

**THE (IN)ADEQUACY OF MEASURES RELATING TO PUBLIC SCHOOL  
GOVERNANCE IN THE REALISATION OF THE RIGHT TO BASIC  
EDUCATION: A CASE STUDY IN TLOKOENG**

*A thesis submitted in fulfilment of the requirements for the degree of*

**MASTER OF LAWS**

of

**RHODES UNIVERSITY**

by

**Renalelona Goodness Maumo**

February 2026

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## **ACKNOWLEDGEMENTS**

I thank Rhodes University, not only for allowing me to further my studies but also for assisting in funding them.

I'm forever grateful to my supervisor, whom I dragged into working overtime. The Law Faculty staff also extended a helping hand in different forms, be it nagging me about when I am completing the research or providing me with library and administrative assistance; thank you.

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In the face of all challenges, to the people who took it upon themselves to help me collect the data for this research, I am indebted to you.

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Of course, I am not out of nothing; I am led. I will always be grateful to my Creator!

## ABSTRACT

Effective school governance is pivotal for quality teaching and learning and the realisation of education rights. Provincial education departments have a statutory obligation to capacitate school governing bodies to enable them to effectively perform their functions as provided for in the South African Schools Act. However, provincial education departments do not always adequately capacitate school governing bodies. The inadequate capacitation of school governing bodies is especially detrimental for parent-school governing body members in rural areas due to the high illiteracy that often befalls people in rural areas.

This study assessed the adequacy and effectiveness of measures relating to school governance in selected public secondary schools in the rural Eastern Cape. While there is no established legal standard for such an assessment, the study relies on international, national and foreign jurisprudence on the realisation of socio-economic rights, the right to education in particular, to identify relevant factors to be considered for such an assessment. It is concluded that the measures relating to school governance are inadequate to the extent that they are neither comprehensively conceptualised nor effectively implemented, and thus fail to adequately capacitate school governing bodies.

Recommendations are made on how the identified inadequacies could be ameliorated. It is suggested that effective school governance is one of the elements necessary for the realisation of the right to basic education and should be given similar regard as the other components of that right such as the provision of textbooks, furniture and educators. Further, the plans relating to school governance could be drafted with more detail and clarity as to the action plan as to how school governing bodies will be adequately trained, supported and monitored. Equally important is clear resource allocation to fulfil the plans to capacitate school governing bodies. Ultimately, the comprehensive plan must be properly implemented.

**Keywords:** basic education, right to basic education, public school governance, school governing body, rural areas; adequacy.

## ABBREVIATIONS AND ACRONYMS

**ASIDI** – Accelerated School Infrastructure Development Initiative

**CMC** – Circuit Management Centre

**DBE** – National Department of Basic Education

**ECDBE** – Eastern Cape Department of Basic Education

**HOD** – Head of Department

**ICESCR** – International Covenant on Economic, Social, and Cultural Rights

**NSNP** – National School Nutrition Programme

**SASA** – South African Schools Act

**SGB** – School Governing Body

**SMT** – School Management Team

**SRP** – School Rationalisation Programme

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## 1. INTRODUCTION

### 1.1. Purpose and context of study

“Educating all of our children must be one of our most urgent priorities. We all know that education, more than anything else, improves your chances of building better lives.” – Nelson Mandela.

For many learners in schools in rural areas, the chance of building a better life remains but a dream. These learners are deprived of a chance to change their lives because their right to basic education remains unrealised. Amongst other things, school governance seems to fall short of enabling the realisation of their right to basic education. The right to basic education is protected in the Constitution of the Republic of South Africa in the following terms by section 29:

- “(1) Everyone has the right–
- (a) to a basic education, including adult basic education; and
  - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.”<sup>1</sup>

The Constitution was adopted as the supreme law of the republic to, among other things, transform the South African society in a more egalitarian direction,<sup>2</sup> to improve the quality of life of all citizens and free all individuals’ potential.<sup>3</sup> While the Constitution does not give a model of a transformed South Africa and how to effect the envisaged change, it presents a set of rights, values and institutions to effect the change.<sup>4</sup> The right to basic education has an important role in the envisaged transformation, it has been described as an indispensable tool for transformation.<sup>5</sup>

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<sup>1</sup> The Constitution of the Republic of South Africa, 1996.

<sup>2</sup> P Langa “Transformative Constitutionalism” (2006) 3 *Stellenbosch Law Review* 351 at 352.

<sup>3</sup> Preamble of the Constitution.

<sup>4</sup> L Arendse “The South African Constitution’s Empty Promise of Radical Transformation: Unequal Access to Quality Education for Black and/or Poor Learners in the Public Basic Education System” (2019) 23 *Law, Democracy and Development* 100 at 103.

<sup>5</sup> *Section 27 v Minister of Education* 2013 (2) SA 40 (GNP) para 5.

Several legislative and executive measures have been adopted to give effect to this constitutional right.<sup>6</sup> The judiciary has also contributed significantly to providing clarity on the state's obligations for realising the right to basic education and fulfilling its components, such as the provision of educators, learning and teaching support material (LTSM), and school furniture, amongst others.<sup>7</sup>

Effective school governance is crucial for the realisation of the right to basic education. At least, the fulfilment of the mentioned components of the right to basic education depends, to a degree, on effective school governance. This is because the functions of school governing bodies (SGBs) speak to some of these components. In essence, effective school governance enables schools to create environments conducive to teaching and learning.<sup>8</sup> Quality teaching and learning enable learners to perform well academically and access higher education.<sup>9</sup> This, in turn, equips learners with the skills and knowledge to access employment opportunities and enjoy other political and socio-economic rights.<sup>10</sup>

On the other hand, ineffective school governance may cause dysfunctionality in schools. Dysfunctional schools are plagued by poor teaching and learning, resulting in academic underperformance in learners.<sup>11</sup> Academic underperformance contributes to high levels of illiteracy, difficulties in accessing further education and training institutions, and unemployment. Learners so affected have difficulties accessing other

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<sup>6</sup> The South African Schools Act 84 of 1996 being one of the main legislative measures. Policy measures and related administrative measures include the National School Nutrition Programme for the provision of nutrition at schools, and the Accelerated School Infrastructure Delivery Initiative for the provision of infrastructure. It must be noted that this study was undertaken before the amendments by the Basic Education Laws Amendment Act 32 of 2024 to the South African Schools Act. Accordingly, the version of the South African Schools Act referred to in the study excludes the amendments that took effect on 24 December 2024.

<sup>7</sup> *Tripartite Steering Committee v Minister of Basic Education* 2015 (5) SA 107 (ECG) para 18.

<sup>8</sup> A Mbengashe *Improving School Performance Through Effective SGB Governance in Previously Disadvantaged Schools* (Master of Business Administration thesis, Nelson Mandela Metropolitan University, 2014) 76–77.

<sup>9</sup> K Bipath *The Leadership of a Functional School in a Dysfunctional Area* (Doctor of Education thesis, University of Johannesburg, 2005) 63–64.

<sup>10</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13 of the Covenant) (3 December 1999) para 1.

<sup>11</sup> Bipath *The Leadership of a Functional School in a Dysfunctional Area* 40–43. See also SG Pretorius “Educators’ Perceptions of School Effectiveness and Dysfunctional Schools in South Africa” (2014) 40 *Journal of Social Sciences* 51 at 54–55. See further VO Netshandama *et al* “Understanding the Dynamics in a Dysfunctional School Through a University – Community Participatory Action Research” (2012) 11 *Journal of Educational Studies* 85 at 85–86.

socio-economic rights and are limited in their ability to exercise their civil and political rights. For these learners, the transformative vision of the Constitution is no more than an aspiration, and even the very Constitution seems redundant. Accordingly, effective school governance is pivotal in ensuring the transformation envisioned through education. Therefore, ineffectiveness in school governance must be addressed.

Research has demonstrated several problems with school governance and the resultant poor teaching and learning, especially in rural areas.<sup>12</sup> It has been observed that SGB members in rural areas tend to have low literacy levels, which negatively affect the functioning of SGBs since SGB members have difficulty understanding the policy documents meant to empower and guide them in performing their roles.<sup>13</sup> Some SGBs generally lack the leadership, management, organisational and communication skills to govern schools, and this is exacerbated by the lack of effective training to capacitate them.<sup>14</sup> Studies have shown that such lack of skills, in turn negatively impact on teaching and learning provision which then compromises the academic performance of learners.<sup>15</sup>

The National Department of Basic Education (DBE) and the Eastern Cape Department of Basic Education (ECDBE) in particular, make provision for the training, supporting and monitoring of SGBs to ensure effective school governance. This is provided for in the first two of the seven operational programmes adopted nationally, provincially and at a district level for the general administration of basic education since 2010.<sup>16</sup> The seven programmes are named in terms of their intended purpose in the administration

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<sup>12</sup> See Mbengashe *Improving School Performance* and SJ Mohapi and T Netshitangani "Views of Parent Governors' Roles and Responsibilities of Rural Schools in South Africa" (2018) 4 *Cogent Social Sciences* 1.

<sup>13</sup> Mohapi and Netshitangani "Views of Parent Governors' Roles" 8–9.

<sup>14</sup> RI Lumadi "Critical Path to a Sustainable Future of Managing No-fee Secondary Schools in the Limpopo Province" (2020) 40 *South African Journal of Education* 1 at 6. See also Mohapi and Netshitangani "Views of Parent Governors' Roles" 4.

<sup>15</sup> Mbengashe *Improving School Performance* 24. See also Mohapi and Netshitangani "Views of Parent Governors' Roles" 2.

<sup>16</sup> ECDBE Annual Performance Plan 2020/2021 44 <https://eceducation.gov.za/resource-centre/documents-library/3/annual-performance-plans#:~:text=Annual%20Performance%20Plan%202020/2021> (accessed 7 February 2023). It must be noted that both the ECDBE and the Eastern Cape Treasury have updated websites and almost all documents no longer have a direct link, the closest one gets is the link to a page with a certain category of documents.

of basic education; the two relevant to this study are Administration and Public Ordinary School Education.

## **1.2. Goals of the study**

First, this study will describe the state of teaching and learning provision in schools in rural areas which includes learner underperformance, overcrowding, and inadequate LTSM. Second, this study will outline the interplay between school governance and the fulfilment of the components of the right to basic education to demonstrate the importance and role of effective school governance in ensuring the provision of quality education. It will be argued that effective school governance should not be seen only as part of a mechanism through which the components of the right to basic education are fulfilled, it should be seen as one of the components of the right to basic education in itself. The jurisprudence relating to the legal standard of the realisation of the right to basic education will be examined to deduce a legal standard to measure the adequacy and effectiveness of measures meant to fulfil the components of the right to basic education.

The identified legal standard will be utilised to assess the adequacy and effectiveness of the ECDBE's measures relating to school governance. The adequacy assessment will be undertaken in respect of both the conceptualisation and implementation of the ECDBE's measures in relation to school governance. Further, such an assessment shall be for the measures meant for the 2018/2019 to 2020/2021 financial years (2018 to 2020 school years).

It shall be assessed whether and to what extent SGBs in the participant schools understood and performed their roles effectively for the years in question. This will enable the determination of whether there is poor school governance and related issues in Tlokoeng,<sup>17</sup> and whether and to what extent such poor school governance contributed towards poor teaching and learning provision. In this regard, reliance shall be on national and provincial legislative and policy documents, information gathered from provincial and district documents such as Annual Plans and Reports, information

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<sup>17</sup> The name of the town recently changed from Mount Fletcher to Tlokoeng, as published in terms of Section 10(2) of the South African Geographical Names Council Act 118 of 1998, GN 1886, *Government Gazette* 46049, 16 March 2022.

gathered through interviews conducted with SGB members of the participant schools, and information from school documents (school policies, SGB meeting minutes, school management teams meeting minutes, and staff meeting minutes).

Ultimately, recommendations will be made on how to improve the plans relating to school governance with an aim to ensure effective school governance and quality teaching and learning. In turn, this will help realise the learners' right to basic education and related rights such as equality and human dignity.

### **1.3. Scope of the study**

The programmes to ensure effective school governance are established at a national level and adopted by all the provinces. The focus in this thesis is on the Eastern Cape. The research was conducted through both doctrinal and empirical research methods to determine whether the measures relating to school governance led to the realisation of the right to basic education. A case study was conducted in four schools in Tlokoeng in the Joe Gqabi District.

With respect to the assessment of the effectiveness of the implementation of adopted plans relating to school governance, the study was limited to the four main roles of SGBs: financial management, staff recruitment, property management, and policy making insofar as it relates to the aforementioned three functions. It is important to note that the South African Schools Act (SASA)<sup>18</sup> outlines a litany of functions of SGBs, with an emphasis on school governance and school management. School management, referred to as "professional management", is mainly the duty of the principal,<sup>19</sup> while school governance is mainly the duty of the SGB.<sup>20</sup> In the professional management of a school, the principal works with the school management teams (SMTs), which consist of the deputy principal and all the heads of departments in the school.<sup>21</sup>

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<sup>18</sup> Act 84 of 1996.

<sup>19</sup> Section 16(3) of SASA.

<sup>20</sup> Section 16(1) of SASA.

<sup>21</sup> School D SMT policy.

The duties of the principal in the professional management of a school include implementing educational programmes and curriculum activities, managing educators and support staff, managing LTSM and other equipment, and implementing policy and legislation.<sup>22</sup> Notably, it is also the duty of the SGB to support the principal, educators, and other school staff in the performance of their professional functions.<sup>23</sup> Further, the principal is also an *ex officio* member of the SGB.<sup>24</sup> Accordingly, the lines that distinguish professional management from school governance are often blurred in practice.<sup>25</sup>

Both school governance and school management are meant to ensure that schools are functional and teaching and learning conducive. Nevertheless, this research focuses on school governance and only speaks to school management by virtue of the interconnectedness of the two.

#### 1.4. Limitations of the study

The empirical research was only conducted in one district out of twelve districts in the Eastern Cape as seen on the map below. Only four schools were chosen to participate. With two schools being in the same circuit, only three circuits out of eight in the chosen district were represented. This means that three out of 220 circuits in the province participated.

**Figure 1:** *A map depicting the 12 districts in Eastern Cape*

*(accessed from Eastern Cape School Rationalisation Map <https://ecsrp.webmaps.africa/map> on 2 February 2022)*

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<sup>22</sup> Section 16A (2)(a) of SASA.

<sup>23</sup> Section 20(1)(e) of SASA.

<sup>24</sup> Section 23(1)(b) of SASA.

<sup>25</sup> P Basson and R Mestry "Collaboration Between School Management Teams and Governing Bodies in Effectively Managing Public Primary School Finances" (2019) 39 *South African Journal of Education* 1 at 5–6. See also MT Galetuke *School Governing Bodies' Support of Schools to Promote Quality Academic Performance* (Master of Education thesis, North-West University, 2017) 24.

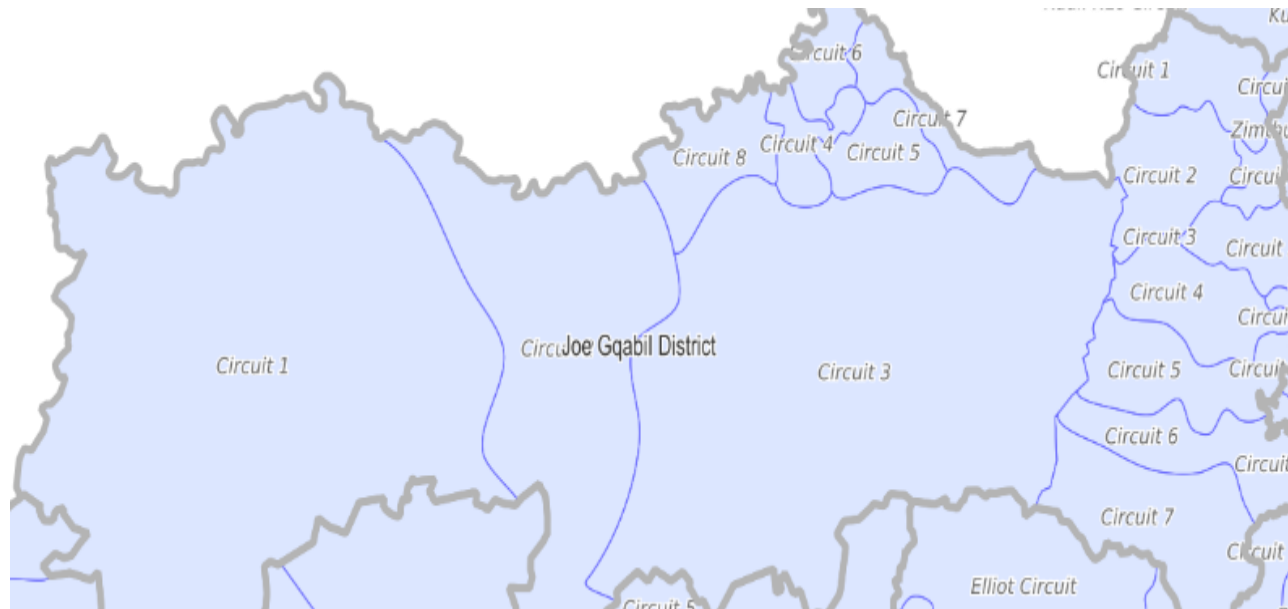


**Figure 2:** A map depicting Joe Gqabi District (accessed from <https://www.joegqabieducation.com/home/joe-gqabi-map> on 2 February 2022)



**Figure 3:** A map depicting the eight circuits in Joe Gqabi District

(accessed from Eastern Cape School Rationalisation Map <https://ecsrp.webmaps.africa/map> on 2 February 2022)



The interviews were mainly conducted in 2022 and early 2023. Accordingly, there were instances where the participants did not have a clear recollection of specific details.

