IN THE GAUTENG DIVISION OF THE HIGH COURT

PRETORIA, REPUBLIC OF SOUTH AFRICA

CASE NO: 23949/14

In the matter between:

BASIC EDUCATION FOR ALL	First Applicant
SCHOOL GOVERNING BODIES OF 29 SCHOOLS IN THE PROVINCE OF LIMPOPO	Second to Twenty-third Applicants

and

(1) REPORTABLE: YES / ~~NO~~

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

05/05/14
DATE

SIGNATURE

MINISTER OF BASIC EDUCATION	First Respondent
DIRECTOR-GENERAL OF BASIC EDUCATION	Second Respondent
MEC, DEPT OF EDUCATION, LIMPOPO	Third Respondent
ACTING HOD, DEPT OF EDUCATION, LIMPOPO	Fourth Respondent
HEAD OF INTERVENTION TEAM, DEPT OF EDUCATION, LIMPOPO	Fifth Respondent
SOUTH AFRICAN HUMAN RIGHTS COMMISSION	Sixth Respondent

JUDGMENT

Tuchten J:

1 This case was called early in April 2014 in the urgent court. It stood to enable papers to be filed. The weight of the paper thus generated made it impossible to hear the case in the urgent court. By special allocation, it was set down for hearing on 22 April 2014. I heard argument over two days.

2 The first applicant ("Befa") is a voluntary organisation based in Limpopo. Its some 50 members seek to promote and protect the right to basic education for learners in Limpopo. It has links with another voluntary organisation, Section27, some of whose members are practising lawyers and whose aim similarly is to promote education. Befa was formed in 2012 in response to what the main deponent to the applicants' founding affidavit calls the education crisis in Limpopo.

3 The second to twenty-third applicants ("the school applicants") are school governing bodies of public schools[1] in Limpopo. The schools in question are all no-fee schools. So they rely entirely on the department of education within the provincial government of Limpopo ("the LDoE") for the procurement and delivery of textbooks and, indeed, all their other teaching materials. The interests of Befa and

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[1] References to schools in this judgment are to public schools in Limpopo as identified in chapter 3 of the South African Schools Act, 84 of 1996. Other types of schools and schools in provinces other than Limpopo are outside the scope of this judgment.

the school applicants are coextensive. They were represented throughout by the same counsel and attorneys. The only issue raised which affects the school applicants separately from Befa is a challenge to the standing of the school applicants. It is unnecessary to name or distinguish between the school applicants, for reasons which will ultimately follow.

4 The applicants' complaint is that by the time this application was launched, 27 March 2014, several schools ("the 39 schools") had not received all of their textbooks for the school year 2014. The 39 schools are listed in an annexure to the notice of motion. The applicants explain that the difference between the number of school applicants and the number of the 39 schools is to be attributed to some schools' reluctance to litigate against the authorities. It is unnecessary to come to any conclusions on this allegation.

5 It is similarly generally unnecessary to distinguish between the several respondents within spheres of government. I shall generally refer to them collectively as the DBE.[2] These, the first to fifth respondents, were represented by the same counsel and attorneys. The sixth respondent ("the SAHRC") is the state institution which strengthens democracy referred to in ss 181(1)(b) and 184 of the Constitution.

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[2] Where I refer specifically to one of the respondents, I shall use that respondent's full name and not an acronym.

6 In its notice of motion, the applicants seek orders directed at declaring the failure by the DBE to ensure the complete delivery of textbooks to all schools in Limpopo a violation of the Chapter 2 constitutional rights to basic education, equality, dignity and ss 165(4) and 195 of the Constitution. The references to these latter sections are directed at condemning what the applicant claims are failures to comply with certain orders granted in this court by Kollapen J in earlier litigation between Section27 and others as applicants and certain DBE respondents.

7 About a week before the case came up for argument before me, I suggested that the parties might usefully identify the issues in relation to each of the affected schools at what would be a pre-trial conference if this were a trial action. On the morning that argument was due to start, the parties decided to hold a pre-trial conference. A minute was prepared. It identified the shortages as at 22 April 2014 in relation to the 39 schools as contended for by the applicants and the DBE's version in relation to each such allegation. The DBE's version was expanded upon in a further affidavit which I allowed and which was put up without objection on 23 April 2014, the second day of argument.

8 The version of the DBE was supplied in a lengthy answering affidavit and several supplementary affidavits. The applicants also delivered supplementary affidavits. No criticism attaches to any of the parties in this regard. The application was brought urgently and the evidence adduced from time to time justified further explanation and still further evidence. The state of delivery of books was further not static; deliveries took place while the proceedings were pending and perhaps even while the case was being argued. This is because the DBE committed itself to delivering all outstanding textbooks.

9 The pre-trial minute proceeds to recite that the DBE undertook to deliver the shortages as identified in the annexure to the minute by 8 May 2014 in relation to those required for grades 7-9 and 12 and by 6 June 2014 in relation to the other grades.

10 The reason for the different dates is to be found in the historical background to the case. As counsel for the applicants pointed out, there does not appear to be any problem with the delivery of textbooks to learners in any province but Limpopo. That province, it seems, has special needs.

11 Historically, the textbook problem in Limpopo has two causes. Firstly, beginning in 2012, the DBE decided to implement a new curriculum.

Previously, each province formulated its own curriculum. The new policy developed was to replace the previous policy, called the Revised National Curriculum Statement ("RNCS)[3] with the Curriculum and Assessment Policy Statement ("CAPS).The DBE decided to implement CAPS in grades 1 to 3 and 10 in the 2012 academic year, grades 4 to 6 and 11 in the 2013 academic year and grades 7 to 9 and 12 in the 2014 academic year. For this purpose the DBE developed a national catalogue identifying the approved textbooks.

12 The policy was intended to standardise education throughout South Africa. An implication of the policy was that all previous textbooks had to be replaced as and when CAPS was implemented in the various grades. This transition placed a great strain on the available resources of the DBE. In an effort to meet these challenges, the DBE decided to give priority to the procurement of textbooks for the grades in which CAPS was to be implemented for the first time. The result, on the ground, was that the DBE ran out of money and started to fall behind in the provision of textbooks. It could, as a matter of practicalities, only remedy the deficiencies when additional money became available to the DBE after 1 April each year. That was when money voted by Parliament for the annual budgets became available.

