

The Realisation of the Right to a Basic Education in the Twenty Years of Constitutional Democracy

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1 INTRODUCTION

In promoting democracy in the Republic of South Africa, the Constitution enshrines the rights of all people in the country by making provision for them in the Bill of Rights.¹ Accordingly, the state is obliged to respect, protect, promote and fulfil the rights of all.² As a safeguard to the realisation of human rights, the South African Human Rights Commission was created to promote, respect, provide protection for, monitor and assess the observance of human rights in the Republic.³

One of the most important rights, which is an indispensable means for realising other human rights, is the right to education.⁴ The Constitution guarantees everyone the right “to a basic education, including adult basic education; and to further education, which the state, through reasonable measures, must make progressively available and accessible”.⁵ The main focus of this paper is on the first part of the broader right to education; that is, the right to a basic education. The extent to which this right has been realised twenty years after the ushering in of the new constitutional democracy is assessed by discussing some of the impediments to the realisation of the right. As an introduction to the main issue, the nature and content of the right is explained and a conclusion is drawn on the realisation of the right.

2 THE NATURE OF THE RIGHT

As stated above, the right to basic education is a stand-alone right that can be realised independently but also as the first component of a broader right to education – the right to

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¹ See section 7(1) of the Constitution of the Republic of South Africa, 1996 (hereafter the Constitution).

² See section 7(2) of the Constitution.

³ See section 184(1) of the Constitution.

⁴ See section 29(1) of the Constitution.

⁵ See section 29(1) of the Constitution.

further education. Thus, the right to further education is linked to the first component in that it could not be accessed without the right to basic education first having been accessed. The nature of this right is manifest in the importance of basic education. This was emphasised in the *Governing Body of the Juma Masjid Primary School v Essay*,⁶ where the court held that basic education “provides a foundation for a child’s lifelong and work opportunities”.⁷ The right to basic education is both a human right in itself and an indispensable means of realising other human rights.⁸ This right is distinctive from the right to further education which the state is required to make progressively available and accessible through reasonable measures. It is also distinct from other socioeconomic rights under sections 26 and 27 of the Constitution which provide for the right to have access to adequate housing and to health care services, sufficient food and water and social security.

There is an ongoing debate about the implication of the nature of the right to basic education as unqualified with regard to the fulfilment of such a right. There are views that the unqualified right to a basic education does not necessarily translate into an immediate obligation on the state to provide adequate facilities.⁹ Others are of the view that the right to basic education is not subject to provision over time but to immediate provision, since the state’s reasonable measures are not part of fulfilling the government’s provision of the right and cannot be a defence for the state’s failure to fulfil its obligations.¹⁰

The Constitutional Court has settled this uncertainty around the nature of this right in the *Juma Masjid* judgment where it was held that, unlike some of the other socioeconomic rights, the right to a basic education is immediately realisable since there is no internal limitation requiring that the right be progressively realised within “available resources” subject to reasonable legislative measures.¹¹ The right may be limited only in terms of a law of general application which is reasonable and justifiable in an open democracy based on human dignity, equality and freedom.¹²

⁶ 2011 8 BCLR 761 (CC) (hereafter *Juma Masjid* case).

⁷ *Ibid* para 43.

⁸ *Ibid* para 41.

⁹ See Mc Connachie and Mc Connachie “Concretising the right to a basic education” 2012 *SALJ* 557.

¹⁰ Simbo “The Right to Basic Education, the South African Constitution and the *Juma Masjid* case: An Unqualified Human Right and a Minimum Core Standard” 2013 *LDD* 488.

¹¹ *Juma Masjid* case para 37.