While SGBs consist of parent, educator, and learner members, learner members were not included in the study. The research focused on parent and educator SGB members. Further, given that the research is mainly on 2018/2019 to 2020/2021 financial years, it is possible that the situation in some respects in public school governance would have already changed by the time this thesis is completed. Where necessary, mention shall be made of aspects with crucial changes that might render the research outdated.

Finally, there were limitations in data availability. The researcher's lack of success in collecting data at a district level<sup>26</sup> meant that the secondary data sources used, especially regarding the measures adopted to train, monitor and support SGBs, are high level data mainly from provincial documents. There was also a lack of success in

<sup>26</sup> Please see detailed explanation in Chapter 2.6.

relation to policy documents from one school and SGB meeting minutes of another as it will be detailed in chapter 2.

## **1.5. Conclusion**

This chapter introduced the research by outlining the study's purpose, objectives, scope and limitations. It briefly set out the interconnectedness of school governance and the provision of quality teaching and learning, as well as the other components of the right to basic education. This demonstrated the importance of effective school governance in the overall realisation of the right to basic education. The next chapter will set out the research methodology adopted to determine whether the ECDBE has employed adequate measures to ensure effective school governance.

## **2. METHODOLOGY**

### **2.1. Introduction**

This chapter outlines the research methodology and the research methods utilised in this thesis. The rationale, the risks, and the limitations of the employed research methodology are explained. This is to enable the evaluation of the reliability and validity of the research assessing the ECDBE's plans relating to school governance.

### **2.2. Research methodology**

A research methodology is the overall technique employed in research. It informs the research methods and procedures adopted for specified research.<sup>27</sup> Research methods are the techniques used to collect data. This study combined the doctrinal research methodology with the case study research methodology. Doctrinal research methodology can be described as:

“[R]esearch that aims to give a systematic exposition of the principles, rules and concepts governing a particular legal field or institution and analyses the relationship between these principles, rules and concepts with a view to solving [ambiguities] and gaps in the existing law.”<sup>28</sup>

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<sup>27</sup> MD Pradeep “Legal Research-Descriptive Analysis on Doctrinal Methodology” (2019) 4 *International Journal of Management, Technology and Social Sciences* 95 at 98–99.

<sup>28</sup> J M Smits “What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research” (2015) 6 *Maastricht European Private Law Institute* 1 at 5.

This methodology can either be descriptive, thus describing existing law;<sup>29</sup> or prescriptive, thus involving a search for practical application of the described law.<sup>30</sup> This study employed the descriptive approach of the doctrinal research methodology in relation to the legal framework concerning the conceptualisation of measures established in relation to school governance and the assessment of the adequacy thereof.

The main research method for doctrinal research is the desktop research method. Desktop research involves the study and analysis of primary and secondary sources.<sup>31</sup> Accordingly, primary and secondary sources of the law in relation to the right to basic education, such as the international covenants, the Constitution, national and provincial legislation and policy documents, case law, journal articles, and internet sources, were utilised.

When it comes to the assessment of the effectiveness of the implementation of the plans relating to school governance, the methodology shifted to that of a case study methodology. A case study research methodology is “the in-depth investigation of contemporary phenomena, within a real-life context”.<sup>32</sup> The case study methodology can be used to investigate how and why actors consider, interpret and understand a phenomenon the way they do.<sup>33</sup> It offers a deep insight into a particular situation in relation to which findings in respect of the theoretical propositions can be transferred to other contexts.<sup>34</sup>

This kind of research adopts empirical methods to draw inferences from observations of a phenomenon.<sup>35</sup> These observations are often achieved by collecting and

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<sup>29</sup> Smits “What is Legal Doctrine?” 8.

<sup>30</sup> Smits “What is Legal Doctrine?” 10.

<sup>31</sup> WH Chui “Quantitative Legal Research” in M McConville and WH Chui (eds) *Research Methods for Law* 2 ed (2017) 49.

<sup>32</sup> M Ramchander “Shortcomings in Case Study Research Design in Master’s Dissertations at South African Universities” (2018) 13 *The Independent Journal of Teaching and Learning* 5 at 6.

<sup>33</sup> L Webley “Stumbling Blocks in Empirical Legal Research: Case Study Research” (2016) *Law and Methods* 1 at 2–3.

<sup>34</sup> Webley “Stumbling Blocks in Empirical Legal Research” 4.

<sup>35</sup> Webley “Stumbling Blocks in Empirical Legal Research” 1.

triangulating a range of data sources to explore the theoretical propositions of a selected case.<sup>36</sup> Empirical research methods can be qualitative, quantitative or both.<sup>37</sup> Qualitative research is mainly concerned with gathering data through interviews and observation to develop theories and understand social phenomena.<sup>38</sup> On the other hand, quantitative research is mainly reliant on statistical or numerical data analysis to test existing theories to understand behaviour.<sup>39</sup>

This study is primarily qualitative, with some quantitative aspects. It relied on interviews to gather information to determine whether SGB members understood and performed their functions adequately. This enables an assessment of the effectiveness and adequacy of the plans of the ECDBE on school governance. This is the qualitative aspect. The study included limited numerical data derived from the interviews conducted, thus introducing a limited quantitative aspect.

Empirical research can be descriptive, explanatory or and evaluative.<sup>40</sup> This study is descriptive as it seeks to describe a phenomenon, i.e. factors affecting public school governance.<sup>41</sup> The research also has an explanatory element as it seeks to establish and explain the relationship between several factors affecting school governance.<sup>42</sup> Additionally, after interpreting the data by developing conceptual categories supporting or challenging assumptions made about the concepts, the researcher added her judgment to the phenomenon. This makes the research evaluative as well.<sup>43</sup>

Both primary and secondary data were collected, managed, and analysed.<sup>44</sup> SGB members were interviewed regarding their experiences within the school governance system. The interviews were semi-structured and conducted telephonically and in

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<sup>36</sup> Webley "Stumbling Blocks in Empirical Legal Research" 3.

<sup>37</sup> I Dobinson and F Johns "Legal Research as Qualitative Research" in *Research Methods for Law* 20.

<sup>38</sup> F Bell "Empirical Research in Law" (2016) 25 *Griffith Law Review* 262 at 266.

<sup>39</sup> Chui "Quantitative Legal Research" in *Research Methods for Law* 50–51.

<sup>40</sup> Dobinson and Johns "Legal Research as Qualitative Research" in *Research Methods for Law* 35–36. See also Chui "Quantitative Legal Research" in *Research Methods for Law* 52–54.

<sup>41</sup> C Bless *et al* *Fundamentals of Social Research Methods; An African Perspective* 5 ed (2013) 57.

<sup>42</sup> Bless *et al* *Fundamentals of Social Research Methods* 57.

<sup>43</sup> Z Zainal "Case Study as a Research Method" (2007) 9 *Journal Kemanusiaan* 1 at 3.

<sup>44</sup> Primary data is data collected from first-hand sources (the key stakeholders in the implementation of legislation and policy frameworks in the context of this thesis) using methods like interviews, surveys, or questionnaires. Secondary data is data that has already been collected through primary sources and has been made readily available to researchers (often through documentation).

person. Secondary data collected includes relevant documents available in the public domain such as Annual Plans and Reports, the minutes of relevant meetings such as SGB and SMT meetings, as well as meetings between the ECDBE officials and principals or SGBs.

### **2.3. Rationale for the research methodology**

All research methodologies have their strengths and weaknesses or limitations. A strictly doctrinal research methodology presumes law in isolation, whereas law operates within a social system.<sup>45</sup> Further, doctrinal research mainly depends on the availability of literature, without which the research lacks credibility.<sup>46</sup> On the other hand, a case study methodology is criticised for being focused on efficacy and thus failing to take cognisance of the complexity of the problems relating to the legal framework on which the policy evaluated is based.<sup>47</sup> It also runs the risk of introducing researcher bias and has limited generalisability.<sup>48</sup>

A mixed methodology<sup>49</sup> enables the research to benefit from various methods. The methods complement/ supplement each other to minimise their individual shortcomings.<sup>50</sup> The lines drawn to distinguish between these research methodologies are, at the very least, blurred.<sup>51</sup> The desktop research methodology offers advantages such as its inexpensiveness and convenience. It was adopted in respect of the analysis of the legal framework given that there is readily available and reliable information on the subject matter. The case study approach negates the limitations of the desktop approach, as it enables the contrast of the law as written and the law as practised.<sup>52</sup> This way, the gap between formal law and how the law operates is measured, and remedies are sought.<sup>53</sup>

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<sup>45</sup> Pradeep "Legal Research-Descriptive Analysis on Doctrinal Methodology" 101.

<sup>46</sup> *Ibid.*

<sup>47</sup> Bell "Empirical Research in Law" 275.

<sup>48</sup> P Langbroek *et al* "Methodology of Legal Research: Challenges and Opportunities" (2017) 13 *Utrecht Law Review* 1 at 7.

<sup>49</sup> Using both qualitative and quantitative and desktop and empirical methodologies.

<sup>50</sup> Bless *et al* *Fundamentals of Social Research* 58.

<sup>51</sup> *Ibid.*

<sup>52</sup> Bell "Empirical Research in Law" 264.

<sup>53</sup> Bell "Empirical Research in Law" 275.

In negating the criticism of the case study methodology, the policy was not taken as a given in this study. Similarly, the study did not merely assess the implementation of policy and the efficacy thereof. The adequacy of the policy/programmes as conceptualised was also evaluated. As for the risk of researcher bias, this was negated through triangulation of data sources and methods that ensure methodological rigour.<sup>54</sup>

The use of general, rather than specific, questions during interviews was especially adopted to avoid influencing participants' perceptions, to bolster the interviews to yield more candid information and distinctive insights.<sup>55</sup> The disadvantages that may result from this approach were negated by the very mixed research methodology, triangulation in particular.

#### **2.4. Ethical considerations**

Since data had to be gathered from interviews with relevant stakeholders, anonymity and confidentiality concerns arose. In this research, confidentiality refers to the fact that the interviews between the researcher and the participants are confidential.<sup>56</sup> Anonymity, defined as keeping the authorship of a matter unknown, is one of the mechanisms by which confidentiality is provided in this research.<sup>57</sup>

By virtue of the research involving human participation, it was necessary to obtain ethical clearance from the Rhodes University Human Research Ethics Committee (HREC) as well as approval from the ECDBE.<sup>58</sup> The informed consent of the individual SGB members who were interviewed was obtained.

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<sup>54</sup> Langbroek *et al* "Methodology of Legal Research" 7.

<sup>55</sup> R Mestry "The Effective and Efficient Management of School Fees: Implications for the Provision of Quality Education" (2020) 40 *South African Journal of Education* 1 at 4. See also H Schuman and S Presser "The Open and Closed Question" (1979) 44 *American Sociological Review* 692 at 693 and EM Njeya *Parents' Perceptions on the Causes of Poor Performance in Grade 12 at Sehlabeng High School in Manyatseng* (Master of Education thesis, Central University of Technology, 2007) 49–50.

<sup>56</sup> Meaning that the information exchanged cannot be used by the researcher for any other purpose but for this research. See L Dube *et al* "The Ethics of Anonymity and Confidentiality: Reading from the University of South Africa Policy on Research Ethics" (2014) 13 *African Journal of Indigenous Knowledge Systems* 201 at 202.

<sup>57</sup> Dube *et al* "The Ethics of Anonymity and Confidentiality" 202.

<sup>58</sup> See the Application letter annexed. Some information has been removed for confidentiality purposes.

## 2.5. Potential risks

In 2021, when information gathering commenced, there were potential health risks, i.e., COVID-19-related risks. Care had to be taken when schools were visited to access the school documents. The risk was mitigated through compliance with the COVID-19 precautions outlined in the regulations issued under the National Disaster Management Act.<sup>59</sup> This risk did not arise in relation to interviews with educator-SGB members since the ECDBE only permitted virtual interviews with the educators at the time.<sup>60</sup> Similarly, even for the one non-educator SGB member interviewed in 2020, the interview was virtual. Ninety percent of the interviews were conducted after the country's state of disaster was uplifted and the COVID-19-related risks were no longer a concern.

There was also a potential for legal risks. From the interviews and school documents, the researcher could possibly have acquired information on illegal activities done by SGB members. Similarly, the researcher could possibly have acquired information relevant to an ongoing investigation (criminal or otherwise). Depending on the applicable law and the tribunal that has jurisdiction over the matter that could potentially be investigated or the matter already under investigation, the researcher could be compelled to make full disclosure of the information received through the interviews.<sup>61</sup> This potential risk could cause participants to refuse to participate for fear of being implicated. Some participants could still participate but filter out information that could enable the eventuation of this potential risk. Given that the SGB members' participation was essential in this research, the potential legal risk also raised a potential conflict of interest for both the researcher and the participants.

The researcher could not avoid conducting interviews or perusing school documents to mitigate the potential legal risk. By nature, the study assesses the theoretical legal framework in contrast with how the framework translates into reality, where several social and human factors must be considered.<sup>62</sup> The research required an insight into

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<sup>59</sup> Act 57 of 2002. At all times, face masks were worn, hands and materials used during school visits were sanitised, and a 2-metre distance between the school staff and the researcher was maintained.

<sup>60</sup> Clause 1(f) of ECDBE Approval letter.

<sup>61</sup> M Israel "Strictly Confidential?: Integrity and the Disclosure of Criminological and Socio-Legal Research" (2004) 44 *British Journal of Criminology* 1 at 2.

<sup>62</sup> This is the purpose of a case study approach.

the experiences, opinions and knowledge of the different stakeholders about their roles in school governance. Similarly, an insight into the interaction of the various stakeholders in school governance and management was essential. The research, therefore, rested on the different stakeholders' participation, so there was no alternative to interviews and the perusal of school documents.

The potential legal risk was well communicated to the participants. The limitations on the confidentiality provided by the researcher were also explained.<sup>63</sup> This enhanced the participants' autonomy to decide whether and how to engage with the research, while minimising their vulnerability at the same time. It was emphasised to the participants that they have the autonomy to decide what questions not to answer and what information not to give. Further, it was emphasised that they could exercise that entitlement at any time during the interview without attracting any adverse consequences.<sup>64</sup> The interviews were also conducted in a focused manner to avoid side-tracking, and participants were advised to stick to answering the questions.<sup>65</sup> This was done without taking away from the open-endedness and benefits of semi-structured interviews.

Researcher bias, as mentioned above, is one of the potential limitations of empirical research. In this research, this limitation was also a potential risk as the researcher is familiar with two of the participant schools. This was mitigated by the fact that the researcher only conducted one out of ten interviews in those schools. The rest were conducted by research assistants who conducted the interviews in this research. Further, all interviews were semi-structured, and every participant was asked the same questions as they appeared in the questionnaire.

## 2.6. Sampling

Sampling is about choosing the appropriate participants<sup>66</sup> and determining the adequate number of participants for the specified research.<sup>67</sup> In qualitative research,

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<sup>63</sup> See examples in Israel "Strictly Confidential?" 11–12.

<sup>64</sup> See the consent form annexed.

<sup>65</sup> Israel "Strictly Confidential?" 6.

<sup>66</sup> Bless *et al Foundations of Social Research Methods* 161.