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3 Which was preceded by an earlier National Curriculum Statement ("NCS").

13 I interrupt this narrative to observe that much of the debate before me related to the extent, if any, to which budget constraints justified a failure on the part of the state to fulfil constitutional obligations. This is a matter to which I shall, of course, return.

14 The other historical cause for the textbook delivery problem was the fact that through widespread fraud, corruption, incompetence and perhaps other reasons as well, the provincial government of Limpopo was unable to fulfil a substantial part of its executive obligations. Section 100 of the Constitution provides that in such circumstances the national executive may, after following a procedure laid down in the section, assume responsibility for the obligations of the delinquent province and intervene to maintain essential national standards or meet established minimum standards for the rendering of a service, maintain economic unity, maintain national security or prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.

15 In January 2012, the national executive concluded that the situation in Limpopo warranted intervention and the constitutional process to this end was implemented apparently without opposition from the Limpopo provincial government. One of the areas of responsibility in which the national executive intervened was basic education in the

province, heretofore administered or, more appropriately, maladministered by the LDoE. An intervention task team was formed.[4] A troubling state of affairs within the LDoE was disclosed: supply chain management systems within the LDoE were improperly managed; the LDOE had failed to order *any* learner/teacher support material for the 2012 academic year; the LDoE had accumulated unauthorised expenditure in the amount of R2,2 billion; the LDoE had overdue debts of R100 million; it was projected that the LDoE would, but for the intervention, have overspent its budget for the 2012/2013 fiscal year by R283 million; certain schools had not received any subventions of funds during 2011, with predictably dire consequences for their day to day administration.

16 The tasks of those charged with rescuing basic education in Limpopo were made more difficult when certain private entities, to which the LDoE had outsourced its executive obligations in the sphere of basic education, emerged from the woodwork. These entities, one of which was called Educare, claimed exclusive rights to perform certain of these functions and took proceedings to interdict the authorities from dealing with any other body in the sphere in which each claimed a monopoly, pending a leisurely ventilation of the issues involved at a

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[4] The head of the intervention task team dealing with basic education is the fifth respondent.

later date. Sad to say, some of these entities actually obtained interim relief. It took time to meet and deal with these litigious challenges and diverted resources from the reconstruction task at hand.

17 The DBE developed what it called catch up plans to deal with this lamentable situation. But by May 2012, civil society, which hitherto had displayed great tolerance of or perhaps indifference towards the venality and incompetence of its elected representatives in Limpopo and their delegates, had had enough. On 4 May 2012, under case no. 24565/2012, Section27, a school[5] and a private individual approached this court as a matter of urgency for orders compelling the present first and third respondents to provide full textbook delivery and implementation of a catch up plan for grade 10 learners.

18 The matter was heard on 15 May 2012 before Kollapen J and on 17 May 2012, the learned judge handed down his judgment. The order of court which issued at the hand of the learned judge declared that the failure of the LDoE and the DBE to provide textbooks to schools in Limpopo was a violation of the rights to a basic education, equality, dignity, the South African Schools Act, 84 of 1996, and s 195 of the Constitution.[6]

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5 Not one of the present applicants.

6 Section 195 provides that public administration must be governed by the democratic values and principles enshrined in the Constitution.

19 The LDoE alternatively (*sic*) the national Department of Basic Education was directed to provide textbooks for grades R, 1, 2, 3 and 10, commencing on 31 May 2012 and concluding by no later than 15 June 2012. These dates were apparently forecasts provided by the respondents. These forecasts proved unattainable and the decisions of the respondents to commit themselves to their attainment unwise.[7]

20 The order of Kollapen J of 17 May 2012 further required the LDoE alternatively the national Department of Basic Education immediately to develop a catch up/remedial plan for "at least affected Grade 10 learners in Limpopo", specified certain minima which the plan was to contain and directed the LDoE alternatively the national Department of Basic Education, by 8 June 2012, to serve a copy of the plan on the then applicants and file it in court and to submit monthly reports with regard to the implementation of the plan until 30 September 2012.

21 15 June 2012 came and went. The then applicants moved the court urgently once more. It seems that despite the brightest hopes of all concerned, full delivery by that date had been impossible. The parties then settled the matter. The then respondents committed themselves

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[7] Counsel for the government respondents used an even stronger term in argument in relation to his own clients' predictions of the delivery capabilities of their departments. It seems that these respondents had overlooked that the conduct of litigation, like politics, is the art of the possible.

to a fresh date for delivery of textbooks for grades R, 1, 2, 3 and 10, ie 27 June 2012, and to provide additional training resources for teachers to enable them to bring themselves up to date with their tardily delivered teaching materials. The respondents undertook to provide progress reports to the applicants.

22 But even this later date was unattainable. The then applicants placed the case on the roll before Kollapen J. On 4 October 2012 the learned judge issued a fresh order. The date for completion of the 2012 textbooks was extended to 12 October 2012. The order made it plain that there was no finding on the respondents' justification for their non-compliance. Provision was made in the order for this aspect to be ventilated. The respondents were ordered to deliver and did deliver affidavits. As far as I can make out, the issue of the 2012 textbooks was left where it lay on 4 October 2012, until reference was made to the 2012 orders in these proceedings.

23 The applicants' case is that textbook delivery improved in 2013 but was not completed. The DBE's case is that there were shortfalls in deliveries in relation to textbooks required for the 2013 academic year but that these were rectified. No relief is sought in respect of textbooks required for the 2013 academic year directly relating to books which should have been delivered but allegedly were not. This is hardly

surprising as that year has passed. Certainly there was no litigation in relation to these books. Nor is there any contemporaneous correspondence before me complaining of failures to deliver the 2013 books.

24 But by email dated 15 January 2014, Ms Stein, the attorney for the applicants, wrote to an official within the DBE to say that

> We have received reports from a number of schools of textbook shortages. I just wanted to find out who I should forward these reports to? The schools have reported the shortages to the Department but have asked us to do the same. I have compiled a list of shortages at about 40 schools. Are you still the point person on this issue?

25 It seems that Ms Stein had acted for Section27 and the other applicants in the litigation before Kollapen J. It is clear from the correspondence that there was a cordial professional relationship between Ms Stein and Mr Subban.[8]

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[8] Counsel for the DBE told me during argument, without contradiction from their opponents, that the good relationship continues. I mention this because it is relevant to the order which I shall make.

