, Media Liaison, Mr Vincent Moaga
 SAHRC, Ekanem Okon
 SAHRC, Head of Programme: Parliamentary and International Affairs, Ms Judith Cohen
 SAHRC, Lindiwe Khumalo
 SAHRC, Melanie Dugmore
 SAHRC, Mr Eric Mokonyama
 SAHRC, Mr Kleinbooi Matsetela
 SAHRC, Mr Loyiso Mpondo
 SAHRC, Mr Randall Tsolo
 SAHRC, Ms Angela Kartuki
 SAHRC, Ms Naomi Webster
 SAHRC, Ms Tanuja Munnoo
 SAHRC, Senior Researcher, Ms Yuri Ramkissoo
 SAHRC, Senior researcher: Equality, Dr Kgamadi Kometsi
 SAHRC, Sindiswa Mathiso
 Section 27, Thabang Poee
 South African Press Association, Adam Wakefield
 UNICEF, Chief Education Specialist, Ms Nadi Albino
 UNICEF, Senior Social Policy Specialist, Mr André Viviers
 World Vision South Africa

END NOTES

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- 3 UN Committee on the Rights of the Child. (2006). *General Recommendation 7: Implementing child rights in early childhood; United Nations. (2002). 'A World Fit for Children'; Education for All Goal 1; SADC Minimum Package of Services for OYV&C 2011 Annex 1a: Educational and vocational skills essential services*
- 4 Universal Declaration of Human Rights (UDHR), Article 26(1); International Covenant on Economic, Social and Cultural Rights (ICESCR), article 13(2); Convention on the Rights of the Child (UNCRC), article 28(1)(a); African Charter on Human and People's Rights (ACHPR), article 11(3)(a); African Charter on the Rights and Welfare of the Child (ACRWC), article 11(3)(a); Education for All Goal 2; SADC Protocol on Education and Training; SADC Regional Indicative Strategic Plan
- 5 UDHR, article 26(1); ICESCR, article 13(2)(b); UNCRC, article 28(1)(b); ACRWC, article 11(3)(b), SADC Protocol on Education and Training ; SADC Minimum Package of Services for OYV&C 2011 Annex 1a: Educational and vocational skills essential services
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- 38 Paragraph 4.20
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- 41 Paragraph 6.3
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- 81** UNCPRD, article 24(4), Department of Basic Education (2001)
- 82** Department of Education (2008)
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- 84** SACMEQ III (2010), Section 27 and 2 others v Minister of Basic Education and 1 other
- 85** Van der Berg et al (2011)
- 86** NEEDU (November 2011)
- 87** SACMEQ (October 2011)
- 88** Van der Berg et al (2011)
- 89** Department of Basic Education (2011a & b)
- 90** Paragraph 4.10.2
- 91** Paragraph 6.4.4 and 6.4.5
- 92** Department of Basic Education (2012b)
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- 107** United Nations (2002); UNICEF and UN Committee on the Rights of the Child (2006); SADC Minimum Package of Services (2011);
- 108** Department of Education (2001a); Department of Education (2008b)
- 109** Taylor (2011)
- 110** Department of Basic Education (2010)
- 111** Department of Basic Education (2011b); Tomasevski (2004); World Education Forum. Dakar Framework of Action (2000)
- 112** Commitments made by the signatories to UNESCO's Dakar Framework of Action (2000)
- 113** Department of Basic Education (2011)
- 114** Minister of Basic Education (2011); Department of Basic Education (2011)
- 115** Giese, Hombakazi, Koch, & Hall (2008)
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- 121** United Nations, Education for All Goal 2, UNCRC, article 28(1)(e); ACRWC, article 11(3)(d)
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