¹² See *Juma Masjid* case para 37. It should be noted that section 36(1) of the Constitution, known as the limitation clause, provides that the rights in the Bill of Rights may be limited only in terms of a law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including the nature

3 THE CONTENT OF THE RIGHT

The content of the right to basic education has not been succinctly defined. Basic education could refer either to a period of schooling or it could refer to a standard of schooling.¹³ Simbo defines basic education as “a specific type of formal education that is usually provided to children at primary school level although it can also be provided to adults as adult basic education”.¹⁴ The author further endorses the definition of basic education by the World Declaration on Education for All, which defines basic education as “the acquisition of basic learning needs”. These learning needs have two components, namely, “essential learning tools as well as the basic learning content”.¹⁵ McConnachie and McConnachie suggest that a purposive interpretation entails that the right to basic education is a right to an education with substantive content.¹⁶ These authors differentiate between primary education and basic education in that primary education is defined as a period of compulsory schooling while basic education refers to an education with a substantive content.¹⁷

Although primary education and basic education are not synonymous, it seems that primary education is a component of basic education. Compulsory education enhances a learner’s access to education with substance. The content of the right, therefore, entails both the compulsory period of education and the substance of education. This right imposes the obligation to “respect” the right which requires the state to refrain from impairing access to an existing right; the obligation to “protect” which requires the state to take steps to protect people’s existing access to the right; and the ability to gain access to the right; and the obligation to “fulfil”, which requires the state to take positive steps to ensure that those who lack access do gain access to the right.¹⁸ The substance of education entails the availability of qualified educators, a decent infrastructure and resources. Decent school facilities are vital tools for the type of teaching and learning that is capable of satisfying basic learning needs.¹⁹

of the right; the importance of the purpose of the limitation; the nature and extent of the limitation; the relationship between the limitation and its purpose; and less restrictive means to achieve the purpose.

¹³ Mc Connachie and Mc Connachie 565.

¹⁴ Simbo 483.

¹⁵ *Ibid.*

¹⁶ Mc Connachie and Mc Connachie 566.

¹⁷ *Ibid* 567.

¹⁸ Arendse “The Obligation to Provide free basic Education in South Africa: An International Law Perspective” 2011 *PER* 103 (hereinafter, Arendse).

¹⁹ Mc Connachie and Mc Connachie 569.

As pointed out by the Constitutional Court in the *Juma Masjid* case, access to school is the necessary condition for the achievement of the right to basic education.²⁰

4 BARRIERS TO THE RIGHT TO A BASIC EDUCATION

Arguably, the right to basic education has not been fully realised twenty years into the new democratic dispensation, in that some learners have been excluded from schools owing to various barriers that prevent them from accessing basic education, including a lack of political will on the part of the government. Accordingly, this article discusses lack of political will as the main barrier to learners accessing their right to basic education. The choice of this barrier is motivated by the fact that it is not dependent upon the availability of resources, but requires sincerity and commitment by leaders in government.

4 1 Lack of political will

Lack of political will is a term that is used to refer to failure on the part of politicians and governments.²¹ The term has been used to refer to the extent of commitment by decision makers to a particular policy solution or problem.²² Abdulai, when explaining the linkage between political will and corruption, states that political will “refers to the sincerity of government’s pledge to control corruption both by words and by deeds”.²³ There are various causes of a lack of political will, including recklessness and corruption on the part of government officials.²⁴ Political will is essential in fulfilling government’s obligation and its overreach on other barriers to the realisation of basic education. Accordingly, the lack of political will has further manifested itself in different ways, including the non-delivery of textbooks and failure to fill essential posts, lack of infrastructure, insecurity and corruption.

4 1 1 *Non-delivery of textbooks and failure to fill essential posts*

The lack of political will on the part of the government to enable learners to access the right to basic education is manifest in government’s failure to prioritise the delivery of school books and the filling of administrative posts at schools. In a practical sense, in the case of *Section 27*

²⁰ *Juma Masjid* case para 43.

²¹ Kapoutsis *et al* “Measuring Political will in Organizations: Theoretical Construct Development and Empirical Validation” 2015 *Journal Management* 1.

²² *Ibid* 3.