26 Mr Subban responded the next day. The gist of his reply was that shortages had been reported and were being attended to:

> Where stock was not available, orders have already been placed and publishers are presently delivering to the warehouse.

27 Further correspondence ensued. By 16 January 2014, 21 schools had reported shortages to Section27. Ms Stein sent Mr Subban a list of the schools in question with the shortfalls report. In an email dated 16 January 2012, Ms Stein wrote to say that certain of the schools reporting shortages did not receive their full quotas of books in 2012 and 2013. By 17 January 2014 the number of schools claiming short deliveries had grown to 24. Mr Subban wrote to say that he appreciated Ms Stein's help. He asked for further information to "expedite verification and remediation".

28 By 31 January 2014, the number of schools on the list had grown to 26. The list of that date identified, as had the lists that preceded it, the subjects in which there had been short delivery and the quantities required by each school. Mr Subban continuously expressed his appreciation for Ms Stein's efforts and the information she supplied. It was not suggested that Subban was insincere in this regard or that he did not reflect the attitude of the DBE.

29 By 11 February 2014, the list had grown to 32 schools which claimed that they had not received their books for 2014. By 25 February 2014, the list had in fact shrunk to 30 schools but Ms Stein, understandably, expressed concern in an email of that date to Mr Subban that delays were being experienced in addressing these shortages. On 31 January 2014, Mr Subban responded to Ms Stein, thanking her for her assistance and promising to "investigate and remediate".

30 By 10 March 2014, as appears from her email of that date, Ms Stein's and her clients' concern was growing. They were two months into the school term and the list of schools reporting shortages to Section27 had grown to 36. In addition, Ms Stein wrote, reports from some of the schools on the list indicated threats and intimidation by officials of the DBE. Mr Subban once again promised to investigate and respond.

31 On 20 March 2014, Ms Stein wrote on Section27's letterhead to the first respondent, the Minister of Basic Education. She enclosed a list of schools reporting shortages, which had grown by that date to its final figure, before me, of 39 schools. Ms Stein sought in the letter a formal undertaking that all outstanding learner teacher support materials, which include textbooks, would be delivered by 7 April 2014, in default of which there would be an urgent application. The letter was copied to numerous officials. There was no substantive

response to this letter and the present application was launched on 27 March 2014.

32 Against this background, I must deal with the submission of counsel for the DBE that the school applicants have no standing because they have not complied with the peremptory provisions of the Intergovernmental Relations Framework Act, 13 of 2005 ("IRFA"). Section 45(1) reads:

> No government or organ of state may institute judicial proceedings in order to settle an intergovernmental dispute unless the dispute has been declared a formal intergovernmental dispute in terms of section 41 and all efforts to settle the dispute in terms of this Chapter were unsuccessful.

33 In my view, the definitions of "government" and "intergovernmental dispute" in s 1 are dispositive of this issue. A government means the national, a provincial or a local government. An intergovernmental dispute means a dispute between different governments or between *organs of state from different governments* arising from the sources identified in the definition. All the parties accepted that a school governing body is an organ of state as defined in s 239 of the Constitution. But as defined in IRFA, the expression *organ of state* bears the meaning ascribed to that expression in s 239 of the

Constitution, *excluding those listed in s 2(2) of IRFA*. One of the exceptions, listed in s 2(2)(g), to which IRFA is expressly stated not to apply, is a public institution that does not fall within the national, provincial or local sphere of government.

34 A school governing body manifestly does not fall within the spheres of any of those governments. As its preamble makes clear, IRFA was enacted to give effect to s 41(2) of the Constitution, which calls for an Act of Parliament to establish or provide structures and mechanisms to promote and facilitate intergovernmental relations and to provide appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes. Section 40(1) of the Constitution says government in the Republic is constituted as national, provincial and local spheres of government. Sections 40 and 41 of the Constitution are thus directed at spheres of government and organs of state within each sphere. An intergovernmental dispute is thus a dispute between parties that are part of government in the sense of being either a sphere of government or an organ of state within a sphere of government.[9]

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9 *Independent Electoral Commission v Langeberg Municipality* 2001 3 SA 925 CC paras 20-21

35 I therefore hold that IRFA is not applicable to a dispute between a school governing body and any government or any other organ of state. A dispute between a school governing body and a government or another organ of state is not an intergovernmental dispute. A school governing body such as each of the school applicants is not required to comply with IRFA before instituting judicial proceedings against a government or an organ of state.

36 I have mentioned that in the pre-trial minute the DBE committed itself to delivery dates for the outstanding textbooks. The applicants accepted these dates despite their initial demand that the books be provided by 7 April 2014. The parties further identified the disputes before me.

37 If I find that there has been "conduct that is inconsistent with the Constitution" (which translates in this case into a violation of the alleged rights of learners to receive their textbooks on time), I must declare that conduct invalid to the extent of its inconsistency. Then I must develop a remedy which would be appropriate, just and equitable. The remedy may include a declaration of rights.[10]

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[10] Sections 172(1) and 38 of the Constitution; *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency and Others* 2014 1 SA 604 CC para 25

38 The disputes were identified in the pre-trial minute. The first dispute was described as being whether the failure by the DBE to ensure the complete delivery of textbooks to all schools in Limpopo, including the 39 schools identified in the annexure to the notice of motion, was a violation of those rights I mentioned in paragraph 6 above. This formulation seems to me to conflate whether there was a violation with whether, if there has been a violation, the DBE is to blame.

39 The remaining disputes as identified in the pre-trial minute relate to remedy. The applicants ask for supervisory orders, ie directing the DBE by a specified date to lodge an affidavit confirming full delivery, directing the DBE to lodge a plan indicating how they intend to address textbook shortages in schools throughout Limpopo and directing the SAHRC to monitor the full delivery of textbooks and compliance by the plan to address textbook shortages. There is a dispute as to whether the undertaking I have described should be made an order of court. The applicants ask for leave to approach the court again on the same papers, appropriately supplemented, for further relief if necessary. Finally, there is the question of costs.

40 I shall begin with the question whether there has been a violation. That question does not really seem to me to be controversial any more. The case for the DBE is that it has used every resource at its

disposal to deliver textbooks to the learners but that through circumstances beyond its control it has not as yet been able to do so completely. All counsel were agreed that the Constitution requires that every learner have every textbook that he or she requires before the teacher begins with that part of the curriculum to which the textbook relates. That usually, if not always, means that all the textbooks must be available to all the learners on the first day of the academic year.