<sup>67</sup> Bless *et al Foundations of Social Research Methods* 164.

unlike quantitative research, the adequacy of the sample is not necessarily about representation since the research does not seek generalisation.<sup>68</sup> It is about data saturation; when increasing the sample size does not yield any different results.<sup>69</sup> It is accepted that time and resource constraints sometimes make this impossible and demand a set sample size.<sup>70</sup>

The number of individual SGB members interviewed was guided by the Eastern Cape Regulations for the Elections of School Governing Bodies for Public Schools, which outline the composition of SGBs.<sup>71</sup> The number of educator, parent and learner SGB members in each school depends on the type of school and the number of learners enrolled in the school.<sup>72</sup> By virtue of being secondary schools with more than 630 pupils, the chosen schools are supposed to have at least 17 SGB members. The SGBs are supposed to have the following composition:<sup>73</sup> nine members who are parents to learners in the respective school; three members who are educators at the school; one member who is not an educator nor a parent to any learner in the respective school; three learners who are in grade 8 or above; and the principal.

Initially, the plan was to interview at least three out of nine members who are parents of learners in the school, one out of three members who are educators, and one out of one member who is not an educator nor a parent to any learner in that school, and the principal. This sample, more so the combination than the size, was regarded as appropriate in that it would provide a broad range of views from SGB members representing different interests. However, since the research has aspects of quantitative research, the sample size also had to be representative of the population. At least six SGB members per school and at least 24 in total would have been

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<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> Bless *et al* *Fundamentals of Social Research Methods* 179.

<sup>71</sup> Eastern Cape Regulations for the Elections of School Governing Bodies for Public Schools, GN R226, *Provincial Gazette* 3939, 16 October 2017. The MEC has since issued new EC Regulations for the Elections of School Governing Bodies for Public Schools, Provincial Notice 795, *Eastern Cape Provincial Gazette* 5054, 19 February 2024. However, the 2024 Regulations bring no new substance on the composition of SGBs.

<sup>72</sup> EC Regulations for Elections of SGBs 2017 para 3.

<sup>73</sup> EC Regulations for Elections of SGBs 2017, Schedule A. See also the National Guidelines for School Governing Body Elections 13 and 28.

adequate for representation purposes in a particular case study. Similar case studies have had participants ranging from eight to 18.<sup>74</sup>

Several challenges made it difficult to identify the above combination of participants for each participating school, i.e., an educator-SGB member, parent-SGB members with children who were enrolled at the school, and a parent SGB-member who did not have children enrolled at the school. It posed particularly difficult to obtain a broad range of SGB members to participate from School B. The school had only eight SGB members for the 2018–2020 period (excluding the principal). Two of the parent SGB members effectively refused to participate in the research.<sup>75</sup> The teacher SGB members of school B also refused to participate. Eventually, one agreed. Ultimately, five school B SGB members participated, one being a teacher SGB member and four being parents.

School A similarly presented challenges for data gathering, but for different reasons. The school had 12 SGB members in 2018–2020 (excluding the principal). By the time the interviews were conducted in 2023, three of the 12 had passed away. Another two had relocated and could not be contacted. Of the seven remaining members, the teacher SGB members indicated time constraints, also indicating that they had other commitments during weekends and holidays. Ultimately, all five participants were parent SGB members.

For school D, it proved to be challenging to ascertain the identities of the SGB members as the principal was new to the school. He had only been appointed to this school after 2020. He was unfamiliar with the former SGB members and seemed to

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<sup>74</sup> See HJ Kruuse *Life in the Suburbs After Grootboom: The Role of Local Government in Realising Housing Rights in the Eastern Cape* (Master of Laws thesis, Rhodes University, 2008) which had 8 participants. See also LS Ntombela *Secondary School Principals' Implementation of Instructional Leadership in the Amajuba District of KwaZulu Natal* (Master of Education thesis, University of South Africa, 2014) where there were 21 participants. See further VJ Majola *The Role of the School Governing Body (SGB) in Conflict Management: A Case Study* (Master of Education thesis, University of South Africa, 2013) where there were 10 participants. Finally, see N Mandukwini *Challenges Towards Curriculum Implementation in High Schools in Mount Fletcher District, Eastern Cape* (Master of Education thesis, University of South Africa, 2016) where three schools were selected and 13 people were interviewed in total.

<sup>75</sup> They had agreed to participate in the research via a scheduled telephone interview but failed to answer the phone when contacted at the scheduled time. When the interviews were rescheduled, they still did not answer. When one participant finally answered, she diverted the conversation to other matters, while the other never answered the call.

have problems accessing school records. The researcher eventually sought advice from a departmental official who connected the researcher with one of the teachers who could remember some of the SGB members for the years in question. Contact details of some SGB members could not be found. The six SGB members whose contact details were available were willing to participate, except for one former chairperson.

Obtaining information from School C's SGB members presented a few challenges. The SGB members were easily identifiable from the SGB minutes and the school documents. Further, the principal provided the list with all members' contact details. It was difficult to find suitable times to interview the teacher members. There were 12 SGB members in 2018–2020, one of whom had never been to any SGB meeting post-election. Ultimately, five SGB members participated.

The research did not consider the learner-members of SGBs. It is acknowledged that their contribution would have been highly valuable to this research. First, learners in all five grades (8 to 12) are eligible to be SGB members. Some of these learners are still children (below 18 years). This makes the ethical clearance application procedure more onerous as more protection must be given to children. Second, some of the learners who were SGB members in 2018–2020 left the schools already and tracing them proved difficult. The SGB meeting minutes on which reliance was placed to obtain the contact details of parent and teacher SGB members make no mention of learner-SGB members. The research thus focused on the parent and teacher constituencies of SGBs.

At the commencement of this research, the researcher sought to interview the district director and relevant circuit managers. However, the logistics made it almost impossible to engage with the district director as he was non-responsive to e-mails sent to him and never answered his phone. An attempt was made to engage with him through another district official, but the official also stopped being responsive. What made it even more difficult is that the district office where the district director is stationed is in Aliwal North (Maletswai), a town 314km away from Tlokoeng and 374 km away from Makhanda.

As for circuit managers, difficulties were mainly due to the fact that the research is timed (2018–2020). None of the present circuit managers were in this position for the participant schools in 2018–2020. It became clear that tracing circuit managers would also be difficult because, at the time, the circuit management centre (CMC) manager (the person who oversees all the circuits in Tlokoeng) was also not responsive from the moment when merely being informed about the research.

Considering these challenges, the decision was to interview as many SGB members as were accessible and willing. This was irrespective of whether they were a teacher or a parent member. Ultimately, 5 SGB members were interviewed per school, making a total of 20 interviewees. This is still an acceptable sample for this kind of case study.

As for the appropriateness of the sample in qualitative research, it is about choosing the population that has the properties being examined.<sup>76</sup> In this study, the participant schools were chosen by virtue of being in rural areas and having the characteristics of historically disadvantaged schools. These schools are quintile one schools serving poor communities.<sup>77</sup> Quintile one schools are regarded as “poor”, with a shortage of physical and financial resources. These types of schools are allocated more funds than those schools under quintile four to five, which are regarded as “wealthy” schools.

All of the participant schools are overcrowded and lack appropriate ablution structures.<sup>78</sup> School D has dilapidated classrooms, with some made of inappropriate material, inadequate LTSM, and inadequate infrastructure.<sup>79</sup> Two of the schools are situated far from the town and Route 56, while the other two are close to town. Further, the schools were also sampled based on their grade 12 performance; two have been consistently within the upper ranges of the overall pass rate, while two have remained at an average or low performance for the past 5 years.<sup>80</sup>

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<sup>76</sup> Bless *et al* *Fundamentals of Social Research Methods* 164.

<sup>77</sup> The DBE classifies schools in terms of their surroundings with quintiles 1 to 3 being in poor communities while quintiles 4 and 5 are in relatively well-off surroundings. This has implications on resource allocation by the DBE and whether schools may charge school fees. Quintile 1 schools are described in SASA as being the poorest and fully state-funded.

<sup>78</sup> The average teacher-to-learner ratio is far beyond 1:40, the prescribed national norm.

<sup>79</sup> Interviews in School A and researcher observation.

<sup>80</sup> Please see Table 3 in Chapter 3.5. The National Senior Certificate Examinations School Performance Reports for 2017–2021 were used to gather the information on the participant schools' performance.

Coupled with purposive sampling is availability and convenience sampling. Availability sampling is about choosing a place that the researcher knows to readily have the desired characteristics.<sup>81</sup> Convenience sampling is about choosing a place that the researcher knows to be not too much of an inconvenience to access. The schools were chosen for their desired characteristics (being in rural areas and historically disadvantaged), similar to purposive sampling. Further, the schools were chosen since the researcher is familiar with Tlokoeng thus making it relatively easy and convenient to carry out the research.

## 2.7. Data collection processes

### 2.7.1. Seeking informed consent

After the HREC and the ECDBE had approved the project, the respective district director, circuit managers and principals were contacted telephonically or by e-mail.<sup>82</sup> They were informed about the research in detail and sent the relevant research documents most of which had been translated into Sesotho and IsiXhosa.<sup>83</sup> Arrangements were made for the researcher to visit the schools. Upon visiting schools, the researcher further explained the research and answered any questions the principals had. The researcher was granted access to the school records and scanned SGB, SMT and staff meeting minutes, as well as school policy documents. Where the SGB meeting minutes did not have a comprehensive list of SGB members, the school provided the list with the contact details of the members.

**Table 1:** *School visit schedules*

<i>School</i>	<i>Documents accessed</i>	<i>Date</i>
School B	Policies	18 November 2021

See National Senior Certificate Results 2017–2019: School Performance Reports 32–33 <https://www.education.gov.za/Portals/0/Documents/Reports/2019%20NSC%20School%20Performance%20Report.pdf?ver=2020-01-07-155427-290> (accessed 26 February 2021) and National Senior Certificate Results 2019–2021: School Performance Reports 34–35 <https://www.education.gov.za/Portals/0/Documents/Reports/2021NSCReports/School%20Performance%20Report.pdf?ver=2022-01-31-130221-553> (accessed 12 July 2023).

<sup>81</sup> Bless *et al* *Fundamentals of Social Research Methods* 172.

<sup>82</sup> These were the circuit managers who turned out to have been newly appointed and had not worked with the 2018–2020 SGBs.

<sup>83</sup> Documents include the information sheet, informed consent form, questionnaire, university ethical clearance letter, and the ECDBE's approval letter.

	SGB meeting minutes SGB Constitution Staff meeting minutes Parents meeting minutes	
School D	Policies SMT meeting minutes	28 June 2022
School C	Policies SGB meeting minutes SGB Constitution SMT meeting minutes	01 July 2022
School A	SGB meeting minutes SMT meeting minutes Staff meeting minutes Parents meeting minutes	08 July 2022

The researcher telephonically engaged with the SGB members whose contact details were found. The research was explained in detail, and the research documents were shared with the SGB members mainly through WhatsApp, e-mail or in person. The nature and purpose of the research were explained to the participants. The nature of the SGB members' participation, as well as related risks and benefits, were also explained. The participants were also informed that they were not going to be remunerated for participating and that they could withdraw at any time during their participation without giving a reason or suffering any consequences. It was emphasised that their personal details would remain confidential and that all the information gathered would be used for the purposes of the study only.

The participant informed consent form that had already been sent to the participants via WhatsApp was explained. Their consent for the interview to be recorded on an audio recording device was particularly sought. It was explained that the records would

be used for purposes of the thesis only and would be stored safely until they are destroyed after five years in terms of Rhodes University rules. The participants consented telephonically and signed the physical consent forms later when they met with the people who assisted with data collection.

**Table 2: Interview schedules**

<i>School</i>	<i>Interview number per school</i>	<i>SGB member</i>	<i>Interviewer</i>	<i>Method</i>	<i>Date</i>
School B	1	Parent-chairperson	Researcher	Telephonically	15/09/2022
School B	2	Teacher-secretary	Researcher	Telephonically	13/11/2022
School C	1	Teacher-ordinary	Researcher	Telephonically	17/12/2022
School A	1	Parent-Treasure	Data collector	In-person	28/06/2023
School A	2	Parent-chairperson	Data collector	In-person	29/06/2023
School A	3	Parent-deputy chairperson	Data collector	In-person	29/06/2023
School A	4	Parent-ordinary	Data collector	In-person	03/07/2023
School A	5	Parent-secretary	Data collector	In-person	10/07/2023
School C	2	Parent-ordinary	Data collector	In-person	10/07/2023
School C	3	Parent-chairperson	Data collector	In-person	12/07/2023
School C	4	Parent-vice-secretary	Data collector	In-person	13/07/2023

School B	3	Parent- additional	Data collector	In-person	23/08/2023
School B	4	Parent- additional	Data collector	In-person	23/08/2023
School B	5	Parent- vice- chairperson	Data collector	In-person	23/08/2023
School D	1	Parent- chairperson	Data collector	In-person	28/09/2023
School D	2	Parent- ordinary	Data collector	In-person	01/10/2023
School D	4	Principal	Data collector	In-person	05/11/2023
School C	5	Principal	Data collector	In-person	16/11/2023
School D	5	Parent- additional	Data collector	Telephonically	01/12/2023

### 2.7.2. Data collection

Four participants who consented to telephonic interviews were interviewed as such. The first three interviews were conducted by the researcher during the COVID-19 lockdown. The interviews were digitally recorded, translated and transcribed. The rest of the interviews were conducted in person by the people who helped with data collection except for the last one which was also telephonic.

Once participants telephonically consented to participate in the research, arrangements for interview dates, times, and venues were made based on their availability and convenience. Before each in-person interview, SGB members were asked to confirm their verbally communicated consent by signing the consent forms, and they did. The consent forms were explained in detail again in person where necessary. Further, the forms were mostly in the participants' mother tongue, especially for parent SGB members.

One interview was conducted in Tlokoeng town by agreement and the rest were conducted at each participant's home. As was done for the consent forms, the interview questionnaires were translated into Sesotho and Isixhosa. The interviews were also mainly in these two languages in accordance with the SGB members' preferred language or home language. With the consent of the participants, the interviews were recorded digitally and sent to the researcher.

The three people that assisted with data collection had been sought to assist the researcher due to time constraints. The researcher had approached them based on their experience with data collection in field research, their level of education and their familiarity with the places in which the participants are located. The research was thoroughly explained to them. They were also given guidelines on how to engage with the participants to collect the data. The researcher constantly engaged with them to guide and support them throughout the data collection period. They sent the recordings of the interviews to the researcher and deleted them on their devices (once the researcher confirmed receipt thereof) to ensure confidentiality.

The researcher stored the records, transcribed them and translated them into English. In instances where clarity or additional information was required, the researcher contacted the participants telephonically to seek clarity or more detail. The data collected through interviews is about the knowledge, opinions, and experiences of different stakeholders in relation to their roles in school governance. This information relates to how these stakeholders understand and performed their roles relating to school financial management, school staff recruitment, policy development and school property management.

Data was also collected from school documents that were scanned and stored by the researcher upon school visits. The data collected from meeting minutes provides a record of some of the engagements of the different stakeholders in so far as it relates to governing and managing school affairs. Data was also collected from provincial documents such as Annual Plans and Reports of the ECDBE. This data was mainly about the programmes relating to school governance.

### 2.7.3. The impact of COVID-19

Given that the research was initially undertaken at a time when the country was under a state of national disaster due to COVID-19, there were limitations to the data collection processes used. Triangulation was limited to techniques that aligned with the ECDBE's guidelines and precautions in dealing with COVID-19 as outlined in the approval letter. This was in the sense that interviews with the employees of the ECDBE had to be virtual. This meant that the interactions with the educator members of the SGBs had to be virtual. Therefore, techniques such as small discussion groups and participant observation could not be adopted. The research could not benefit from the advantages that come with face-to-face interviews.<sup>84</sup>

Eventually, the state of national disaster was uplifted, and there was no longer a barrier to techniques like small group discussions. However, there were already time constraints which made the researcher decide against group discussions. Further, it had become clear that the SGB members per school were so geographically scattered that it would have been expensive to get them into groups. This was exacerbated by the fact that the research is backdated, and these are in fact former SGB members and no longer visit the schools to discharge SGB roles.

Further, the research still did not benefit from participant observation even for the subsequent face-to-face interviews since those were not conducted by the researcher. Nonetheless, data triangulation, as explained above, mitigated the concern. It should be noted that, while the participants are essentially former SGB members as the research is backdated, they are referred to as SGB members than former SGB members for convenience purposes in this thesis.

## **2.8. Trustworthiness**

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<sup>84</sup> Face-to-face interviews enable the researcher to observe social cues such as the voice, intonation, and body language of the interviewee, thus giving the researcher more information. These interviews also provide synchronous communication where there is no significant time delay between question and answer as the interviewer and interviewee can directly react to what the other says or does. This makes the interview spontaneous without extended reflections. Nonetheless, these have their own disadvantages as well.