²³ Abdulai “Political will in Combating Corruption in Developing and Transition Economies: A comparative Study of Singapore, Hong Kong and Ghana” 2009 *Journal of Financial Crime* 390 (hereinafter Abdulai).

²⁴ Abdulai 370 points out that it has been observed that a lack of political will to combat corruption is commonly found in countries where political office is seen as a quick route to acquiring personal riches.

v Minister of Education,²⁵ the department of education in Limpopo failed to deliver school books to schools until the month of May in the 2012 academic year. The failure to deliver school books was not due to a lack of funds, but rather to the department's failure to promote and protect the right of the learners to basic education and to manage the tender for the delivery of school books properly. In finding that the provision of textbooks is a component of the right to basic education, the court held that a lack of learning materials in schools clearly points to the learners not performing well in their learning.²⁶

Given the fact that the provision of textbooks is inextricably linked to the fulfilment of the right to basic education, it is inconceivable how this right can be given effect in the absence of textbooks.²⁷ The court subsequently applied the test of reasonableness and held that it was not reasonable for the department of education to delay conducting an audit of the actual textbooks needed which resulted in government's eventual failure to deliver any textbooks to learners.²⁸ It was found that the department's failure to provide textbooks constituted a violation of the right to basic education.²⁹ The crucial issues in the *Section 27* case pertain to the conduct of the officials of the department of education in failing to conduct an audit of actual number of textbooks needed and to manage the tender for the delivery of textbooks properly. The careless manner in which the department handled the delivery of textbooks was described by the court as unreasonable. In this regard, the department did not display commitment to enabling learners to access learning. As held by the court, no reasonable person can expect the learners to acquire knowledge without textbooks. Arguably, the department was just paying lip service to enabling learners to access education but was not sincere. Textbooks are an essential means of imparting knowledge; without textbooks educators can merely dictate notes to learners and that would restrict the learners from thinking broadly and engaging in the subjects beyond the notes dictated by the educator.

Furthermore, in the case of *Basic Education for All v Minister of Basic Education*,³⁰ the Department of Basic Education had failed to deliver school books in some schools in Limpopo two months after the start of the 2014 academic year. There was a history of maladministration in Limpopo which had prompted the Minister of Basic Education to intervene in 2012. The

²⁵ 2013 2 SA 40 (GNP) (hereafter the *Section 27* case).

²⁶ *Ibid* para 23.

²⁷ *Ibid* para 25.

²⁸ *Ibid* para 29.

²⁹ *Ibid*.

³⁰ 2014 4 SA 274 (GP) (hereafter the *Basic Education for All* case).

intervention task team observed that supply chain management within the provincial department of education was improperly handled, the department had failed to order any learner\teacher support material, and certain schools had not received any subvention of funds.³¹ The court found that, because the textbooks were not provided to all the learners before the commencement of the academic year in Limpopo, the rights of the learners had been violated.³² The *Basic Education for All* case demonstrates that the conduct of the department of education in delivering the textbooks selectively in schools arguably offends the right to equality before the law and to equal protection and benefit of the law guaranteed to everyone by the Constitution.³³ Since ‘equality’ includes the enjoyment of all rights and freedoms, those learners in schools where the textbooks were not delivered were excluded from the benefit of using textbooks, whereas other learners in schools where the textbooks were delivered benefited from their use.

Apart from the failure to deliver textbooks at schools, incidents of recklessness with regard to post provisioning further prevent learners from accessing tuition and learning. In the case of *Centre for Child Law v Minister of Basic Education*,³⁴ the issue arose from the longstanding failure of the provincial department to attend to post provisioning, which had been the case for over a decade. This resulted in some schools having more educators and non-teaching staff than necessary while others had too few.³⁵ In declaring that the posts for non-teaching support staff should be filled, the court held that, without proper administration in schools, the right of scholars to basic education is threatened.³⁶ The *Centre for Child Law* case found that the department was further reckless and inept in the provisioning of human resources. The fact that there were too many educators in some schools, too few in others and the positions for administrative staff were not filled arguably demonstrates that leaders in the department of education were not committed to delivering quality education to the learners.