41 Section 29(1)(a) of the Constitution lays down that everyone is has the right to a basic education. Counsel agreed that this right is to be contrasted with the rights, eg to access to housing under s 26(1), access to health care resources, sufficient food and water and social security under s 27 and further education under s 29(1)(b), which are progressively to be realised.

42 In *Governing Body of the Juma Musjid Primary School & Others v Essay NO and Others (Centre for Child Law and Another as Amici Curiae)* 2011 8 BCLR 761 CC the court said the following about the nature of the basic education guaranteed by s 29(1)(a):[11]

> [37] It is important ... to understand the nature of the right to 'a basic education' under section 29(1)(a). Unlike some of the other socio-economic rights, this right is

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11 Where I quote from decided cases in this judgment, I generally omit footnotes.

immediately realisable. There is no internal limitation requiring that the right be 'progressively realised' within 'available resources' subject to 'reasonable legislative measures'. The right to a basic education in section 29(1)(a) may be limited only in terms of a law of general application which is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom'. This right is therefore distinct from the right to 'further education' provided for in section 29(1)(b). The state is, in terms of that right, obliged, through reasonable measures, to make further education 'progressively available and accessible.'

[42] The significance of education, in particular basic education for individual and societal development in our democratic dispensation in the light of the legacy of apartheid, cannot be overlooked. The inadequacy of schooling facilities, particularly for many blacks was entrenched by the formal institution of apartheid, after 1948, when segregation even in education and schools in South Africa was codified. Today, the lasting effects of the educational segregation of apartheid are discernible in the systemic problems of inadequate facilities and the discrepancy in the level of basic education for the majority of learners.

[43] Indeed, basic education is an important socio-economic right directed, among other things, at promoting and developing a child's personality, talents and mental and physical abilities to his or her fullest potential. Basic education also provides a foundation for a child''s lifetime learning and work opportunities. To this end, access to school - an important component of the right to a basic education guaranteed to everyone by section 29(1)(a) of the

> Constitution - is a necessary condition for the achievement of this right.
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> [44] The importance of the right to a basic education is also foreshadowed by the fact that any failure by a parent to cause a child to attend school renders that parent guilty of an offence and liable, on conviction, to a fine or imprisonment for a period not exceeding six months. Furthermore, '[a]ny other person who, without just cause, prevents a learner who is subject to compulsory attendance from attending school is also guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.' ... .[12]

43 Counsel similarly agreed that the content of the right to basic education is not unrelated to the resources available to the state. The state must manifestly budget for basic education as well as for all the other resources which the state provides. Determining the budget requires political and policy choices. Although it was suggested in argument that in theory Parliament could be compelled to vote an objectively adequate amount for basic education, it is very difficult to envisage circumstances in which such an action could succeed. Courts are notoriously ill-equipped to decide such questions.

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12 See also *Madzodzo and Others v Minister of Basic Education and Others* (unreported) ECLD (Mthatha) case no 2144/2012, judgment delivered 20 February 2014 paras 17 and 20

44 What is the content of the right to a basic education? This, very big, question is not before me in its entirety. But it was suggested in the case presented by the DBE in its affidavits that the failure to supply textbooks did not constitute a violation of the right. This was said to be because most of the textbooks had been delivered (as at 21 April 2014 97,71%), because the late deliveries were caused by budgetary constraints and the failures by the principals of certain schools to submit returns identifying needs not initially anticipated and because the failure to provide each learner with a textbook did no more than cause an inconvenience to teachers and those learners not in possession of their own textbooks. So the question whether the provision of textbooks is a component of basic education is squarely before me.

45 In the first textbook case,[13] Kollapen J found that the provision of textbooks was indeed a component of basic education. The learned judge referred to the policies of the national executive itself which, as recently articulated by its head, require that each learner be timeously provided with a minimum set of textbooks and workbooks and concluded that this demonstrated the proposition.

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13 *Section27 and Others f Minister of Basic Education and Another* 2013 2 SA 40 GNP paras 23-25

46 While I wish to guard myself against the proposition that the content of a right may be determined without more by reference to the policies of the executive, I agree with the conclusion reached by the learned judge. I also agree that the policies of the executive are relevant to the determination of the content of a constitutional right, when that content is in issue. I think that the nature of books and the part they play in the education process are highly relevant to the enquiry.

47 Textbooks have been part of the stock in trade of the educator for centuries. There is something special about a book. It has a very long life, far longer than that of the individual reader. It is a low tech(nology) device. It is accessible to anyone who can read the language in which it has been written. During the hours of daylight it can be read (accessed) without any other supporting technology at all. It needs no maintenance except the occasional strip of adhesive tape. It can accommodate the reader's own thoughts in the form of jottings and emphases. It can accompany the reader wherever she goes, even to prison, to war and into exile. At night, it can be accessed with the help of the simplest technology, like a candle. What is written on one of its pages can readily be compared with what is on other pages by simply using bookmarks. It is always available, without mediation: a book in the hands of a reader cannot be censored or altered to distort what is written in it by anyone trying to exercise power over the reader. Books

are the essential tools, even weapons, of free people. That is why tyrants throughout the ages have sought to restrict and even deny the access of their subjects to the written word and to burn and otherwise destroy the books of those whose cultures and ideas they seek to suppress.

48 We live in an age in which access to information is often available electronically. Of course many, if not all, the school applicants and the 39 schools operate under conditions in which electronic access to information is not readily available, if it is available at all. It is not suggested that the need for books has, in this context been supplanted by electronic access to information. But even where electronic access is available, books have not been rendered obsolete. In the present age, the two sources if information are complementary.

49 Contrast the ready availability of information in a book with the complexities of electronic access: electronic access requires a source of electricity, something that is not uniformly available in our country, and sophisticated technology, usually a computing device in one form or another. If access is through a remote server, then that remote server must be functioning and not overloaded to achieve access to the information. A malfunction at any point in the technologically

complex chain of connection between reader and information renders the information inaccessible.