In this study, the qualitative research trustworthiness criterion was mainly employed as the case study is more qualitative than quantitative in nature.<sup>85</sup> The criterion for ensuring qualitative research trustworthiness relies on the dependability, confirmability, credibility, and transferability of the research findings.<sup>86</sup> Different techniques, including good interview techniques, triangulation<sup>87</sup> and descriptive and purposeful sampling,<sup>88</sup> were employed to ensure the quality of the findings.

### 2.8.1. Triangulation

Triangulation is a technique of increasing trustworthiness through combining research methodologies (methodological triangulation), or using several datasets to answer the same research questions (data triangulation), or having different researchers in one study (investigator triangulation).<sup>89</sup> This research employed all three triangulation techniques to varying degrees.

As outlined at the beginning of this chapter, this study combined a doctrinal and a case study research methodology. Further, as demonstrated through the data collection process, different datasets were used. Provincial and district reports and plans as well as school documents were utilised. Further, SGB members were interviewed. Similarly, the researcher had the assistance of three people for the interviews, which brought some diversity to the data collection processes.<sup>90</sup>

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<sup>85</sup> VN Anney “Ensuring the Quality of the Findings of Qualitative Research: Looking at Trustworthiness Criteria” (2015) 5 *Journal of Emerging Trends in Educational Research and Policy Studies* 272 at 276–279.

<sup>86</sup> *Ibid.*

<sup>87</sup> This is the use of different techniques to cross-examine the integrity of the participant’s responses and to reduce researcher bias. It involves the use of multiple and different methods, investigators, sources of data and theories to obtain corroborating evidence. Here, data and interpretations are continuously tested as they are derived from members of various audiences to ensure that the researcher includes the voices of participants in the analysis and interpretation of the data. The testing strategy involves establishing structural corroboration or coherence, i.e. testing all the data to ensure that there is no internal conflict or inconsistencies and establishing referential adequacy, and testing the analysis and interpretation against the documents that were used during data collection before producing the final document (see Anney “Ensuring the Quality of the Findings of Qualitative Research” 277).

<sup>88</sup> Here the researcher is able to decide on the category of participants to conduct the study with and the reasons for that decision. The researcher is able to focus on the category of participants that is knowledgeable or appropriate given the research question (see Anney “Ensuring the Quality of the Findings of Qualitative Research” 278).

<sup>89</sup> Bless *et al* *Fundamentals of Social Research Methods* 238–239.

<sup>90</sup> Bless *et al* *Fundamentals of Social Research Methods* 239.

### 2.8.2. Concurrent data collection and analysis

Here, the researcher analyses data while still collecting some, which allows for the data collection technique to be refined based on the results.<sup>91</sup> For example, the researcher may then add some questions or phrase them differently based on the emerging trend.<sup>92</sup> In this study, the researcher had to analyse collected data while some interviews were still being conducted. First, time constraints did not allow for all data to be collected before starting with the analysis. Second, for constant guidance to data collectors, each data collector conducted the next interview only after the researcher had given them feedback on the previous interview. To give the feedback, the researcher had to engage with the audio record of the completed interview and analyse it. Accordingly, this technique was also employed as a necessary consequence in this study.

### 2.8.3. Adequate description of data collection and analysis processes

A detailed account of the procedures adopted helps improve the quality of qualitative research.<sup>93</sup> As seen above, the study is at length describing the sampling technique adopted and the data collection procedures as they unfolded.

### 2.8.4. Use of verbatim quotation

Here, the researcher includes sufficient direct quotes from the interviewees to let the voices of the participants be heard as they are.<sup>94</sup> In this study, this technique was employed, but to a limited extent. This is mainly because the interviews were conducted in Isixhosa and Sesotho, only two were in English. Translating IsiXhosa and Sesotho to English sometimes results in a loss of emotion, context or meaning inherent in the languages. Therefore, the study employed this technique as far as possible, as will be seen in chapter 6.

Lastly, as already said, the study has some qualitative research aspects. However, no reliance is put on this aspect on its own or in the strict sense. It is mainly considered in so far as it complements the qualitative aspects such as to give context and content

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<sup>91</sup> Bless *et al* *Fundamentals of Social Research Methods* 238.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> Bless *et al* *Fundamentals of Social Research Methods* 239.

on the participants in the case study. Accordingly, quantitative research quality criteria were not considered.

## **2.9. Conclusion**

This chapter has detailed the research methodology and methods employed in this research as well as the rationale thereof. Both the doctrinal and case study methodologies were utilised. The desktop and empirical research methods were accordingly used. The doctrinal research was mainly employed in the analysis of legislative and policy measures adopted to ensure effective school governance in the Eastern Cape. On the other hand, a case study was employed when assessing the implementation of outlined measures. These research methodologies and methods complemented and supplemented each other.

This chapter also detailed the sampling technique adopted in choosing the participants. Purposive sampling was used. The data collection processes were explained, as well as the techniques employed to ensure the trustworthiness of the research. The next chapter will explain the historical and socio-economic context of the district within which the research was conducted.

## **3. CASE STUDY AREA**

### **3.1. Introduction**

This chapter provides a brief overview of the historical, cultural, social, and economic context of Tlokoeng and its surrounding areas without losing the context of the education system in South Africa as a whole. A consideration of the context of the case study area is important since the schools that form the subject of this research are necessarily moulded by the social, economic, political, and cultural character of the communities they serve.<sup>95</sup>

### **3.2. Geographics and demographics of the case study area**

Tlokoeng is one of the small towns along the provincial Route 56 in the north-eastern part of the Eastern Cape Province. It is located at the foothills of the Drakensberg

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<sup>95</sup> JA Robinson "Children's Rights in the South-African Constitution" (2003) 6 *Potchefstroom Electronic Law Journal* 1 at 12–13.

Mountains in Elundini Local Municipality, which is part of Joe Gqabi District Municipality. The town is divided into five locations and surrounded by over 50 villages. The Provincial Profile: Eastern Cape [Community Survey 2016] shows that in 2011, Elundini had a population 137 039 people which increased to 144 929 in 2016<sup>96</sup> and decreased to 141 762 by 2022.<sup>97</sup> The majority of the inhabitants in Joe Gqabi in general fell within the census category “youth” (people aged 15–34) in 2016<sup>98</sup> while the majority of people in Elundini as a whole was aged 15–64 in 2022.<sup>99</sup> According to the Elundini Local Municipality 2019/2020 Final Integrated Development Plan, about 98% of the population in this municipality was Black in 2016,<sup>100</sup> and this did not change in 2022 as shown in the 2022 census.<sup>101</sup> The population in the Eastern Cape as a whole is predominantly AmaXhosa.<sup>102</sup> In Elundini, the population is mostly AmaXhosa and BaSotho.<sup>103</sup>

Most of the people around Tlokoeng have low literacy levels. The Provincial Profile: Eastern Cape [Community Survey 2016] shows that about 6% of the population aged 20 and over had never attended school, while 21% of the Elundini population had some incomplete primary education.<sup>104</sup> In 2016, most of the people in the Joe Gqabi District Municipality as a whole had not completed secondary schooling,<sup>105</sup> the majority of which were 20 years old and above.<sup>106</sup> To be precise, about 90% of the people in Joe Gqabi had a below-tertiary level of education.<sup>107</sup> In 2016, about 81% of the population aged 5–24 in Elundini were attending educational institutions,<sup>108</sup> most of which were primary and secondary schools.<sup>109</sup> In 2022, 38% of people aged 20 and

<sup>96</sup> Provincial Profile: Eastern Cape [Community Survey 2016] Report 03-01-08 at 91 <http://cs2016.statssa.gov.za/wp-content/uploads/2018/07/EasternCape.pdf> (accessed 13 July 2022).

<sup>97</sup> Provincial Profile Eastern Cape Census 2022 at 11 <https://www.statssa.gov.za/publications/Report-03-01-71/Report-03-01-712022.pdf> (accessed 10 February 2024).

<sup>98</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 12.

<sup>99</sup> Provincial Profile Eastern Cape Census 2022 at 20.

<sup>100</sup> Elundini Local Municipality 2019/2020 Final IDP 64 [https://www.elundini.org.za/images/IDP/2019-2020/Elundini\\_IDP\\_2019-2020.pdf](https://www.elundini.org.za/images/IDP/2019-2020/Elundini_IDP_2019-2020.pdf) (accessed 13 July 2022). See also Provincial Profile: Eastern Cape [Community Survey 2016] 96.

<sup>101</sup> Provincial Profile Eastern Cape Census 2022 at 28.

<sup>102</sup> Provincial Profile Eastern Cape Census 2022 at 32.

<sup>103</sup> Elundini Local Municipality 2019/2020 Final IDP 65.

<sup>104</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 103.

<sup>105</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 37–39.

<sup>106</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 103.

<sup>107</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 37–39

<sup>108</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 100.

<sup>109</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 101.

above in Elundini had completed secondary schooling, however, only 19.7% had completed matric.<sup>110</sup>

In 2012, Tlokoeng and its surrounding villages had about 187 ordinary public schools with 19 secondary schools, 66 primary schools, and 102 combined schools before the Eastern Cape School Rationalisation Programme (SRP) was implemented.<sup>111</sup> The SRP is a programme whose mission is to rationalize and re-align small, unviable, non-performing schools in order to efficiently allocate financial and human resources to where they are most needed for a better teaching and learning environment. This project was implemented in 2018 and is still ongoing.<sup>112</sup>

Depending on the need, the programme includes the closure, merger, expansion (by grade and or infrastructure), and the establishment of new schools.<sup>113</sup> Some schools in Tlokoeng are part of this project. Depending on the process undertaken, most schools have been affected in some way. This is especially the case in schools that have been expanded from grades 10–12 to grades 8–12 without having been provided with the needed additional infrastructure first. All four schools participating in this research were expanded, with two having been expanded in 2017, one in 2018, and the other in 2019.<sup>114</sup>

### 3.3. Historical context of the case study area

Tlokoeng was part of the Republic of Transkei, one of the four homelands created during apartheid.<sup>115</sup> The apartheid system of racial segregation and discrimination

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<sup>110</sup> Provincial Profile Eastern Cape Census 2022 at 42.

<sup>111</sup> Education Series II: Focus on Schooling in Eastern Cape, Report 92-01-02 (2013) at 2 <http://www.statssa.gov.za/publications/Report-92-01-02/Report-92-01-022013.pdf> (accessed 13 July 2022). The rationalisation programme has merged, closed and aligned schools such that mainstream education mainly consists of primary schools (grades R–7) and secondary schools (grades 8–12).

<sup>112</sup> ECDBE Annual Performance Plan 2019/2020 25.

<sup>113</sup> Rationalisation of schools <https://eceducation.gov.za/programmes/programme-library/rationalisation-of-schools>.

<sup>114</sup> The School A SGB meeting minutes dated 23 January 2019 demonstrate that grade 8 and 9 learners were admitted in school A for 2019.

<sup>115</sup> National Archives and Records Service of South Africa, Transkei Republic Administrative Listing pdf 1 [https://www.nationalarchives.gov.za/sites/default/files/ITEM\\_COD-0064-0133--010.pdf?utm\\_source=chatgpt.com](https://www.nationalarchives.gov.za/sites/default/files/ITEM_COD-0064-0133--010.pdf?utm_source=chatgpt.com) (accessed 23 February 2023). See also T Woker and S Clarke “Human Rights in the Homelands” (1990) 1 *South African Human Rights Yearbook* 152 at 153. Also see SF Khunou “Traditional Leadership and Independent Bantustans of South Africa: Some Milestones

reserved 10% of the South African land for Black people, and it was allocated to them based on their culture, languages, and ethnic groups.<sup>116</sup> The apartheid government claimed that there was a need for independent development of different tribes and that apartheid would ensure such independent development.<sup>117</sup> Each tribe would have cultural, economic, and political independence and purity.<sup>118</sup> For AmaXhosa, the government established the Transkei and Ciskei homelands.<sup>119</sup>

Transkei was the first of the homelands to get its independence from South Africa.<sup>120</sup> It has been strongly argued that this independence was merely symbolic since Transkei remained under the control of the South African government which ruled through traditional leaders.<sup>121</sup> Transkei accordingly relied on the South African government for its budget allocation.<sup>122</sup> Since resources were unequally distributed along racial lines,<sup>123</sup> the homeland was allocated fewer resources than the parts of South Africa that were reserved for Whites.<sup>124</sup> Accordingly, economic development in the Transkei was slow or non-existent.<sup>125</sup> The underfunding of the homeland by the South African government contributed to the poverty in Transkei,<sup>126</sup> which was exacerbated by leaders who misused public funds.<sup>127</sup> The agricultural potential of this homeland was limited by the fact that the fertile part of the land was farmed by White farmers while the Blacks were left with most of the poor-quality soil.<sup>128</sup> The economy in Transkei did not reach a stage of self-sustenance, there was little revenue produced within its borders.<sup>129</sup>

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of Transformative Constitutionalism Beyond Apartheid” (2009) 12 *Potchefstroom Electronic Law Journal* 80 at 85–86.

<sup>116</sup> Khunou “Traditional Leadership and Independent Bantustans” 82.

<sup>117</sup> BH King and B McCusker “Environment and Development in the Former South African Bantustans” (2007) 173 *The Geographical Journal* 6 at 7.

<sup>118</sup> Khunou “Traditional Leadership and Independent Bantustans” 81.

<sup>119</sup> Khunou “Traditional Leadership and Independent Bantustans” 87.

<sup>120</sup> Khunou “Traditional Leadership and Independent Bantustans” 88.

<sup>121</sup> Khunou “Traditional Leadership and Independent Bantustans” 86 and 91.

<sup>122</sup> Woker and Clarke “Human Rights in the Homelands” 156.

<sup>123</sup> *Ibid.*

<sup>124</sup> Robinson “Children’s Rights in the South-African Constitution” 12.

<sup>125</sup> Woker and Clarke “Human Rights in the Homelands” 156 and 169. It is worth noting that it has been recognised that, to some degree, corruption and incompetence in the administration in general also contributed towards the poor provision of basic services.

<sup>126</sup> *Ibid.*

<sup>127</sup> Khunou “Traditional Leadership and Independent Bantustans” 89.

<sup>128</sup> *Ibid.*

<sup>129</sup> Woker and Clarke “Human Rights in the Homelands” 156.

Development and economic growth were further stymied by the apartheid government's opposition to external funding for the homeland.<sup>130</sup> Further, other countries refused to recognise homelands as independent states. Accordingly, other countries would not fund homelands as that would seem to be condoning their independence thus condoning the ideals of apartheid.<sup>131</sup> Little funding was available for basic services such as housing and healthcare, let alone education in Transkei.<sup>132</sup> The funding that was available was partially lost due to corruption as there were ghost teachers and a diversion of funds to fund certain political activities including the operations of secret security forces.<sup>133</sup>

Between 1963 and 1975, the number of learners enrolled in secondary schools in Transkei increased from 8 077 to 66 053.<sup>134</sup> In 1980, high school enrolment increased to 150 000 learners.<sup>135</sup> Notably the population in Transkei had doubled since the early 1960s to the 1980s.<sup>136</sup> Schools were overcrowded, which made it difficult for teachers "to exercise proper educative influence on learners' minds and character".<sup>137</sup> Further, there were insufficient teachers, let alone well-trained ones.<sup>138</sup> Teaching facilities for training the practical aptitudes of learners were also inadequate.<sup>139</sup> Academic results were accordingly poor in Transkei between the 1960s and the 1980s.<sup>140</sup> In the 1960s, a commission set to advise the Transkei on education policy visited some schools and reported that the Transkei had "an almost frighteningly low standard of education in all subjects".<sup>141</sup>

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<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> S Meny-Gibert "State 'Infrastructural Power' and the Bantustans: The Case of School Education in the Transkei and Ciskei" (2018) 50 *African Historical Review* 46 at 48. See also L Arendse "Beyond Rivonia: Transformative Constitutionalism and the Public Education System" (2014) 29 *Southern African Public Law* 159 at 160–161.

<sup>133</sup> Meny-Gibert "State 'Infrastructural Power' and the Bantustans" 57.

<sup>134</sup> Meny-Gibert "State 'Infrastructural Power' and the Bantustans" 56.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*

<sup>137</sup> VI Cherian and L Cherian "Relationship Between Parents' Interest, Life Status and the Academic Achievement of Xhosa Children in South Africa." (1997) 2 *Journal of Psychology in Africa* 54 at 57.