It is evident from the cases examined here that the learners did not receive education with substance because they either did not have the textbooks they needed or there were not enough administrative staff and educators to assist in providing tuition. Consequently, the right of the

³¹ See *ibid* para 15.

³² See *ibid* para 55.

³³ See section 9 of the Constitution.

³⁴ 2013 (3) SA 183 (ECG) (hereafter *Centre for Child Law* case).

³⁵ See *ibid* para 24.

³⁶ See *ibid* para16.

learners to a basic education had been violated owing to the lack of political will from the executive authorities to protect the enjoyment of the right.

4.1.2 Lack of infrastructure

The infrastructure is an integral component of learning and teaching because a school's infrastructure enables learners and educators to access the resources required to support learning and teaching.³⁷ However, facilities and infrastructure remain challenges for the realisation of the right to basic education. This is partly due to the long-term effects of the apartheid policy of the previous dispensation, which promoted disparities in society. In this regard, the Constitutional Court in the *Juma Masjid* case pointed out that the inadequacy of schooling facilities, particularly for many blacks, was entrenched by the formal institution of apartheid when segregation, even in education and schools, in South Africa was codified.³⁸ Research shows that, in 2012, there were still 395 mud schools, 3544 schools without electricity, 2402 with no access to water, and about 1000 schools with no toilet facilities in the Eastern Cape alone.³⁹

Another infrastructural problem relates to classroom overcrowding which contributes immensely to poor performance by learners. Furthermore, apart from dilapidated infrastructure, there are still communities with no schools at all or schools are located far from learners' homes, which leads to learners walking long distances to and from school. For example, it is reported that at Nquthu in rural KwaZulu-Natal, pupils walk up to 14 kilometres to and from school.⁴⁰ What exacerbates the situation further is the failure by government to provide transport to enable these learners to access schooling.

In some instances interested parties have resorted to court and obtained court orders compelling the department of education to deliver school infrastructure. The issue of the lack of facilities arose in *Madzodzo v Minister of Basic Education*,⁴¹ owing to the alleged failure by the Eastern Cape provincial department of education to provide essential school furniture, in the form of desks and chairs, to public schools. The court found that the persistent lack of

³⁷ Khumalo and Mji "Exploring Educators' Perceptions of the Impact of Poor Infrastructure on Learning and Teaching in Rural South African Schools" 2014 *Mediterranean Journal of Social Science* 1522

³⁸ See *Juma Masjid* case para 42.

³⁹ See *Mc Connachie and Mc Connachie* 555.

⁴⁰ John "No buses for KZN Pupils who walk 14 km to school" *Mail and Guardian* June 27 2017.

⁴¹ 2014 2 All SA 339 (ECM) (hereafter the *Madzodzo* case).

access to appropriate resources at public schools constitutes a violation of the right to basic education.⁴²

Yang points out that despite a number of court cases aimed at compelling government to deliver school infrastructure, as of 2013 only half of South African schools had water and sanitation and many schools still had a shortage of desks and chairs for students.⁴³ In these instances many students are forced to sit on the floor. These appalling conditions where learners are either standing or sitting on the floor because of lack of infrastructure are not conducive to learning and teaching. A learner without a desk may be obligated to place the exercise book on his/her lap when writing. One cannot imagine how the learners can concentrate on learning while experiencing this type of discomfort during the learning process. In explaining the effect of overcrowding on tuition and learning, Khumalo and Mji point out that overcrowding hinders educators from moving freely among the learners and monitoring their school work, which results in educators failing to pay special attention to slow learners and learners with learning disabilities.⁴⁴

The lack of infrastructure at schools further affects the recruitment of skilled educators. It would be difficult for poor schools without toilets, water and electricity to attract highly skilled teachers. This view is reinforced by Bertram *et al* who point out that well-qualified teachers are moving away from poor schools into former exclusively white schools, resulting in poor schools filling the gap with unqualified teachers.⁴⁵ This situation could arguably entrench further disparity in education, where affluent schools with adequate infrastructure will attract skilled educators and produce skilful learners while schools without infrastructure will secure incompetent educators.