50 It is argued by the DBE that the teacher can fulfil the functions of a textbook. This is of course true up to a point. But again the resources are complementary. What a teacher tells her class is ephemeral and subject to the perceptions, preconceptions and world view of the individual teacher. An inattentive pupil may miss entirely what the teacher is saying, with no way of retrieving the information being imparted. Notes prepared by teachers will vary in quality from one individual to another. The absence of textbooks places an additional workload on the teacher. And there is evidence before me that in some schools in Limpopo, there are no copying facilities.

51 Perhaps one day, books will be superseded by other stores of information. But that day has, in my judgment, not yet arrived. The dictum of Kollapen J to which I have referred is binding on me unless I find it is clearly wrong. No such argument was addressed to me. I think, with respect, that the learned judge was right. Textbooks are essential to all forms of education. Textbooks are therefore a component of basic education.

52 The delivery of textbooks to certain learners but not others cannot constitute fulfilment of the right. Section 29(1)(a) confers the right of a basic education to *everyone*. If there is one learner who is not timeously provided with her textbooks, her right has been infringed. It is of no moment at this level of the enquiry that all the other learners have been given their books.

53 I shall say more later about the alleged failures of school principals to render their returns to the DBE. In the present context, all that need be said is that whoever, if anyone, is to blame for the non-deliveries, is irrelevant to the enquiry. It is not suggested that any of the learners is to blame. Whatever the causes of the failure to deliver, the right has been infringed.

54 Counsel for the applicants submitted that the right to education is a vehicle for the realisation of numerous other rights, including the rights to equality and dignity. In paragraph 3 of the judgment in the first textbook case, Kollapen J refers to education as being critical to freeing and unlocking the potential of every person. I agree with both these propositions.

55 It follows then, that because textbooks were not provided to all the learners in Limpopo before the commencement of the curricula for which they were required, ie at the beginning of the academic year, the rights of learners were violated. It is in my judgment appropriate, just and equitable that a declaration to this effect should issue.

56 The next questions are whether the undertaking of the DBE should be made an order of court and whether some form of supervisory (structural) relief should issue. The nature of the relief which a court can grant in a constitutional case was authoritatively described in *Hoffmann v South African Airways* 2001 1 SA 1 CC as follows:

> [42] Section 38 of the Constitution provides that where a right contained in the Bill of Rights has been infringed, 'the Court may grant appropriate relief'. In the context of our Constitution 'appropriate relief' must be construed purposively, and in the light of s 172(1)(b), which empowers the Court, in constitutional matters, to make 'any order that is just and equitable'. Thus construed, appropriate relief must be fair and just in the circumstances of the particular case. Indeed, it can hardly be said that relief that is unfair or unjust is appropriate. As Ackermann J remarked in the context of a comparable provision in the interim Constitution, '[i]t can hardly be argued, in my view, that relief which was unjust to others could, where other available relief meeting the complainant's needs did not suffer

> from this defect, be classified as appropriate'. Appropriateness, therefore, in the context of our Constitution, imports the elements of justice and fairness.
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> [43] Fairness requires a consideration of the interests of all those who might be affected by the order. ... .
>
> [44] ...
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> [45] The determination of appropriate relief, therefore, calls for the balancing of the various interests that might be affected by the remedy. The balancing process must at least be guided by the objective, first, to address the wrong occasioned by the infringement of the constitutional right; second, to deter future violations; third, to make an order that can be complied with; and fourth, of fairness to all those who might be affected by the relief. Invariably, the nature of the right infringed and the nature of the infringement will provide guidance as to the appropriate relief in the particular case. Therefore, in determining appropriate relief, 'we must carefully analyse the nature of [the] constitutional infringement, and strike effectively at its source'.

57 The case for structural relief was based on the following:

57.1 The applicants say that the DBE has failed to respond to numerous requests, all detailed in the founding affidavit, by school principals for textbooks additional to those previously ordered. This is however denied by the DBE. They claim that

they only learnt of these shortages when they were reported to the DBE by Section27.

57.2 The applicants point out that the DBE previously had to be ordered to fulfil its constitutional obligations and then failed to comply with the orders so made. I have referred to the orders made effectively on undertakings by the DBE as to the dates upon which textbooks delivery would be completed. Counsel pointed out that there is clear authority that a mandamus against any public official including the political head of the department in question is competent.[14] On the applicants' case, the DBE was in breach of these orders when the present application was launched. The DBE, on the other hand, asserts that there was ultimately compliance with the previous orders before the present proceedings were instituted.

57.3 The applicants argue that the DBE has undermined the basic principles and values governing public administration through what the applicants describe as the DBE's failure to provide information as to what plans and processes are in place to ensure the full delivery of textbooks. The DBE's answer is that

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14 MEC, Department of Welfare, Eastern Cape v Kate 2006 4 SA 478 SCA para 30

its affidavits in the present case, read with the affidavits in the previous textbook cases, contain complete information on the applicable policies, plans and processes of the DBE.

57.4 The applicants point to the fact that when the present case was heard in court, the DBE had still not completed the delivery of the 2014 textbooks and are thus in breach of their constitutional obligation to ensure that their constitutional obligations in relation to textbooks required for the 2014 academic year are performed diligently and without delay as required under s 237 of the Constitution. The applicants point to the correspondence which demonstrates their efforts to secure delivery and the substantive silence of the political head of the DBE in response to the letter addressed to her. The DBE's case is that it has set out in its affidavits that its tardy delivery of textbooks is explained on two grounds: firstly, the DBE says, initial deliveries of books in numbers calculated to meet the anticipated needs of individual schools took place in good time. But school principals, on whom the DBE relies for information on supplementary deliveries did not sometimes timeously, sometimes at all, forward the necessary requests for supplementary deliveries. The problems associated with supplementary deliveries, according to the DBE, were

exacerbated by the failures of teachers to make sure that learners handed in their textbooks at the end of 2013. Secondly, the DBE says, budgetary constraints forced them to delay supplementary deliveries until fresh funds became available after 1 April 2014.

57.5 The applicants point to the denial by the DBE that the content of the right to a basic education requires that every learner be provided with all necessary textbooks before teaching on the relevant curriculum commences. In this context, the DBE has contended that budgetary constraints prevented the DBE from completing the 2014 deliveries until additional funds, were made available to the DBE pursuant to the budget approved by Parliament.