<sup>138</sup> Meny-Gibert "State 'Infrastructural Power' and the Bantustans" 56–57.

<sup>139</sup> Cherian and Cherian "Relationship Between Parents' Interest" 57.

<sup>140</sup> Meny-Gibert "State 'Infrastructural Power' and the Bantustans" 56–57 and 61.

<sup>141</sup> WG McConkey "Bantu Education: A Critical Survey with Illustrations" (1972) 38 *Theoria: A Journal of Social and Political Theory* 1 at 37.

### 3.4. Socio-economic context of the case study area

The advent of constitutional democracy brought some changes to the former Transkei areas including in Tlokoeng. Resources were made available for the development of rural areas in general through programmes such as the Reconstruction and Development Programme (RDP). However, the overall development of infrastructure has been rather slow. By 2016, only about 12.5% of the households had RDP or government-subsidised dwellings in Elundini<sup>142</sup> which increased to 18.2% by 2022.<sup>143</sup> In 2016, most households lived in traditional dwellings,<sup>144</sup> and by 2022, about 77% of households are said to have lived in formal dwellings.<sup>145</sup>

Majority of households in Joe Gqabi used pit toilets in 2016,<sup>146</sup> and they are said to have used flush toilets by 2022.<sup>147</sup> This might have been made possible by the increase in piped water inside ones' yard from 17.7% to 53.3% from 2011 to 2022.<sup>148</sup> For Elundini, this is an improvement from 2016 where available piped water was mostly supplied to communal stands than to households.<sup>149</sup>

In 2016, about 40% of the inhabitants in Elundini relied on other energy sources for cooking, with electricity mainly being used for lighting.<sup>150</sup> In 2022, about 48% of the households still used other energy sources for cooking,<sup>151</sup> despite having electricity installed in more villages than in 2016.<sup>152</sup>

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<sup>142</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 114.

<sup>143</sup> Provincial Profile Eastern Cape Census 2022 at 59.

<sup>144</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 113.

<sup>145</sup> Provincial Profile Eastern Cape Census 2022 at 55. The description or characteristics of a formal or a traditional dwelling is not given on these documents. One cannot get a full picture of what is meant.

<sup>146</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 57.

<sup>147</sup> Provincial Profile Eastern Cape Census 2022 at 64.

<sup>148</sup> Provincial Profile Eastern Cape Census 2022 at 61.

<sup>149</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 119.

<sup>150</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 134.

<sup>151</sup> Provincial Profile Eastern Cape Census 2022 at 69.

<sup>152</sup> Elundini Local Municipality 2019/2020 Final IDP 104.

The roads in Tlokoeng are in a poor condition; they become slippery when it rains, with some deemed impassable<sup>153</sup> as they have no bridges.<sup>154</sup> Some roads are sometimes impassable despite having bridges since the streams flood over the bridges when it rains heavily.<sup>155</sup>

The lack of infrastructure is accompanied by a low employment rate in the Elundini Local Municipality.<sup>156</sup> Most of the households rely on social grants for income.<sup>157</sup> In 2016, 26% of the households had run out of money for food in the 12 months prior to the census.<sup>158</sup> Eighteen percent of these households had skipped at least one meal at some point in those 12 months as they ran out of money for food.<sup>159</sup> The low employment rate is compounded by the fact that towns in Elundini Local Municipality, including Tlokoeng, have become the administrative centres for more villages than they have the capacity for. As a result, the facilities and resources in town are insufficient to cater for all villages.

The main economic sectors in Tlokoeng (as well as the two other towns in Elundini-Ugie and Maclear) are agriculture (28%), wholesale and retail trade (14%), and civil servants in governmental departments providing social services (41%).<sup>160</sup> The main employers are in the towns as well as the areas that have commercial farming (where there is high rainfall and fertile soil).<sup>161</sup> Accordingly, the economy in the surrounding villages is predominantly agricultural, with both commercial and subsistence pastoral<sup>162</sup> and crop farming. However, farming has decreased over the years, with most of the land being used for residential purposes, especially on the outskirts of

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<sup>153</sup> B Macupe “Ripped off Road to Mount Fletcher” *City Press* 12 December 2021 <https://www.news24.com/citypress/news/ripped-off-road-to-mount-fletcher-20211212> (accessed 2 April 2022).

<sup>154</sup> L Ngcukana “Dying for an Education: Pupils Drown in Flash Floods on Way Home from School” *City Press* 19 March 2019 <https://www.news24.com/citypress/news/dying-for-an-education-pupils-drown-in-flash-floods-on-way-home-from-school-20190319> (accessed 3 December 2021).

<sup>155</sup> *Ibid.*

<sup>156</sup> Elundini Local Municipality 2019/2020 Final IDP 70–71.

<sup>157</sup> Elundini Local Municipality 2019/2020 Final IDP 148–149.

<sup>158</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 137.

<sup>159</sup> Provincial Profile: Eastern Cape [Community Survey 2016] 138.

<sup>160</sup> Elundini Local Municipality 2019/2020 Final IDP 61.

<sup>161</sup> *Ibid.*

<sup>162</sup> Interview with 2019’s Best Communal Shearing Shed Chairman (2019) 7 *Wolboer/Wool Farmer* 76 at 76–79.

Tlokoeng. The area also earns some income through tourism due to its scenic natural beauty, however, the tourism industry in the area is underdeveloped.<sup>163</sup>

### 3.5. Schooling in Tlokoeng

Post 1994, there has been an increased investment in the public schooling system in general.<sup>164</sup> This brought several changes ranging from curriculum changes to school governance changes. Programmes such as the National School Nutrition Programme (NSNP), the Accelerated School Infrastructure Development Initiative (ASIDI), and Inclusive Education were established. However, the inequality that already existed was so great that far more resources would be needed to effect the envisioned change.<sup>165</sup> Generally, most Black learners either live far from former White schools or simply cannot afford the school fees payable in those schools.<sup>166</sup> As a result, “ex-Black schools have remained Black, while ex-White schools have become more racially diverse, albeit with wealthier Black, Coloured and Indian students”.<sup>167</sup> This means that Black learners continued to receive less quality education than their White counterparts even post-apartheid.<sup>168</sup>

Further, despite mentioned developments, schooling in historically disadvantaged schools, which include schools in rural areas, was still characterised by unqualified and under-qualified teachers and a lack of books, libraries, laboratories and other resources.<sup>169</sup> Teacher to learner ratios, including in Eastern Cape, remained high-twice the ratio in the Western Cape.<sup>170</sup> Ultimately, the inequality continued thus seemingly defeating the purpose for the increased resource provision in the schooling system.<sup>171</sup>

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<sup>163</sup> Elundini Local Municipality 2019/2020 Final IDP 77–78.

<sup>164</sup> Apartheid: The Facts (1983) London: International Defence and Aid Fund for Southern Africa in Co-Operation with United Nations Centre against Apartheid 28.

<sup>165</sup> E Berger “The Right to Education Under the South African Constitution” (2003) 103 *Columbia Law Review* 614 at 619. See also Apartheid: The Facts 28.

<sup>166</sup> N Spaul “Poverty and Privilege: Primary School Inequality in South Africa” (2013) 33 *International Journal of Educational Development* 436 at 438.

<sup>167</sup> *Ibid.*

<sup>168</sup> Berger “The Right to Education” 619.

<sup>169</sup> F Veriava “Basic Education Provisioning” in F Veriava *et al* (eds) *Basic Education Rights Handbook: Education Rights in South Africa* (2017) 222.

<sup>170</sup> Berger “The Right to Education” 619–620.

<sup>171</sup> Veriava “Basic Education Provisioning” 222.

The newly established DBE also made several policy decisions some of which might have had negative unintended consequences. For example, in the 2000–2005s, the DBE incentivised teachers' early retirement which resulted into a significant decrease of experienced teachers in schools.<sup>172</sup>

In relation to learner performance, some researchers found that to some degree, there were learner retention challenges in primary schools where only 39% of Black learners had progressed from grade 2 to 7 without some disruption.<sup>173</sup> There were also other issues including a culture of violence and sexual abuse especially in Black schools.<sup>174</sup>

By 2015, Spaul and Kotze had conducted extensive research about the academic output of the South African education system in general, albeit mostly in primary schools. Their research demonstrated that South Africa had been falling below national and international standards, even way below poorer countries.<sup>175</sup> The inequality in South Africa had always meant that Black children have been argued to fall far behind their White counterparts. Spaul and Kotze even argued that:

“[P]oor children in South Africa, who make up the majority, are starting behind and staying behind, casting doubt on the ability of the South African schooling system to impart to students the knowledge, skills and values they need to become full members of society and thus promote social mobility.”<sup>176</sup>

South Africa is said to have a high enrolment into schools,<sup>177</sup> however, even after 6 years of schooling, 26% of children in the system were found to be functionally illiterate, while 38% were found to be functionally innumerate.<sup>178</sup> Only 46% of poor children were functionally numerate, compared to 85% of their wealthier

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<sup>172</sup> Berger “The Right to Education” 618. See also E Nel and T Binns “Changing the Geography of Apartheid Education in South Africa” (1999) 84 *Geography* 119 at 122.

<sup>173</sup> Berger “The Right to Education” 621.

<sup>174</sup> Berger “The Right to Education” 622–623.

<sup>175</sup> N Spaul and J Kotze “Starting Behind and Staying Behind in South Africa: The Case of Insurmountable Learning Deficits in Mathematics” (2015) 41 *International Journal of Educational Development* 13 at 22. See further Arendse “The South African Constitution’s Empty Promise” 111.

<sup>176</sup> Spaul and Kotze “Starting Behind and Staying Behind” 23.

<sup>177</sup> N Spaul and S Taylor “Access to what? Creating a Composite Measure of Educational Quantity and Educational Quality for 11 African Countries” (2015) 59 *Comparative Education Review* 133 at 155.

<sup>178</sup> Spaul and Taylor “Access to what?” 156.

counterparts.<sup>179</sup> Grade 3 students from schools in quintiles 1 to 3 were found to be three years behind their counterparts in quintile 5 schools.<sup>180</sup> The three-year gap grows to four by the time the learners have progressed to grade 9.<sup>181</sup> The country is therefore said to have a dual system, one for the rich and one for the poor<sup>182</sup> where the system for the latter is characterised by high grade repetition, high dropout, high teacher absenteeism and severe academic underperformance.<sup>183</sup> Other scholars have also posited that most of the learners performing poorly are Black, from historically Black schools.<sup>184</sup>

The Eastern Cape has remained one of the bottom two performing provinces in the National Senior Certificate (NSC) results in general<sup>185</sup> and for the years 2018/2019 to 2020/2021. In 2018, Eastern Cape learners achieved 70.6% pass rate and was placed 8<sup>th</sup> out of the nine provinces in terms of NSC pass rate.<sup>186</sup> In 2019, the pass rate was 76.5%, moving the province to being in 7<sup>th</sup> position.<sup>187</sup> The province went back to position 8 with a pass rate of 68.1% in 2020.<sup>188</sup> It moved up to position 7 again in 2021 with a pass rate of 73%.<sup>189</sup> In the Eastern Cape Provincial Treasury Annual Performance Plan 2018/2019, poor performance on NSC and the fact that lower

<sup>179</sup> Spaul and Taylor "Access to what?" 159–160.

<sup>180</sup> Spaul and Kotze "Starting Behind and Staying Behind" 23.

<sup>181</sup> *Ibid.*

<sup>182</sup> AM Buka *et al* "Sustaining Good Management Practices in Public Schools: Decolonising Principals' Minds for Effective Schools" (2017) 35 *Perspectives in Education* 99 at 101.

<sup>183</sup> Spaul "Poverty and Privilege" 437. Good achievement is linked to schools that score 70% or more in the grade 12 examinations. Schools with a lower than 70% pass rate in the grade 12 examinations are said to be underperforming schools.

<sup>184</sup> Arendse "The South African Constitution's Empty Promise" 112.

<sup>185</sup> JG Maree *et al* "An Analysis of Factors Influencing Grade 12 Results" (2011) 10 *Journal of Educational Studies* 120 at 120.

<sup>186</sup> National Senior Certificate Examinations Report 2018 pdf 11 <https://www.education.gov.za/Portals/0/Documents/Reports/NSC%202018%20Examination%20Report%20WEB.pdf?ver=2019-01-03-085338-000> (accessed 26 February 2021). See also National Senior Certificate Examinations Report 2019 at 7 <https://www.education.gov.za/Portals/0/Documents/Reports/2019%20NSC%20Examination%20Report.pdf?ver=2020-01-07-155811-230> (accessed 26 February 2021).

<sup>187</sup> National Senior Certificate Examinations Report 2019 at 7 <https://www.education.gov.za/Portals/0/Documents/Reports/2019%20NSC%20Examination%20Report.pdf?ver=2020-01-07-155811-230> (accessed 26 February 2021).

<sup>188</sup> National Senior Certificate Examinations Report 2020 at 7 <https://www.education.gov.za/Portals/0/Documents/Reports/2021%20NSC%20Reports/2020NSCREPORT.pdf?ver=2021-07-19-142304-897> (accessed 26 February 2021).

<sup>189</sup> National Senior Certificate Examinations Report 2021 at 11 <https://www.education.gov.za/Portals/0/Documents/Reports/2021NSCReports/School%20Performance%20Report.pdf?ver=2022-01-31-130221-553> (accessed 2 February 2023).

grades were below local and international benchmarks (PIRLS SAQMEQ and TIMMS) despite considerable resources was acknowledged.<sup>190</sup> The treasury therefore reiterated the need for continued dedication towards education.

In Tlokoeng in particular, some schools have fluctuated with an average pass rate of no more than 55%. It must be noted that there are issues with the use of matric results to gauge academic performance as some academics argue that the bar is in any event too low, and that perhaps the standard should be the number of learners qualifying for a bachelor's degree enrolment at tertiary.<sup>191</sup>

**Table 3:** *National Senior Certificate Results; percentage of achieved learners per school per year in terms of DBE school performance reports*

School	2017	2018	2019	2020	2021
A	73.8	85.2	88.9	71	68.4
B	69.2	53	59.7	54.2	59
C	71.4	50.7	74.3	49.8	67.2
D	84.4	77.7	86.6	56.9	70.4

From the Joe Gqabi Operational Plan on Activities Term 3–4 grade 11 results in 2020, School D was listed as an underperforming school with a pass rate of 40%.<sup>192</sup> All 4 schools in this study were listed for underperformance in Mathematics, Physical Sciences and other subjects.<sup>193</sup> Schools B and D were also mentioned as underperforming in grade 11.

In terms of the 2013 and 2014 Annual National Assessment,<sup>194</sup> the highest average mark achieved by grade 9 learners from Tlokoeng was 38% for mathematics, their

<sup>190</sup> Eastern Cape Treasury Annual Performance Plan 12 <https://www.ectreasury.gov.za/AnnualPerformancePlan> (accessed 18 September 2025). PIRLS being the Progress in International Reading Literacy Study, SAQMEQ being the Southern and Eastern Africa Consortium for Monitoring Educational Quality, and TIMSS being the Trends in International Mathematics and Science Study.

<sup>191</sup> Veriava "Basic Education Provisioning" 224.

<sup>192</sup> Joe Gqabi Operational Plan on Activities Term3–4 pdf 33.

<sup>193</sup> Joe Gqabi Operational Plan on Activities Term3–4 pdf 35.

<sup>194</sup> Report on the Annual National Assessment of 2013 and 2014 Grades 1 to 6 and 9 <https://www.education.gov.za/Resources/Reports.aspx> (accessed 14 July 2022).

home language, and their first additional language.<sup>195</sup> The 2019 performance for grade 9s was the same, with the only improvement being in the home language, with an average of 53%.<sup>196</sup> The 2020/2021 school year was exceptionally challenging for all schools due to the COVID-19 pandemic.

It must be acknowledged that, despite the unfavourable historical and socio-economic context, some schools in Tlokoeng continue to produce top achievers.<sup>197</sup> Some schools have consistently performed well, with a matric pass rate of more than 70% on average.<sup>198</sup> However, it cannot be said that the schools in the district are, overall, performing well.

As already mentioned, the underdevelopment in rural areas like Tlokoeng directly inhibits the development of the schools' functionality and learners' performance. Some of these learners face both safety and health risks as they must walk to school for more than five kilometres despite unfavourable weather conditions.<sup>199</sup> There have been reports of incidents of learners drowning while crossing rivers on their way from or and to school, with one incident happening in Mgxojeni, a village in Tlokoeng.<sup>200</sup> There have also been reports on problems with the government's initiative on scholar transport, ranging from backlogs with qualifying learners still not afforded scholar

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<sup>195</sup> Report on the Annual National Assessment of 2013 Grades 1 to 6 and 9 at 77 [https://www.education.gov.za/Portals/0/Documents/Reports/ANA%20Report%202013%20\(2\).pdf?ver=2013-12-05-123612-000](https://www.education.gov.za/Portals/0/Documents/Reports/ANA%20Report%202013%20(2).pdf?ver=2013-12-05-123612-000) (accessed 13 July 2022).