The huge number of schools still without the necessary infrastructure and the failure of the department to comply with court orders to provide school infrastructure clearly demonstrates a lack of sincerity on the part of the government to prioritise education. This state of affairs reflects that, although learners do have access to schools, substantive education is still unrealisable, owing to a lack of infrastructure and resources.

⁴² See *ibid* para 21.

⁴³ Yang "Eradicating 'mud schools' in South Africa" 2015 *Columbia Journal of Transnational Law* 4-5.

⁴⁴ Khumalo and Mji 1527.

⁴⁵ Bertram *et al* "The Career Plans of Newly Qualified South African Teachers" 2006 *South African Journal of Education* 11.

4 1 3 *Insecurity and corruption at schools*

The phenomenon of crime in South Africa has become a national problem that threatens government's strategic policy, stifles development and undermines the building of a human rights culture.⁴⁶ Crime takes different forms, which among others include corruption and other crimes that threaten both the security of the individual and the state. Schools are also affected by crime which causes insecurity in both the learners and educators.

4 1 3 1 *Insecurity*

Insecurity arises from among other things, the fear of crime. Garafalo defines the fear of crime as "an emotional reaction characterised by a sense of danger and anxiety".⁴⁷ According to Mjijima, a study on violence in schools found that it includes incidents such as intimidation, and sexual and racial harassment.⁴⁸

One cannot imagine how conditions that are characterised by insecurity resulting from violence, sexual harassment and murder in school yards can be conducive to learning. For example, between October and November 2015, some of the reported deaths at schools included a Grade 9 KwaZulu-Natal learner who was stabbed to death outside the school gate;⁴⁹ a 12-year-old boy stabbed to death at a primary school in Mamelodi, Gauteng;⁵⁰ and a 12-year-old learner arrested for stabbing to death two fellow learners at a primary school in Osizweni, KwaZulu-Natal.⁵¹ Most deaths of this sort are occurring in historically black schools where security is inadequate. Ncontsa and Shumba point out that a lack of security is a contributing factor in school violence in that people from outside have easy access to the school premises to commit crime.⁵²

Sexual harassment and rape of female learners by male learners and male educators is one of the prevalent forms of violence on school premises.⁵³ Prinsloo states that many girls

⁴⁶ Singh "Changing the Soul of the Nation? South Africa's National Crime Prevention Strategy" (Paper delivered at the British Criminology Conference, Queens University, Belfast, on 15-19 July 1997).

⁴⁷ Garafalo "The Fear of Crime: Causes and Consequences" 1981 *Journal of Criminal Law and Criminology* 840.

⁴⁸ Mjijima "Violence in South African Schools: Perceptions of Communities about a Persistent Problem" 2014 *Mediterranean Journal of Social Sciences* 199.

⁴⁹ See www.news24.com (accessed 09-12-2015).

⁵⁰ See www.sabreakingnews.co.za (accessed 09-12-2015).

⁵¹ See www.ecr.co.za (accessed on 08-12-2015).

⁵² Ncontsa and Shumba "The Nature, Causes and Effects of School Violence in South African Schools" 2013 *South African Journal of Education* 8.