58 There are disputes of fact in relation to the propositions upon which the applicants base their case for structural relief. Because this is an application for final relief, I must apply the procedural rule in *Plascon-Evans*:[15]

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15 *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 3 SA 623 A 34E-35C

In such a case the general rule was stated ... to be:
"... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order ... Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted."
... It seems to me, however, that this formulation of the general rule, and particularly the second sentence thereof, requires some clarification and, perhaps, qualification. It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts I alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact ...
If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6 (5) (g) ... and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks ... . Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers.

59 Counsel for the applicants ultimately accepted that the DBE's evidentiary material could not be rejected on the papers. Counsel declined, when I raised the matter with her, to apply for evidence. The disputes must therefore be resolved on the DBE's version. In what follows, I shall analyse the DBE's version in relation to the provision of textbooks for the 2014 academic year.

60 I have previously mentioned the decision to replace RNCS with CAPS. As I said earlier, the policy was to implement CAPS as follows: grades 1-3 and 10 in 2012; 4-6 and 11 in 2013; 7-9 and 12 in 2014.[16] The DBE developed a national catalogue which identified the approved textbooks to be used nationally. Previously, each province had had its own catalogue and procured its own works so identified. The idea of CAPS was to standardise education throughout South Africa. But the changeover placed an apparently unanticipated strain on resources because its consequence was that all previous textbooks had to be replaced as CAPS was implemented.

61 The DBE then made an operational decision in an attempt to deal with this problem: in each of the years from 2012 to 2014, priority would be given to the procurement of those textbooks for the grades in respect of which CAPS was to be implemented for the first time. But this

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16 References to years are to academic years.

caused another problem: the DBE ran out of money to procure additional textbooks for grades in respect of which CAPS had already been implemented in previous years. The DBE had estimated and applied for the amount required that for all learner teacher support material ("LTSM") throughout the country for 2014. But when the budget was approved by Parliament and implemented in 2013, they found that they were short of what they needed.[17] The solution the DBE devised for this problem in consultation with the fiscal authorities was to use money budgeted for other purposes in respect of schools. In addition, the DBE used what commercial muscle it could bring to bear on its suppliers to get discounts. But there was still not enough money. So the BDE decided to delay the procurement of additionally needed textbooks until after further subventions became available under the budget passed in 2014.

62 I must say that given the situation in which the DBE found themselves, it is difficult to think what else they could have done. Whether the root cause of the problem, the lack of funds made available for the procurement of LTSM in Limpopo, reflected a failure by Parliament to meet its constitutional obligation to fund basic education is entirely another question.

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17 The DBE had asked for R768 million for grades 7-9 and 12 alone. But they were given only R480 million for *all* grades within Limpopo.

63 Experience had taught the DBE that one delivery of textbooks per school would very often be inadequate. Initial deliveries took place until about October 2013. Under the DBE's policies, each principal of a school in which additional textbooks were needed for 2014 had to report shortages before the schools closed in 2013. Wide publicity was given to this policy and the ways in which it was to be implemented.

64 But on the DBE's case, which I emphasise I must accept for the purposes of this application, numerous principals neglected to inform the DBE of shortages anticipated or experienced in their schools until after December 2013. Those shortages reported (albeit late) in January 2014 were remedied. But some of the shortages reported after the end of January 2014 have still not been remedied. Additionally, at the end of the school year, teachers are supposed to collect the returned textbooks from the learners before the school breaks up but quite substantially neglected to do so. The 2013 targets for returned textbooks were thus not met. The DBE says that a textbook should have a life of five years. It is essentially those causes, say the DBE, which have resulted in the inability to complete deliveries before the date presently anticipated for completion, 6 June 2014.

65 I have already concluded that an appropriate declaration in relation to the denial, *pro tanto*, of the right to basic education must issue. What remains for consideration are the prayers for supervisory relief. At this level, the broad question is whether the court ought to supervise the performance and fulfilment by the DBE of its constitutional obligations in relation to the timeous delivery of textbooks to learners in Limpopo. As I see it, fundamental to the task of determining an appropriate order is the resolution in the present context of the problem created by budgetary constraints.

66 In *Minister of Health and Others v Treatment Action Campaign and Others (No 2)* 2002 5 SA 721 CC the Constitutional Court held:

> [36] The State is obliged to take reasonable measures progressively to eliminate or reduce the large areas of severe deprivation that afflict our society. The Courts will guarantee that the democratic processes are protected so as to ensure accountability, responsiveness and openness, as the Constitution requires in s 1. As the Bill of Rights indicates, their function in respect of socio-economic rights is directed towards ensuring that legislative and other measures taken by the State are reasonable. As this Court said ... '(i)t is necessary to recognise that a wide range of possible measures could be adopted by the State to meet its obligations'.

> [37] It should be borne in mind that in dealing with such matters the Courts are not institutionally equipped to make the wide-ranging factual and political enquiries necessary for determining what the minimum-core standards called for by the first and second amici should be, nor for deciding how public revenues should most effectively be spent. There are many pressing demands on the public purse. ... .
>
> [38] Courts are ill-suited to adjudicate upon issues where Court orders could have multiple social and economic consequences for the community. The Constitution contemplates rather a restrained and focussed role for the Courts, namely, to require the State to take measures to meet its constitutional obligations and to subject the reasonableness of these measures to evaluation. Such determinations of reasonableness may in fact have budgetary implications, but are not in themselves directed at rearranging budgets. In this way the judicial, legislative and executive functions achieve appropriate constitutional balance.

67 Of course the *TAC* case dealt with constitutional rights, access to which the state is required to achieve progressively through reasonable legislative and other measures within its available resources. The right to a basic education, on the other hand, is subject to no such limitations.[18] And yet, the content of the right to a basic education, like all other constitutional rights which require the participation of the state

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[18] *Governing Body of the Juma Musjid Primary School & Others v Essay NO and Others (Centre for Child Law and Another as Amici Curiae)* 2011 8 BCLR 761 para 37

for their realisation, must depend to some extent on the availability of state resources, particularly fiscal resources. One just cannot get blood out of a stone.

68 And the point made, authoritatively, in *TAC* which I think is relevant for present purposes is firstly that the duty, and therefore the power, to determine what resources are available and should be applied to a particular area of social development has been vested in the state and secondly that courts are not well equipped to make such determinations.