<sup>196</sup> Report on the Annual National Assessment of 2014 Grades 1 to 6 and 9 at 98 <https://www.education.gov.za/Portals/0/Documents/Reports/REPORT%20ON%20THE%20ANA%20OF%202014.pdf?ver=2014-12-04-104938-000> (accessed 23 July 2022).

<sup>197</sup> A Linden and A Nini "Province's Top Matric Trio Triumph Over Adversity" *Daily Dispatch* 05 January 2018 <https://www.dispatchlive.co.za/news/2018-01-05-provinces-top-matric-trio-triumph-over-adversity/> (accessed 23 July 2022).

<sup>198</sup> National Senior Certificate Examinations 2018–2020: School Performance Reports 32–33 <https://www.education.gov.za/Portals/0/Documents/Reports/2021%20NSC%20Reports/2020%20school%20performance%20report.pdf?ver=2021-03-02-093753-067> (accessed 26 February 2021).

<sup>199</sup> Z Zweni "Village Mourns Drowned Kids" *Daily Sun* 13 March 2019 <https://www.dailysun.co.za/dailysun/news/national/village-mourns-drowned-kids-20190312> (accessed 3 December 2021). See also C Nobanda "Mount Fletcher Villagers Build Own Wooden Bridge" 1 February 2019 <https://www.sabcnews.com/sabcnews/mount-fletcher-villagers-build-own-wooden-bridge/> (accessed 3 December 2021).

<sup>200</sup> Zweni "Village Mourns Drowned Kids". See also Nobanda "Mount Fletcher Villagers Build Own Wooden Bridge". Further see "Police Recover Last Body of Six EC Kids Who Drowned Crossing River" *Daily Dispatch/Sowetan/Times Live* 12 March 2019 <https://www.timeslive.co.za/news/south-africa/2019-03-12-police-recover-last-body-of-six-ec-kids-who-drowned-crossing-river/> (accessed 23 July 2022).

transport to issues of overloading and possible drunk driving.<sup>201</sup> Further, the Joe Gqabi district is also affected by a high teacher-learner ratio or overcrowding. This has been exacerbated by the fact that projects meant to build classrooms are sometimes stalled due to administrative issues with the ECDBE project management processes.<sup>202</sup>

It is also clear that many other interconnected factors contribute to the inhibition of the effective functioning of schools. These factors include poverty-related factors (which may lead to learner de-motivation and poor parental involvement),<sup>203</sup> learners' negative attitude towards certain subjects, a lack of motivation/commitment in teachers and or learners, and teacher and or learner absenteeism.<sup>204</sup> In 2011, the National Planning Commission had also identified additional factors that contribute to poor learner performance such as inadequate civil service in the education sector.<sup>205</sup> Corruption and nepotism were also identified as factors contributing towards the recurring employment of unqualified principals, educators, and departmental officials.<sup>206</sup>

Buka has even asserted that the poor learner performance in public schools, high rate of violence in schools, teenage pregnancy, corruption, and weak governance and leadership indicate that the South African education system is in crisis.<sup>207</sup> It is therefore acknowledged that beyond Tlokoeng or even the Eastern Cape, the basic education system as a whole faces multiple interconnected challenges, and this thesis cannot address them all.

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<sup>201</sup> "Bus Driver Suspended for Allowing Pupil to Drive while he Drank Alcohol" *The Citizen* 21 October 2020 <https://www.citizen.co.za/news/bus-driver-suspended-for-allowing-pupil-to-drive-while-he-drank-alcohol/> (accessed 2 April 2022).

<sup>202</sup> A Linden "R104m Debt Halts Building at 37 Eastern Cape Schools" *Times Live* 21 November 2018 <https://www.timeslive.co.za/news/south-africa/2018-11-21-r104m-debt-halts-building-at-37-eastern-cape-schools/> (accessed 3 December 2021).

<sup>203</sup> ZM Tekete *School Management Imperatives in Addressing the Needs of Impoverished Secondary School Learners in Rural Areas* (Master of Education thesis, University of South Africa, 2012) 76–83.

<sup>204</sup> Mandukwini *Challenges Towards Curriculum Implementation* 33.

<sup>205</sup> National Development Plan 2030: Our Future- Make it Work 270 [https://www.gov.za/sites/default/files/gcis\\_document/201409/devplan2.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/devplan2.pdf) (accessed 26 February 2021). Inadequate civil service was said to include the provision of sub-standard services by officials in the Department of Education mainly because of the officials' lack of expertise or because of incompetence or a lack of political will.

<sup>206</sup> National Development Plan 270.

<sup>207</sup> Buka *et al* "Sustaining Good Management Practices" 101.

It suffices to say that the overall progress made to improve the functioning of schools and, thus, the quality of education provided to learners in rural areas has been less than satisfactory.<sup>208</sup> Academic underperformance in learners has been seen in rural areas like Tlokoeng and it is therefore imperative to investigate whether such underperformance is also linked to poor school governance and related factors. Most importantly, it is imperative to determine what the ECDBE is doing to improve school governance and whether it is doing enough.

### **3.6. Conclusion**

This chapter has provided an overview of the historical, cultural, social, and economic context of Tlokoeng and its surrounding areas while also touching on the broader scheme of the education system. It has been demonstrated that the town is typical of a historically disadvantaged town struck by underdevelopment, high unemployment rate, and low literacy levels in its population. The schools in Tlokoeng are generally under-resourced and this negatively affects the quality of teaching and learning. Some learners thrive despite these conditions; however, many underperform. This is the context within which the ECDBE's measures to capacitate SGBs will be assessed. Next will be a discussion on the right to basic education and the importance of effective school governance in the realisation thereof which shall end with the deduction of relevant legal standards on the realisation of this right.

## **4. THE RIGHT TO BASIC EDUCATION**

### **4.1. Introduction**

The right to basic education has international, regional and national recognition. It is a multifaceted right whose realisation requires the provision of several components such as LTSM, school furniture, and effective school governance, amongst others. This chapter outlines the content and ambit of the right to basic education as well as the legal obligations for this right's realisation. It is in light of these legal obligations that the standard for the assessment of the adequacy of measures adopted to ensure effective school governance will be determined.

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<sup>208</sup> See Tekete *School Management Imperatives* 105–110.

More pertinent to the purpose of this study, this chapter examines school governance within a historical context and highlights the importance of effective school governance not only for the realisation of the right to basic education, but also in the broader dispensation of constitutional democracy in South Africa. Further, a literature review on the challenges in school governance is provided to give a broad picture of the dire negative impact of these challenges on the provision of basic education. However, it is first necessary to clarify the meaning of basic education.

#### 4.2. What is basic education?

The South African education system is such that learners undergo basic education, followed by further education and training (FET), and finally, higher education. There has been uncertainty regarding the scope and nature of basic education.<sup>209</sup> It concerned the level or grade at which the provision of basic education begins and ends.<sup>210</sup> In order to make sense of the often-confusing terminology, one had to look at statutes, policy and case law in education.<sup>211</sup>

One of the statutes that plays an important role in establishing the South African education system is the National Qualifications Framework Act.<sup>212</sup> This Act provides for the classification, registration, publication and articulation of quality-assured national qualifications through the establishment of the National Qualifications Framework (NQF).<sup>213</sup> The NQF groups the national qualifications in terms of ten levels in ascending order, NQF levels 1 to 10.<sup>214</sup> Each level is described by a statement<sup>215</sup> of learning achievements.<sup>216</sup> The lowest level of education that is statutorily defined

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<sup>209</sup> See LN Murungi “Inclusive Basic Education in South Africa: Issues in its Conceptualisation and Implementation” (2015) 18 *Potchefstroom Electronic Law Journal* 3160 at 3161. See also LM Mphahle “Factors Enhancing Basic Education: Implication on Pupils’ Capability in Botswana Primary and Junior Secondary Schools” (2014) 5 *Journal of Emerging Trends in Educational Research and Policy Studies* 149 at 149.

<sup>210</sup> A Pieterse “The Transformative Nature of the Right to Education” (2004) 4 *TSAR* 700 at 706. See also Murungi “Inclusive Basic Education in South Africa” 3162–3163.

<sup>211</sup> R Joubert “Incorporating International Standards into National Education Law in South Africa: The Accountability of the State” (2014) 29 *South African Public Law Journal* 1 at 11.

<sup>212</sup> Act 67 of 2008.

<sup>213</sup> Section 4 of the National Qualifications Framework Act.

<sup>214</sup> Section 6(1) of the National Qualifications Framework Act.

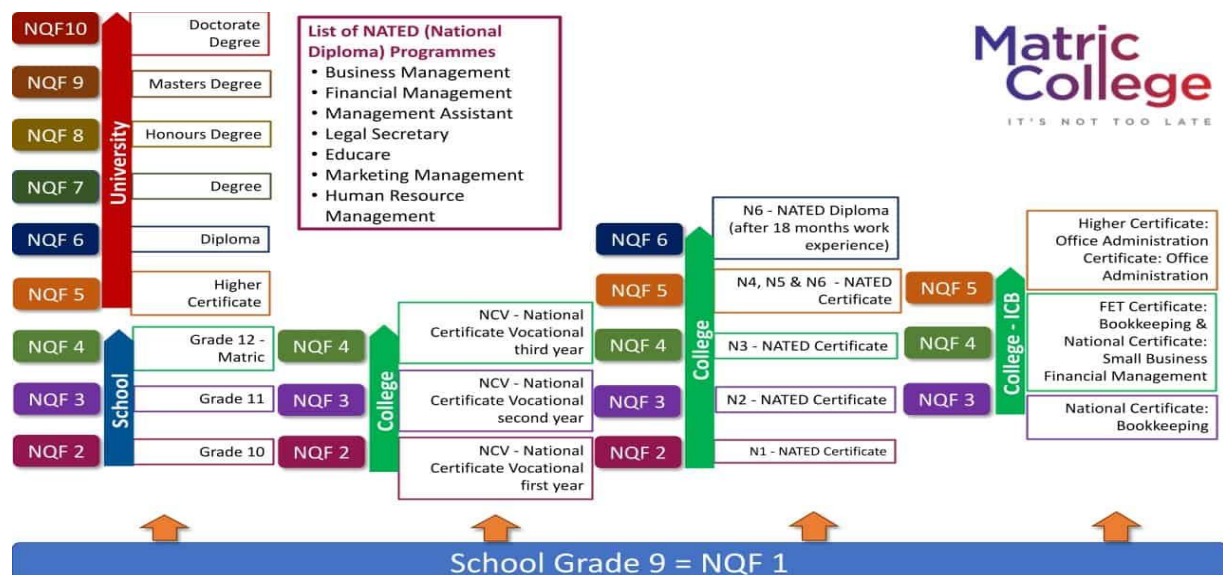
<sup>215</sup> The statement of learning achievements is called a level descriptor.

<sup>216</sup> In terms of section 6(3) of the National Qualifications Framework Act, a level descriptor provides an indication of learning outcomes for the qualifications at a particular level.

and leads to a national qualification is general education and training.<sup>217</sup> General education and training entails all education and training programmes leading to qualifications at level 1 of the NQF, which is below the further education and training levels.<sup>218</sup> FET is all education and learning programmes leading to qualifications from levels 2 to 4 of the NQF.<sup>219</sup> These levels are above general education and training but below higher education. NQF levels 2 to 4 correspond with grades 10–12 in schools and N1–N3 qualifications in the technical college system.<sup>220</sup>

**Figure 4: NQF levels and qualification types**

[All NQF levels with grades 10-12 explained in South Africa - Search \(bing.com\)](#) (accessed on 3 February 2022).



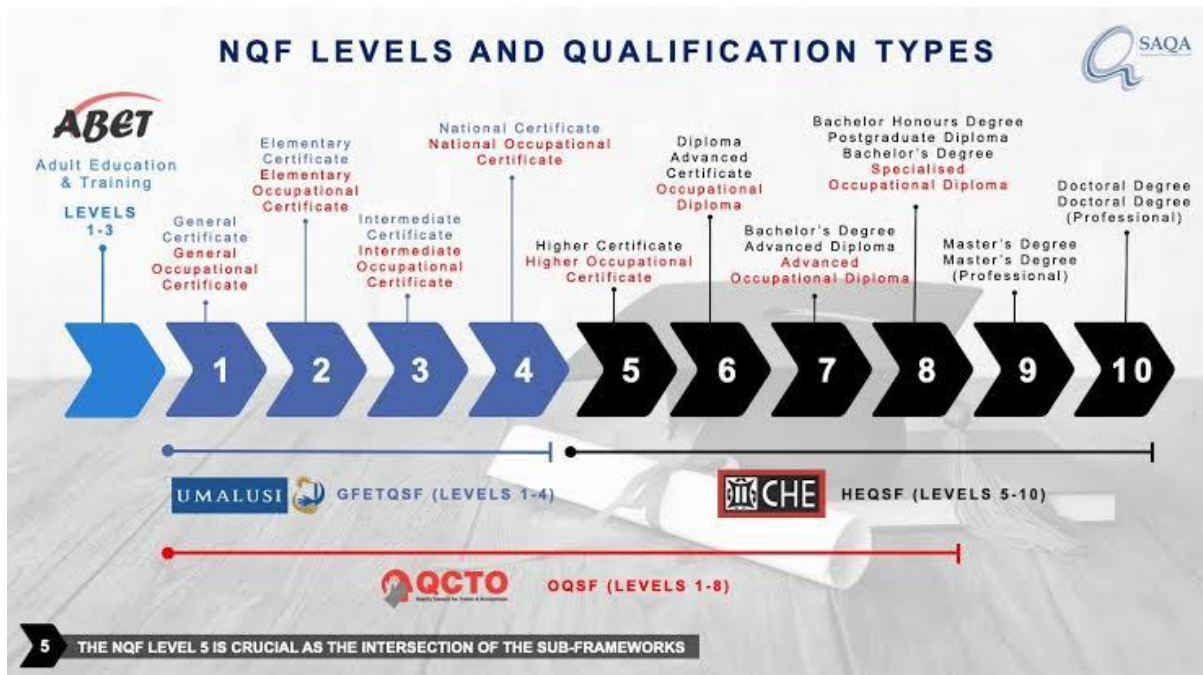
[All NQF levels with grades 10-12 explained in South Africa - Search Images \(bing.com\)](#) (accessed on 3 February 2022).

<sup>217</sup> Section 2(g) of the General and Further Education and Training Quality Assurance Amendment Act 2008.

<sup>218</sup> *Ibid.*

<sup>219</sup> Section 2(f) of the General and Further Education and Training Quality Assurance Amendment Act 50 of 2008.

<sup>220</sup> Education White Paper 2 4–A Programme for the Transformation of Further Education and Training, GN 19281, *Government Gazette* 2188, 25 September 1998 para 2.2. There are also learning and training programmes leading to qualifications or part-qualifications at levels 1 to 4 that are offered in colleges; these are called continuing education and training in terms of the Continuing Education and Training Act 16 of 2006.



Following the end of apartheid, the grade 10–12 education system had to transform. Thus, the policies and plans meant to realise FET education would have to take full account of the senior secondary school sector<sup>221</sup> since grades 10–12 fell within the FET band on the NQF. It was also acknowledged that formal institutional separation between these levels of education (grades 8–9 and grades 10–12) was neither feasible nor cost-effective in the foreseeable future.<sup>222</sup> All schools continued to be governed in terms of SASA unless the school was declared an FET institution, upon which it would become subject to the governance, funding and other provisions of the Further Education and Training Act.<sup>223</sup> The latter Act was later repealed by the Continuing Education and Training Act.<sup>224</sup> School attendance for schools not declared to be FET institutions was made compulsory by SASA. In particular, it provides that school attendance is compulsory for learners up to grade 9 or 15 years of age.<sup>225</sup>

<sup>221</sup> *Ibid.*

<sup>222</sup> Education White Paper 2 4–A Programme para 3.22. In some parts of the Eastern Cape, especially in rural areas, these levels of education were offered in separate schools. There were schools offering grades 1–9 called junior secondary schools, and those offering grades 10–12 were called high schools. These have been integrated so that grades 8–12 are in one school called senior secondary schools or just secondary schools. The schools offering grades 1–7 retained the junior secondary schools label.