⁵³ See Mjijima 199.

experience violence in schools in that they are raped, sexually abused and assaulted by male learners and educators.⁵⁴ Consequently, many girls become stressed and emotional, and eventually drop out of school.⁵⁵

Insecurity at schools undermines the environment for effective education in various ways. When violence breaks out on school premises, it disrupts learning and tuition time,⁵⁶ and learners become uncontrollable and unmanageable which further lowers the morale of both the educators and the learners.⁵⁷ Sexual harassment and rape of girls at schools impedes them from accessing education equally to their male counterparts because their schooling may be interrupted as a result of fear and insecurity.⁵⁸

Thebede, who conducted a study on the effect of crime in schools, points out that the culture of teaching and learning in schools is adversely affected by crime in that⁵⁹

- crime in schools results in learners developing school phobia and, consequently, it is more likely that traumatic incidents of crime at school instil fear in learners;
- criminally victimised learners often feel abandoned and lack the security of being part of the school; and
- being confronted with crime-related experiences at school leads to frustration, loss of self-esteem and problematic behaviour in learners.

Insecurity at schools is, thus, preventing learners from fully realising their right to education.

4 1 3 2 Corruption

Although there is no unanimous definition of corruption, authors seem to agree that it involves the abuse of public power for personal gain. In this regard Jain states that “corruption refers to acts in which the power of the public office is used for personal gain in a manner that contravenes the rules of the game”,⁶⁰ and Melgar, Rossi and Smith define corruption as “the misuse of public office with the purpose of making private gains”.⁶¹ Thus the elements of

⁵⁴ Prinsloo “Sexual Harassment and Violence in South African Schools” 2006 *South African Journal of Education* 305.

⁵⁵ See Mgijima 199.

⁵⁶ Ncontsa and Shumba 6.

⁵⁷ *Ibid* 10.

⁵⁸ Prinsloo 310.

⁵⁹ Thabethe *The Effect of Crime in Schools on a Culture of Teaching and Learning* (Doctor of Education-thesis, University of Zululand, 2010) 141-142.

⁶⁰ Jain “Corruption: A review” 2001 *Journal of Economic Surveys* 73.

⁶¹ Melgar, Rossi and Smith “The Perception of Corruption” 2010 *International Journal of Public Opinion Research* 121.

corruption involve the exercise of public power, contrary to the purpose for which the power is meant, for private gain.

Corruption in schools manifests itself in different forms including embezzlement, fraud, extortion, nepotism and favouritism.⁶² Recently, the sale of posts at schools has surfaced as yet another kind of corruption that impedes the right of learners to access substantive education. This may result from the fraudulent appointment of unsuitable and unfit educators through the sale of teaching posts rather than appointments based on merit. In this regard, the report released by the Minister of Basic Education, which implicates the South African Democratic Teachers Union in the sale of teaching posts, explains the extent of corruption in the education sector.⁶³ Corruption in education has huge implications for both the current and future generations. For the current generation it increases the rate of unemployment and access to the economy. This would be the case when learners graduate without having acquired the skills needed for the marketplace. In addition, Serfontein and De Waal argue that a lack of quality education due to corruption at schools also influences future generations since it increases the skills gaps that hamper economic growth.⁶⁴

Corruption also affects service delivery in that resources that are meant for service delivery are reallocated to activities that are related to crime such as protection devices and operation of correctional services.⁶⁵ In a practical sense, it was stated in the *Basic Education for All* case that another historical cause of the failure to deliver textbooks at schools was that, through widespread fraud and corruption, the provincial government was unable to fulfil its obligation to deliver textbooks at schools.⁶⁶

Other than its effect on education, corruption affects the economy in different ways. Carboni and Detotto state that there is a relationship between criminal activity and economic performance at the macro and micro level.⁶⁷ When the number of incarcerated skilled people increases the economy suffers and this contributes to the growing loss of skilled workers.⁶⁸ The impact of corruption on the economy and education is summarised by Yury Fedotov, the

⁶² Serfontein and De Waal “The Corruption bogey in South Africa: Is Public Education safe” 2015 *South African Journal of Education* 2.

⁶³ www.news24.com (accessed 26-05-2016), where the Minister of Basic Education implicated SADTU in the selling of posts.

⁶⁴ Serfontein and De Waal (2015) 3.