69 In *Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development and Others* 2009 4 SA 222 CC, in relation to what was described in the judgment as mandatory relief, the court was called upon to deal with a submission that the relief decreed by the High Court had impermissibly crossed the boundary imposed by the doctrine of the separation of powers. The Constitutional Court held:

> [181] The importance of the principle of the separation of powers in our constitutional democracy cannot be gainsaid. It is required by the very structure of our Constitution. While there are no bright lines that separate the role of the courts from those of other branches of government, 'there are certain matters that are pre-eminently within the domain of one or other of the arms of government and not the others.

All arms of government should be sensitive to and respect this separation.' ... . Courts too must observe the constitutional limits of their authority ... :

'The constitutional principle of separation of powers requires that other branches of government refrain from interfering in parliamentary proceedings. This principle is not simply an abstract notion; it is reflected in the very structure of our government. The structure of the provisions entrusting and separating powers between the legislative, executive and judicial branches reflects the concept of separation of powers. The principle has important consequences for the way in which and the institutions by which power can be exercised. Courts must be conscious of the vital limits on judicial authority and the Constitution's design to leave certain matters to other branches of government. They too must observe the constitutional limits of their authority. This means that the Judiciary should not interfere in the processes of other branches of government unless to do so is mandated by the Constitution.'

[182] It is unquestionably the constitutional province of the executive to develop and implement policy. ...

[183] Under our constitutional democracy, courts have no power to supervise or interfere with the exercise by the executive or legislature of its functions unless the circumstances amount to a clear disregard by the executive of the powers and duties conferred upon it by the Constitution. Where there is such a disregard, courts are not only entitled but obliged to intervene. But judicial review under our constitutional democracy does not give courts the power to exercise executive or legislative functions. It permits courts to call upon the executive and legislature to observe the limits of

> their powers but does not permit courts to exercise those powers themselves. Courts therefore have the duty to patrol the constitutional borders defined by the Constitution. They cannot, therefore, cross those borders.

70 In *Rail Commuters Action Group and Others v Transnet Ltd T/a Metrorail and Others* 2005 2 SA 359 CC the question arose whether structural relief should be granted. The court held:

> [109] In this case, Metrorail and the Commuter Corporation denied, in error, that they bore obligations to protect the security of rail commuters. Given the importance of that obligation in the context of public rail commuter services, it is important that this court issue a declaratory order to that effect. The applicants also sought an order in which this Court would put Metrorail and the Commuter Corporation on terms to take steps to implement that order. While such an order is no doubt competent, I am not persuaded that it is an appropriate order in the circumstances of this case. *There is nothing to suggest on the papers that Metrorail and the Commuter Corporation will not take steps to comply with the terms of the order.* [my emphasis]

71 In the same case, the court evaluated a defence that budgetary constraints precluded Metrorail from fulfilling its constitutional obligations, holding as follows:

[88] What constitutes reasonable measures [by the state to meet its constitutional obligations] will depend on the circumstances of each case. Factors that would ordinarily be relevant would include the nature of the duty, the social and economic context in which it arises, the range of factors that are relevant to the performance of the duty, the extent to which the duty is closely related to the core activities of the duty-bearer - the closer they are, the greater the obligation on the duty-bearer, and the extent of any threat to fundamental rights should the duty not be met as well as the intensity of any harm that may result. The more grave is the threat to fundamental rights, the greater is the responsibility on the duty-bearer. Thus, an obligation to take measures to discourage pickpocketing may not be as intense as an obligation to take measures to provide protection against serious threats to life and limb. A final consideration will be the relevant human and financial resource constraints that may hamper the organ of State in meeting its obligation. This last criterion will require careful consideration when raised. In particular, an organ of State will not be held to have reasonably performed a duty simply on the basis of a bald assertion of resource constraints. Details of the precise character of the resource constraints, whether human or financial, in the context of the overall resourcing of the organ of State will need to be provided. The standard of reasonableness so understood conforms to the constitutional principles of accountability, on the one hand, in that it requires decision-makers to disclose their reasons for their conduct, and the principle of effectiveness on the other, for it does not unduly hamper the decision-maker's authority to determine

what are reasonable and appropriate measures in the overall context of their activities.

72 I think it is important to place the DBE's reference to budgetary constraints into context: despite the assertion that it was not obliged to provide textbooks and took what it claims are all reasonable steps to deliver them to the learners before the commencement of the academic year, it is clear on the approach I must take to the papers that the DBE went to great lengths to do just that. The issue of budgetary constraints is therefore partly of retrospective interest (who is to blame for the late deliveries of books required for 2014?) and partly of prospective interest (what is likely to happen in subsequent years, particularly 2015?).

73 In my view it cannot be said that there has been a bald assertion by the DBE of budgetary constraints. Much information in this regard was placed before the court. The case for the DBE reduces to this: they asked the fiscal authorities for the money they calculated was necessary to enable them to meet their textbook requirements but they were given a lesser sum; they then negotiated with the same fiscal authorities to find alternate ways of raising the necessary money but were only partially successful. I think that these facts answer the argument of counsel for the applicants that the DBE ought to have had recourse to the emergency funding potential available under s 25 of the

Public Finance Management Act, 2 of 1999. The DBE did, in effect seek emergency funding. They got some, but not all for which they asked.

74 The, once again very big, question whether Parliament failed in its constitutional obligations by not making enough money available to the DBE to fund the textbooks required for 2014 is not directly before me.[19] The fiscal authorities in particular have not been cited. I cannot think of an issue which is more policy laden and polycentric than the compilation of the national budget. I need not burden this judgment with a recitation of additional authority which cautions against the intrusion of the court into this terrain.

75 I think this is a case which bears similarities to *Metrorail*. Although the responsible authority in the present case has, in error, denied the existence of its obligation, there is no reason to believe that it will not honour its constitutional obligation to provide textbooks to learners in Limpopo in accordance with its undertakings. I do not think that this is a case where the court should enter the terrain demarcated for the exercise of public power by another arm of government by directing the DBE to report to the court on their progress with the deliveries which

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[19] Whether the various statutes which were enacted to give effect to the budgetary decisions of Parliament are laws of general application which justifiably limited constitutional rights under s 36 of the Constitution is similarly not before me.

they have undertaken to make. The date by which the DBE has promised to complete deliveries will follow very shortly, a month or so, after this judgment is handed down. If the undertaking is not adhered to, the applicants will have their remedy in approaching the court again. I appreciate that the applicants are not wealthy but there is every likelihood that if the applicants are forced for this reason to come to court again, they will get their costs. The applicants clearly have the confidence of their members and colleagues and of parents. If the DBE is remiss in days to come, the necessary information will be given to Ms Stein and her colleagues and action will be taken. I appreciate too that the DBE was previously in default of compliance with court orders. I think that this non-compliance has been explained. I think that the papers filed by the DBE show that lessons have been learnt and that, subject to one qualification with which I shall deal later, it is unlikely that the DBE will again err in this regard.