<sup>223</sup> Act 98 of 1998.

<sup>224</sup> Act 16 of 2002. See Education White Paper 2 4–A Programme para 3.22.

<sup>225</sup> Section 3(1) SASA.

Learners in the conventional stream (grades 1–12) get a qualification at the completion of grade 12, the NSC, which is an NQF level 4 qualification.

The grading of qualifications in terms of the National Qualifications Framework Act, as well as the fact that compulsory school attendance ends in grade 9, informed the common understanding that basic education extended from grade R to grade 9.<sup>226</sup> Grades 10–12 were therefore understood to be part of the FET band. This was even though the higher levels of basic education (grades 8–9) were delivered at the same sites as the lower levels of further education and training (grades 10–12) in some provinces. Further, the Minister of Basic Education is responsible for all schooling, from grade R to 12. Accordingly, this classification always left room for possible legal uncertainty, practical difficulties and academic criticism.<sup>227</sup>

Learning is a function of time<sup>228</sup> but it is not only time spent on learning that matters; the quality of education is crucial.<sup>229</sup> Thus, it has been argued that basic education is also about the quality of the education rather than the number of years learners must spend attending school.<sup>230</sup> Importantly, it has been observed that the numeracy and literacy levels of most South African learners fall below those expected of children who have attained, or are in the process of attaining, basic education at their grade level.<sup>231</sup> There is therefore a need to define basic education considering the objectives of acquiring basic education.

The main objective of the provision of basic education is to enable learners to establish themselves, self-actualise and be contributing members of society.<sup>232</sup> Furthermore,

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<sup>226</sup> Murungi “Inclusive Basic Education in South Africa” 3163.

<sup>227</sup> See generally G Adams and BV Slade “Providing Greater Clarity on the Meaning of Basic Education [Discussion of *Moko v Acting Principal, Malusi Secondary School 2021 3 SA 323 (CC)*]” (2022) 33 *Stellenbosch Law Review* 579.

<sup>228</sup> Murungi “Inclusive Basic Education in South Africa” 3163.

<sup>229</sup> Arendse “The South African Constitution’s Empty Promise” 108.

<sup>230</sup> C Simbo “Defining the Term Basic Education in the South African Constitution: An International Law Approach” (2012) 16 *Law, Democracy and Development* 162 at 165.

<sup>231</sup> See Simbo “Defining the Term Basic Education” 164–165. See also N Ally and T Kazim “Lessons from the ‘Minimum Core’ Approach to the Right to Basic Education in South Africa” (2024) 24 *African Human Rights Law Journal* 179 at 200.

<sup>232</sup> C Churr “Realisation of a Child’s Right to a Basic Education in the South African School System: Some Lessons from Germany” (2015) 18 *Potchefstroom Electronic Law Journal* 2405 at 2406 and 2416. See also OJ Ojo and GA Obimuyiwa “Basic Education as a Tool for Promoting National Integration

basic education empowers individuals to meaningfully engage with and enjoy their civil and political rights, including freedom of expression, association, and political participation. It also helps to promote an individual's access to socio-economic rights (e.g. food, housing, healthcare) as the individual has better prospects of getting a job and sustaining a better life, a life of dignity.<sup>233</sup> Thus, basic education plays a role in making constitutional democracy a reality and giving effect to the transformation envisaged in the Constitution. Given the lack of necessary knowledge and skills of South African learners by the time they complete grade 9, it has been suggested that basic education in South Africa should include education up to grade 12.<sup>234</sup> This remained but a suggestion as neither the executive nor the legislature addressed the issue.

Grades 10–12 continued being in an NQF band that is under the administration of the Ministry of Higher Education, while practically being administered by the Ministry of Basic Education. This anomaly and related consequences were also never raised for adjudication before courts. Most of the litigated matters in education were in relation to all grades (grades R–12),<sup>235</sup> on the basis of legislation and policies giving effect to the right to basic education and the related rights of equality, dignity and children's socio-economic rights.<sup>236</sup> None of these cases pertinently addressed the issue of litigation being brought on the basis of the right to basic education even in relation to grades 10–12 which theoretically constituted further education.<sup>237</sup> The DBE, as the respondent in these cases, also never raised the argument that it was obliged to act immediately only in relation to grades R–9.<sup>238</sup>

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among Children in Rural Basic Schools" (2019) 1 *Journal of Education Research and Rural Community Development* 1 at 2.

<sup>233</sup> Pieterse "The Transformative Nature of the Right to Education" 709. See also Simbo "Defining the Term Basic Education" 176 and 178.

<sup>234</sup> Churr "Realisation of a Child's Right to a Basic Education" 2411.

<sup>235</sup> See *Centre for Child Law v Minister of Basic Education* 2013 (3) SA 183 (ECG), *Equal Education v Minister of Basic Education* 2019 (1) SA 421 (ECB) and *Minister of Basic Education v Basic Education for All* 2016 (4) SA 63 (SCA).

<sup>236</sup> Section 28(1)(c) of the Constitution.

<sup>237</sup> From the litigants' point of view, it could be argued that raising the right to further education was not to their benefit since that right has a lower legal standard of realisation than the right to basic education.

<sup>238</sup> Needless to say, this argument would have been rather difficult to sustain given that, in practice, the programmes and policies made by the DBE, which are often the subject of litigation, apply uniformly throughout the grades in schools. It is not clear how the DBE would reason through those possible practical absurdities as it never got to raise them; nevertheless, theoretically, the argument could be raised in law.

Whether grades 10–12 formed part of basic education remained uncertain until 28 December 2020 when the Constitutional Court finally put the matter to rest in *Moko v Acting Principal, Malusi Secondary School*.<sup>239</sup> In this case, a grade 12 learner was denied entry to the school premises by the acting principal of the school<sup>240</sup> on the day he was supposed to write a Business Studies exam.<sup>241</sup> As a result, the learner missed the exam. The learner approached the Limpopo Department of Basic Education seeking to write the exam before the end of the year to avoid being academically left behind but to avail.<sup>242</sup> The learner approached the High Court on an urgent basis. The High Court refused to hear the matter on that basis and reasoned that the learner would be able to write the exam the following year.<sup>243</sup> Aggrieved, the learner turned to the Constitutional Court, which granted him direct access.<sup>244</sup> The main issue was whether the acting principal violated that learner's right to basic education by denying him an opportunity to write his exam.<sup>245</sup> To determine the issue, the Court had to first establish whether matric exams were part of basic education and were protected through the right to basic education.<sup>246</sup>

Khampepe J, for the Court, held that:

“To limit basic education under section 29(1)(a) either to only primary school education or education up until Grade 9 or the age of 15 is, in my view, an unduly narrow interpretation of the term that would fail to give effect to the transformative purpose and historical context of the right.”<sup>247</sup>

The Court stated that the definition of basic education should be flexible<sup>248</sup> to meet the learning needs appropriate to the age and experience of learners, and should provide

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<sup>239</sup> *Moko v Acting Principal, Malusi Secondary School* 2021 (3) SA 323 (CC).

<sup>240</sup> 2021 (3) SA 323 (CC) para 7.

<sup>241</sup> *Ibid.*

<sup>242</sup> 2021 (3) SA 323 (CC) para 9.

<sup>243</sup> 2021 (3) SA 323 (CC) para 11.

<sup>244</sup> 2021 (3) SA 323 (CC) para 23.

<sup>245</sup> 2021 (3) SA 323 (CC) para 25.

<sup>246</sup> 2021 (3) SA 323 (CC) para 26.

<sup>247</sup> 2021 (3) SA 323 (CC) para 32.

<sup>248</sup> 2021 (3) SA 323 (CC) para 30.

access to a nationally recognized qualification, which is the NSC.<sup>249</sup> Khampepe J discussed the anomaly of deeming grades 10–12 to be protected under the right to further education rather than the right to basic education. The state would be able to raise the argument of limited resources when it comes to providing the necessary components for the provision of education to grades 10–12, while it cannot for grades R–9.<sup>250</sup> Further, given that the provision of grade 8–12 education is in one school for most of the schools, the implementation of school policies would be difficult if grades 10–12 were to be in the FET band.<sup>251</sup> The Court added that the Minister of Basic Education was, in any event, responsible for the education of learners up to grade 12.<sup>252</sup> It was held that matric examinations are part of basic education,<sup>253</sup> which makes grades 10–12 part of basic education and protected through the right to basic education.<sup>254</sup>

Against the background of the formal legal recognition of the reach of basic education to include grade 12 and its important role in our constitutional democracy, it is

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<sup>249</sup> 2021 (3) SA 323 (CC) para 30–32. See also the White Paper on Education and Training, GN 196, *Government Gazette* 16312, 15 March 1995 para 11 and 14 as the DBE adopted the World Declaration definition of basic education.

<sup>250</sup> 2021 (3) SA 323 (CC) para 32.

<sup>251</sup> *Ibid.*

<sup>252</sup> 2021 (3) SA 323 (CC) para 31.

<sup>253</sup> 2021 (3) SA 323 (CC) para 33.

<sup>254</sup> The result in *Moko v Acting Principal, Malusi Secondary School* is desirable, and it was only a matter of time. However, there might be equality issues in future should the DBE's plans moving towards having a nationally recognised qualification offered upon the completion of grade 9 (as contemplated in Action Plan to 2014: Towards the Realisation of Schooling 2025 chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/https://www.gov.za/sites/default/files/gcis\_document/201409/dobeshortened-action-plan-2025031120100.pdf (accessed 12 February 2023)) materialise. The DBE aims to get this qualification mainly for learners who do not follow through to grades 10–12 but who pursue vocational training. The foreseeable inequality would be from the fact that learners who follow the vocational training route would be left to the protection of the right to further education (once they enter the college system after grade 9) which has a lower realisation standard, while their counterparts are protected under the right to basic education in grades 10–12. This might put those who take the traditional NSC route at an advantage over the others in so far as their prioritisation over state resources is concerned. Leaving aside the intentions and plans of the DBE, there are learners who, after grade 9, undergo vocational training already. For example, a 17-year-old child could be in college funded by the state through the National Student Financial Aid Scheme (NSFAS) while their counterparts are in grade 11. The latter can approach a court to seek an order compelling the DBE to provide them with food in terms of the NSNP and the court is likely to order that food be provided as soon as practically possible. While the former can also approach a court to compel the responsible organ to pay NSFAS allowances, the state's obligations are of a lower legal standard which might affect the immediacy of the order eventually granted, taking into account the circumstances surrounding the delay in the payment of allowances. In relation to the general misalignment between *Moko v Acting Principal, Malusi Secondary School* and DBE policies, see Adams and Slade "Providing Greater Clarity on the Meaning of Basic Education" 589–590.

imperative to note the components of the right to basic education that must be fulfilled to give effect to the objectives of basic education. It is equally important to note that school governance must be understood in light of the recognition that the provision of education in schools at all levels is protected under the right to basic education whose standard of realisation is higher. The components of the right to basic education, and the broader content of the right to basic education, are discussed below.

### 4.3. The content of the right to basic education

At an international level, both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which South Africa ratified in 2015, recognise everyone's right to education and state that education shall be free at least at an elementary or primary level.<sup>255</sup> For the realisation of this right, states are to develop a school system and continuously improve the material conditions of teaching staff.<sup>256</sup> Education is to be directed towards the full development of the human personality and the sense of its dignity, the strengthening of the respect for human rights and fundamental freedoms, and the enabling of persons to participate effectively in society.<sup>257</sup> The ratification of the ICESCR requires South Africa to act in good faith in giving effect to the treaty's provisions and prohibits the use of domestic law to justify a failure to do so.<sup>258</sup>

The Convention on the Rights of the Child to which South Africa is also a signatory recognises the right to education for children.<sup>259</sup> Similarly, primary education is to be made compulsory and free.<sup>260</sup> Education for the child should be directed towards developing the child's abilities to their fullest potential and preparing the child for a responsible life in society.<sup>261</sup> Centred around the protection of children in schools, the

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<sup>255</sup> Article 26 of the Universal Declaration of Human Rights, 1948 and article 13(1) and (2)(a) of the ICESCR, 1966.

<sup>256</sup> Article 13(2)(e) of the ICESCR.

<sup>257</sup> Article 13(1) of the ICESCR.

<sup>258</sup> *Commando and Others v City of Cape Town and Another* 2025 (3) SA 1 (CC) para 145. See also article 27 of the Vienna Convention on the Law of Treaties 1969.

<sup>259</sup> Article 28(1) of the Convention on the Rights of the Child, 1989. Article 1 defines a child as anyone below the age of 15.

<sup>260</sup> Article 28(1)(a) of the Convention on the Rights of the Child. It is noted that primary education is not synonymous with basic education. The study adopts the notion that primary education is part of basic education. See M Mathenjwa "The Realisation of the Right to a Basic Education in the Twenty Years of Constitutional Democracy" (2017) 31 *Speculum Juris* 4 at 6.

<sup>261</sup> Article 29(1)(a) and (d) of the Convention on the Rights of the Child.

Convention provides that states shall take all appropriate measures to ensure that school discipline is administered in conformity with it and especially in a manner consistent with the child's human dignity.<sup>262</sup>

In relation to the content of the right to education, General Comment 13 of the Committee on the ICESCR outlines the essential features of education, i.e. the 4-A scheme, and states that the scheme is applicable in the fulfilment of primary education.<sup>263</sup> The 4-A scheme consists of 4 interrelated features of which education at all levels must exhibit: availability, accessibility, acceptability and adaptability.<sup>264</sup> The 4-A scheme is therefore instructive on the content of the right to education<sup>265</sup> as well as the legal obligations of state parties in realising the right as discussed in detail below.

Availability refers to functioning educational institutions and programmes being made available in sufficient quantity by state parties.<sup>266</sup> It is recognised that these institutions need several components to function, depending on factors such as the development within which the institutions operate.<sup>267</sup> The components mentioned are buildings, sanitation facilities, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, facilities such as a library, computer facilities and information technology.<sup>268</sup> Some of these components were reiterated by Singh, the special rapporteur on the right to education, whose report has contributed towards the normative content of the right to education.<sup>269</sup>

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<sup>262</sup> Article 28(2) of the Convention on the Rights of the Child.

<sup>263</sup> General Comment 13 paras 6 and 8.

<sup>264</sup> General Comment 13 para 6.

<sup>265</sup> See A Strohwalder "The Child's Right to Basic Education in South Africa: The Importance of Reporting to the African Committee of Experts on the Rights and Welfare of the Child" (2022) 47 *South African Yearbook of International Law* 1 at 4–5 and Churr "Realisation of a Child's Right to a Basic Education" 2414. See also A Skelton "The Role of the Courts in Ensuring the Right to a Basic Education in a Democratic South Africa: A Critical Evaluation of Recent Education Case Law" (2013) 46 *De Jure* 1 at 4–5.

<sup>266</sup> General Comment 13 para 6(a).

<sup>267</sup> *Ibid.*

<sup>268</sup> *Ibid.*

<sup>269</sup> K Singh "Report of the Special Rapporteur on the Right to Education: Normative Action for Quality Education" (2012) 18 para 21 [https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNSR\\_Quality\\_Education\\_2012.pdf](https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNSR_Quality_Education_2012.pdf) (accessed 23 January 2021).

Singh is of the view that education must be of the set minimum level of acquisition of knowledge, skills, and competencies; there must be adequate school infrastructure, facilities and environment; there must be a well-qualified teaching force; and schools must be open to everyone's participation (especially learners, their parents and the community).<sup>270</sup> Accordingly, failure to provide schools like in the *Centre for Child Law v Government of the Eastern Cape Province (Mud schools case)*<sup>271</sup> was an impediment on availability.<sup>272</sup> So was the failure to provide LTSM in *Freedom Stationary (Pty) v MEC for Education, Eastern Cape*<sup>273</sup> and the failure to provide textbooks in *Section 27 v Minister for Education*.<sup>274</sup>

The institutions and programmes provided for the provision of education must then be accessible to all in three ways; (a) education must be affordable and be free for primary education, (b) education institutions must be within physical reach, and (c) no one must be discriminated against on any ground.<sup>275</sup> Accessibility is therefore about the child's ability to enrol and attend school.<sup>276</sup> Any obstacle which prevents access, such as in *Head of Department, Department of Education, Free State Province v Welkom High School*<sup>277</sup> where the school policy provided that a pregnant learner must leave school and only return later, impedes on school accessibility. Similarly, the failure on the department to provide scholar transport as was seen in *Tripartite Steering Committee v Minister of Basic Education*<sup>278</sup> also impedes on this international requirement.