⁶⁵ Anderson (1999) 616.

⁶⁶ See *Basic Education for All* case para 14.

⁶⁷ Carboni and Detotto “The Economic Consequences of Crime in Italy” 2016 *Journal of Economic Studies* 122.

⁶⁸ See Anderson “The Aggregate Burden of Crime” 1999 *Journal of Law and Economics* 617.

Executive Director of the United Nations Office on Drugs, when speaking at a meeting of the General Assembly in New York on 24 September 2012:

“Where corruption exists, the rule of law cannot flourish. Too many people fail to understand the impact of corruption on development and on prosperity. The victim exists in every developing and least developed country. Denied education, denied healthcare, denied opportunities”.⁶⁹

It should be recognised that South Africa has taken a number of initiatives to combat corruption by, among other things, enshrining a number of state institutions supporting constitutional democracy in the Constitution. These have been created to monitor public institutions and curb corruption. The Prevention and Combating of Corrupt Activities Act⁷⁰ has also been adopted. However, despite these initiatives the high rate of corruption continues to deprive people of their rights, the right to a basic education included, and corruption still remains a challenge in the public sector.⁷¹

5 CONCLUSION

The value of the right to a basic education manifests in its nature as a means of realising other rights. The importance of this right is further evident from its distinct features from other socioeconomic rights which are progressively accessed through reasonable measures. By contrast, the right to basic education is immediately realisable. Thus, the nature of this right demands that decision makers should commit themselves and prioritise the fulfilment of the enjoyment of the right. This obligation imposed by the right to education requires the state to take positive steps to ensure that the beneficiaries of the right gain access to it.⁷² The obligation can only be met if leaders of government are sincere about the fulfilment of such obligation. Sincerity in this regard goes beyond the making of political statements or commitments, to actually delivering on the obligation.

It is evident that the failure of the Limpopo provincial department of education to deliver textbooks at schools was due to maladministration of the tender for the delivery of school books, as well as the reckless attitude to the department’s obligation to enable learners to access quality education. Also, the lack of commitment from the Eastern Cape provincial government

⁶⁹ www.unodc.org (accessed 13-05-2016).

⁷⁰ The Prevention and Combating of Corrupt Activities Act 12 of 2004 was adopted to provide for the strengthening of measures to prevent and combat corruption and corrupt activities.

⁷¹ See Naidoo “A Critical need for Ethical Leadership to curb Corruption and Promote Good Governance in the Public Sector of South Africa” 2012 *African Journal of Public Affairs* 28.

⁷² See Arendse 103.

to deliver on school infrastructure is manifested in its failure to comply with the court order to deliver on school infrastructure even after interested parties had obtained court orders to this effect. The conditions under which the learners are forced to learn – without toilets, water and desks at schools, and the many kilometres that many learners are compelled to walk in order to access schools – are not only un conducive to effective teaching and learning but also inhuman. Furthermore, the level of crime at schools ranging from murder to rape results in learners dropping out of school. It is in addition unimaginable how those learners who despite being traumatised still attend school can concentrate on learning properly while at the same time being in fear of their safety. Accordingly, it is evident that, twenty years after the ushering in of democracy, the right to a basic education has not yet been fully realised.

Although South Africa, like other developing countries, may not have abundant resources, it is submitted that with the necessary political will the government could make strides in improving the plight of learners who are affected by crime and exposed to harsh and inhumane conditions at schools. A study on the role of political will in combating corruption has shown that other developing countries like Singapore have succeeded in fighting corruption due to a genuine commitment on the part of political leaders.⁷³ If similar commitment can be shown by political leaders in South Africa the intolerable conditions affecting the public provision of education may be improved and learners may be able to access their right to education.

⁷³ Abdulai 388 points out that studies on the role of political will in combating corruption in developing countries show that Hong Kong and Singapore have been studied as successful examples in fighting corruption, largely due to the genuine commitment on the part of political leaders to combat the phenomenon.