76 One of the grounds upon which the applicants ask for supervisory relief is that they have in the past struggled to obtain necessary information to enable them to take steps to protect learners' rights. With the one qualification to which I have just adverted, I think that is not appropriate that the court lend its muscle in the present circumstances to the procurement in the future by the applicants of such information. In addition to the factors I have mentioned generally in regard to

supervisory relief, I would add that the applicants have other, in my view more appropriate, sources of information. For example, they can approach the relevant organs within Parliament through its members. Because the issues raised involve polycentric policy considerations, they are, at least in part, political issues. Political issues require political solutions. Parliament is a more appropriate forum for the ventilation of political considerations than the courts. A further source of information is the machinery created by the Promotion of Access to Information Act, 2 of 2002. And I have mentioned the good relationship that exists between the DBE and the representatives of the applicants. I think it likely that if the applicants ask for information and it is available, the DBE will provide it. If I am wrong, the applicants can approach the court again.

77 For much the same reasons, I do not think that the DBE's undertakings should be translated into orders of court. There however is an additional reason. The orders of court directing delivery by specific dates have in each instance been made on the predictions of the DBE as to their capacity to deliver. Counsel for the applicants frankly acknowledged during argument that although the applicants had pointed in their founding papers to the importance of deliveries by 7 April 2014, they could do no more than accept the assertions of the DBE as to their delivery capacity. While I can appreciate the frustration

of the applicants and parents generally with what they must see as broken promises and slow deliveries which prejudice their children in their education, I do not think that orders of court made on capacity predictions have advanced the applicants' cause. With the advantage of hindsight, I doubt whether those orders, which were effectively unenforceable and were simply varied each time they were breached, advanced the interests of justice. I express, however, no opinion on what the position might be in this regard if the DBE's present undertakings are not achieved.

78 These conclusions dispose, against the applicants, of their request that the SAHRC be ordered to monitor the DBE's progress. The SAHRC itself says that it does not have the capacity to do what the applicants ask of it. But I think there is a deeper reason why such an order should not be granted against the opposition of the SAHRC: it is empowered under s 184(1)(c) to monitor the observance of human rights in the Republic. The way it does so is for the SAHRC to determine. There is no suggestion that the SAHRC has been remiss in its Constitutional duties in this regard. On the authorities to which I have referred, I do not think that there is any justification for this court to order the SAHRC to do its work.

79 The applicants ask for an order which would allow them to approach this court again on the same papers, appropriately amplified. Of course the applicants do not need the leave of the court to approach it again if they feel aggrieved. I think that this question should be determined on purely pragmatic considerations. The record has become quite unwieldy and now consists of some 1 430 pages. If another judge has to consider a fresh approach by the applicants to this court, it would be better if the record before that judge were focussed specifically on the issues then raised by the applicants. The judge would then not have to find her way through paper which is merely historical and does not bear on the issues before her. I shall therefore decline the request.

80 I have said there was one qualification to the proposition that the court should not grant supervisory relief. The main obstacle to timeous deliveries of textbooks in the future seems, on what is before me, to be that Parliament will not vote enough money for this to be achieved. I think that it is arguable that a case could be made out to compel Parliament to vote enough money to meet the needs of Limpopo learners in relation to textbooks despite the very difficult nature of the case which would have to be made. Given the fact that Parliament has, on the DBE's case, denied the DBE the funds they needed in this regard in the past, it is reasonable to predict that it may do so again. I think it would be appropriate if the applicants and the SAHRC were told

by the DBE, at a relatively early stage, if a similar situation is likely to recur. I shall therefore direct the political heads of the relevant national and provincial departments to inform the applicants and the SAHRC of the amounts sought in relation to the provision of textbooks to learners in Limpopo and the amounts actually awarded in this regard.

81 As to costs: the applicants have been substantially successful; they have also contributed positively toward the realisation of learners' rights in Limpopo timeously to get their textbooks. They must have their costs. They ask for punitive costs orders. But the basis laid by the applicants for punitive orders cannot survive the application of the procedural rule in *Plascon-Evans.*

82 I therefore make the following order:

1 It is declared that the content of the right to basic education in s 29(1)(a) of the Constitution includes:

1.1 the right of every learner at a public school as contemplated in the Schools Act, 84 of 1996, in Limpopo to be provided with every textbook prescribed for that learner's grade;

1.2 the right of every such learner to be provided with every such textbook before the teaching of the curriculum for which such textbook is prescribed is due to commence.

2 It is declared that the non-delivery to certain of such learners of certain textbooks prescribed for such learners' grades in the 2014 academic year before the teaching of the curricula for which such textbooks were prescribed was due to commence was a violation of such learners' rights to a basic education in s 29(1)(a) of the Constitution and of their rights to equality and dignity in ss 9 and 10 respectively of the Constitution.

3 It is noted that the first to fifth respondents have undertaken to ensure that delivery to all such learners of all the textbooks required for the 2014 academic year will be completed as follows:

3.1 those textbooks required for grades 7-9 and 12 by 8 May 2014; and

3.2 those textbooks required by the other grades by 6 June 2014;

4 The first and third respondents are both ordered, to the extent that each of them is able to do so, to provide the applicants, through the applicants' attorney of record, and the sixth respondent with an affidavit setting out:

4.1 the submissions, with vouchers where reasonably possible, to the fiscal authorities of the national Department of Basic Education and the department of education within the provincial government of Limpopo in support of these departments' requests for funds for textbooks for learners at public schools in Limpopo for the academic year 2015; and

4.2 particulars of the funds so to be made available for that purpose ("the Limpopo textbook budget allocation"), similarly with vouchers where reasonably possible.

5 The affidavit referred to in paragraph 4 of this order must be provided to the applicants by no later than one month after the last of such respondents has been informed of the Limpopo textbook budget allocation.

6 The first respondent must pay the applicants' costs in this application.

NB Tuchten
Judge of the High Court
5 May 2014

Textbooks(3)23949.14

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