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<sup>270</sup> *Ibid.*

<sup>271</sup> Eastern Cape High Court, Bisho, unreported case no 504/2010.

<sup>272</sup> Skelton "The Role of the Courts in Ensuring the Right to a Basic Education" 6–7.

<sup>273</sup> (59/2011) [2011] ZAECBHC 1 (10 March 2011). Although the Court found that the interdict was justified and the problems that lead to the failure of the delivery of LTSM were the Department's own making, the case still crucially demonstrates that LTSM are a necessary component for the provision of basic education (see Skelton "The Role of the Courts in Ensuring the Right to a Basic Education" 8–9).

<sup>274</sup> 2013 (2) SA 40 (GNP). See Skelton "The Role of the Courts in Ensuring the Right to a Basic Education" 10.

<sup>275</sup> General Comment 13 para 6(b).

<sup>276</sup> Skelton "The Role of the Courts in Ensuring the Right to a Basic Education" 11.

<sup>277</sup> 2014 (2) SA 228 (CC). See Skelton "The Role of the Courts in Ensuring the Right to a Basic Education" 13–15.

<sup>278</sup> 2015 (5) SA 107 (ECG). See Skelton "The Role of the Courts in Ensuring the Right to a Basic Education" 11–12.

The acceptability requirement means that the form and substance of education provided must be of a good quality, be appropriate and culturally relevant with each state being expected to set its own minimum standards.<sup>279</sup> It has been argued that acceptability relates to the curriculum and teaching methods.<sup>280</sup> On the other hand, it has also been contended that acceptability is also about the adequacy of the education being provided, and touches on issues of capacity and class size such that *MEC for Education, Gauteng Province v Governing Body, Rivonia Primary School*<sup>281</sup> would be an example of an impediment on this component as the learner could not be enrolled due to the school admission policy which limited school capacity.<sup>282</sup>

Finally, education has to be flexible so to adapt to the needs of changing societies and communities and respond to the needs of learners within their diverse social and cultural settings.<sup>283</sup> Importantly, the principle of the best interests of a child is paramount in the 4-A scheme.<sup>284</sup>

At a regional level, the African Charter on Human and People's Rights states that every individual has the right to education.<sup>285</sup> The African Charter on the Rights and Welfare of the Child also recognises the right to education for children,<sup>286</sup> and that basic education shall be free and compulsory.<sup>287</sup> The Charter on the Rights and Welfare of the Child further states that the education shall be for the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential.<sup>288</sup> State parties are to take appropriate measures, including legislative measures, to ensure the realisation of this right including making primary education free and compulsory.<sup>289</sup> In terms of the General Comment No. 5 on State Party Obligations Under the African Charter on the Rights and Welfare of the Child, state

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<sup>279</sup> General Comment 13 para 6(c).

<sup>280</sup> C Simbo "A Hexagonal Right: The Six Dimensions of the South African Right to Basic Education" (2018) 39 *Obiter* 126 at 147.

<sup>281</sup> 2013 (6) SA 582 (CC).

<sup>282</sup> Skelton "The Role of the Courts in Ensuring the Right to a Basic Education" 17.

<sup>283</sup> General Comment 13 para 6(d).

<sup>284</sup> General Comment 13 para 7. See also Skelton "The Role of the Courts in Ensuring the Right to a Basic Education" 5–6.

<sup>285</sup> Article 17(1) of the African Charter on Human and People's Rights, 1986.

<sup>286</sup> Article 11(1) of the African Charter on the Rights and Welfare of the Child, 1999.

<sup>287</sup> Article 11(3)(a) of the African Charter on the Rights and Welfare of the Child.

<sup>288</sup> Article 11(2)(a) of the African Charter on the Rights and Welfare of the Child.

<sup>289</sup> Article 11(3)(a) of the African Charter on the Rights and Welfare of the Child.

parties are also to adopt legislative measures to ensure the abolition of corporal punishment and encourage school attendance.<sup>290</sup>

Female children are especially protected. State parties are to take all appropriate measures to ensure that children who become pregnant before completing their education have an opportunity to continue with their education.<sup>291</sup> Like the international framework, state parties are autonomous to establish minimum standards for their education system as long as there is observance of the above.<sup>292</sup>

Finally, the African Youth Charter is explicit about the quality of education and states that every young person has the right to education of good quality<sup>293</sup> and that basic education must be free and compulsory.<sup>294</sup> The purpose of such education is a holistic development of young persons, the provision of life skills to function effectively and lead responsible lives in free societies, and the preservation of good African values.<sup>295</sup>

In conclusion, international and regional instruments are in agreement that the realisation of the right to education includes the provision for free and compulsory primary/elementary education as well as the provisioning of the following:

- “(i) infrastructural provisioning, which includes the building of schools, classrooms and the provisioning of water, sanitation and services;
- (ii) personnel expenditure, which includes educator salaries; and
- (iii) non-personnel recurrent expenditure, which includes capital equipment and consumables used inside schools for schools to function properly, such as textbooks, stationery and computers.”<sup>296</sup>

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<sup>290</sup> General Comment No. 5 on State Party Obligations Under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection (10 August 2018) 20–21.

<sup>291</sup> Article 11(6) of the African Charter on the Rights and Welfare of the Child. This has been found very important in the African context where teenage pregnancy is still highly frowned upon and deemed a disciplinary offence.

<sup>292</sup> Article 11(7) of the African Charter on the Rights and Welfare of the Child.

<sup>293</sup> Article 13(1) of the African Youth Charter, 2006. A youth is defined as everyone between the age of 15 and 35.

<sup>294</sup> Article 4(a) and (i) of the African Youth Charter.

<sup>295</sup> Article 3(a), (c), (d) and (f) of the African Youth Charter.

<sup>296</sup> Arendse “The South African Constitution’s Empty Promise” 112. See also Veriava “Basic Education Provisioning” 227.

These instruments correspond in respect of the purpose of education in relation to children, the youth, and the community at large, as well as the importance thereof. Nationally, determining the scope and content of socio-economic rights is predominantly the duty of the legislative and executive branches of government. These branches fulfil this duty in several ways, ranging from enacting legislation to the formulation of policies, and the actions of the administrative arm of the executive in implementing the legislation and policies.

Parliament has enacted SASA, which sets the uniform national norms and standards in the governance, organisation and funding of schools.<sup>297</sup> SASA provides for compulsory school attendance, and the exemption thereof, from 7 years up to the age of 15 years or grade 9.<sup>298</sup> It is the duty of the member of the executive council in every province to provide public schools and to ensure that there are enough school places for every child who lives in their province to attend school.<sup>299</sup> Public schools must admit learners without requiring an entry exam and provide for their educational requirements without unfair discrimination on any ground.<sup>300</sup>

SASA provides for the Minister of Basic Education to prescribe the minimum uniform norms and standards for, amongst other things, school infrastructure and the provision of LTSM.<sup>301</sup> School infrastructure relates to classrooms, electricity, water, sanitation, library, laboratories, and sports facilities.<sup>302</sup> LTSM include stationery and supplies, teaching equipment, electronic equipment, school furniture and other subject-specific equipment.<sup>303</sup>

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<sup>297</sup> Preamble of SASA.

<sup>298</sup> Section 3(1). The ages of compulsory attendance at school for learners with special education needs are to be determined by the Minister of Basic Education and published by notice in a government gazette.

<sup>299</sup> Section 12(1) and section 3(3) of SASA.

<sup>300</sup> Section 5(1) and (2) of SASA.

<sup>301</sup> Section 5A(1) of SASA.

<sup>302</sup> Section 5A(2)(a) of SASA.

<sup>303</sup> Section 5A(2)(c) of SASA.

Further, the Employment of Educators Act<sup>304</sup> which is applicable to all public schools<sup>305</sup> provides for the employment of educators. This Act states that the director-general is the employer of the education staff in the provincial offices.<sup>306</sup> The provincial head of the department is the employer of the educators in schools in the province.<sup>307</sup>

The National Education Policy Act<sup>308</sup> provides for the development of policy for the planning, financing, coordination, management, governance, monitoring, evaluation, and well-being of the education system by the Minister of Basic Education.<sup>309</sup> The national and provincial legislatures have concurrent legislative competence in relation to basic education.<sup>310</sup> Accordingly, there are also provincial statutes on basic education.<sup>311</sup> In the context of the Eastern Cape, this statute is the Eastern Cape Schools Education Act (EC Education Act).<sup>312</sup>

The national and provincial legislation has been given effect to through national, provincial and district policies, plans, programmes and projects facilitated by the executive branch.<sup>313</sup> While the different components of the right to basic education are provided for in the statutory and policy frameworks, the realisation of these components does not automatically follow. This is in the sense that the different role-players do not always comply with or implement the statutory and policy framework. In those instances, the judiciary plays a crucial role in ensuring the realisation of the right. Such judicial intervention has contributed towards the content of the right to basic education.

The seminal case on the right to basic education, *Governing Body of the Juma Masjid Primary School v Essay N.O.*<sup>314</sup> although mainly renowned for clarifying the legal

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<sup>304</sup> Act 76 of 1998.

<sup>305</sup> Section 2 of the Employment of Educators Act.

<sup>306</sup> Section 3(1)(a) of the Employment of Educators Act.

<sup>307</sup> Section 3 of the Employment of Educators Act.

<sup>308</sup> Act 27 of 1996.

<sup>309</sup> Section 3(4) of the National Education Policy Act.

<sup>310</sup> Schedule 4 Part A of the Constitution.

<sup>311</sup> Section 2(3) of SASA.

<sup>312</sup> Act 1 of 1999.

<sup>313</sup> Some of the programmes include the ASIDI, which was established for the provision of infrastructure, and the NSNP, which was established for the provision of food to learners.

<sup>314</sup> 2011 (8) BCLR 761 (CC).

standard of realisation of this right, recognised that access to schools is pivotal component of the right to basic education.<sup>315</sup> In *AB v Pridwin Preparatory School* the Court also implicitly acknowledged that the right to basic education requires the state to provide a certain quality of education.<sup>316</sup> Scholars have also taken the view that quality basic education is a component of the right to basic education.<sup>317</sup> In *Equal Education v Minister of Basic Education*<sup>318</sup> the Pretoria High Court confirmed that the provision of basic nutrition to learners is a component of the right to basic education.<sup>319</sup>

Similarly, in *Centre for Child Law v Minister of Basic Education*<sup>320</sup> the Grahamstown High Court held that the provision of both educator and non-educator staff is a component of the right to basic education.<sup>321</sup> In 2013, the ECDBE established an educator and non-educator post-establishment programme to hire educators and non-teaching staff in identified posts in public schools.<sup>322</sup> The ECDBE subsequently failed to implement the programme; for almost three years, it persistently failed to appoint the said staff or to pay appointed staff throughout the province.

Negatively affected by the failure of the ECDBE to pay or hire teachers and administrative staff, several schools approached the Court to seek an order compelling the DBE to implement the 2013 educator post-establishment and to pay the educators that the schools had employed when the DBE had failed to do so.<sup>323</sup> The parties settled on the issues relating to educators; the issue that remained for the Court's determination was in relation to non-educator staff.

The question was whether the DBE was obliged to declare the post-establishment for non-teaching staff at public schools and to ensure that those posts were filled.<sup>324</sup> It was held that the DBE's policy provided for the provision of non-teacher staff as an

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<sup>315</sup> 2011 (8) BCLR 761 (CC) para 43.

<sup>316</sup> 2020 (5) SA 327 (CC) para 164.

<sup>317</sup> Simbo "A Hexagonal Right" 143.

<sup>318</sup> 2021 (1) SA 198 (GP).

<sup>319</sup> 2021 (1) SA 198 (GP) para 40.

<sup>320</sup> 2013 (3) SA 183 (ECG).

<sup>321</sup> 2013 (3) SA 183 (ECG) para 16.

<sup>322</sup> 2013 (3) SA 183 (ECG) para 2.

<sup>323</sup> *Ibid.*

<sup>324</sup> 2013 (3) SA 183 (ECG) para 9.

essential component of the right to basic education.<sup>325</sup> The Court explained that SASA contemplates the employment of both teaching and non-teaching staff. While the Employment of Educators Act is silent on non-teaching staff, it does not mean that there is no obligation on DBE to employ and fill non-teaching staff posts. The employment of non-teaching staff is governed by the Public Services Act 103 of 1994.<sup>326</sup> Accordingly, there was a statutory obligation to declare the post-establishment on non-teaching staff at public schools and to ensure that those posts were filled.<sup>327</sup> In *Linkside v Minister of Basic Education*,<sup>328</sup> the Court re-affirmed that the right to basic education includes the provision of both educator and non-educator staff.

Other cases with courts having contributed towards developing the content of the right to basic education include *Tripartite Steering Committee v Minister of Basic Education*. In this case, the Eastern Cape Department of Basic Education had failed to provide scholar transport which it had purported to provide in terms of its policy.<sup>329</sup> It was held that failure to provide scholar transport violated the right to basic education,<sup>330</sup> the Court declared scholar transport a component of the right to basic education.

In *Madzodzo v Minister of Basic Education*<sup>331</sup> the Eastern Cape Department of Basic Education had planned for the provision of age and grade appropriate furniture (a plan that was made through an agreement which had been made an order of court) but failed to implement it.<sup>332</sup> Although the initial dispute was settled, this case confirmed that the provision of school furniture is a component of the right to basic education. Similarly, the *Mud schools* case confirmed that the provision of school buildings or classrooms is a component of the right to basic education.<sup>333</sup> This was further confirmed in *Equal Education v Minister of Basic Education* where Msizi AJ held that

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<sup>325</sup> 2013 (3) SA 183 (ECG) para 22.

<sup>326</sup> 2013 (3) SA 183 (ECG) para 26.

<sup>327</sup> 2013 (3) SA 183 (ECG) para 32.

<sup>328</sup> (3844/2013) [2015] ZAECGHC 36 (26 January 2015) paras 9 and 25.

<sup>329</sup> 2015 (5) SA 107 (ECG) para 2.

<sup>330</sup> 2015 (5) SA 107 (ECG) para 19.

<sup>331</sup> 2014 (3) SA 441 (ECM).

<sup>332</sup> 2014 (3) SA 441 (ECM) para 5.

<sup>333</sup> RD Nanima and E Durojaye "Four Years Following South Africa's Declaration Upon the Ratification of the ICESCR and Jurisprudence on the Right to Basic Education: A Step in the Right Direction?" (2019) 23 *Law, Democracy and Development* 270 at 290–291.

the provision of basic school infrastructure is an integral component of the right to basic education.<sup>334</sup> So did *Khula Community Development Project v The Head of Department, Eastern Cape Department of Education*<sup>335</sup> and *Section 27 v Minister for Education*<sup>336</sup> confirm that the provision of school stationery and textbooks, respectively, are components of the right to basic education. Further, courts have unequivocally affirmed that adequate sanitation is as important for the realisation of the right to basic education. In *Komape v Minister of Basic Education*, Muller J held that the right to basic education includes the provision of adequate and safe toilets at public schools.<sup>337</sup>

Rights are interconnected and interlinked,<sup>338</sup> so is their interpretation and realisation, hence the notion that while there are rights to education, there are also rights in education and then rights through education.<sup>339</sup> Rights in education include the rights to dignity, equality,<sup>340</sup> and basic nutrition for children. The notion of rights through basic education is mainly about the fact that education facilitates access to other civil, political and socio-economic rights.<sup>341</sup>

The South African jurisprudence demonstrates that dignity and equality are not only rights, but they are also the founding values that shape the interpretation of the substantive provisions in the Bill of Rights.<sup>342</sup> The right to human dignity affirms inherent dignity to all people and calls for a corresponding treatment.<sup>343</sup> The right to equality calls for both formal and substantive equality. Formal equality is about all persons being equal before the law and being treated as such.<sup>344</sup> Substantive equality, on the other hand acknowledges the South African history of segregation and

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<sup>334</sup> 2019 (1) SA 421 (ECB) para 47.

<sup>335</sup> Eastern Cape High Court, Grahamstown, unreported case no 611/2022 (22 March 2022) paras 5, 10 and 39.

<sup>336</sup> 2013 (2) SA 40 (GNP) para 25.

<sup>337</sup> (1416/2015) [2018] ZALMPPHC 18 (23 April 2018) paras 61–63.

<sup>338</sup> *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 24.

<sup>339</sup> Churr “Realisation of a Child’s Right to a Basic Education” 2417–2418.

<sup>340</sup> Most cases arguing a violation of the right to basic education consequentially argue the violation of the right to human dignity and equality. For example, see *Madzodzo v Minister of Basic Education and Centre for Child Law v MEC for Education, Gauteng* 2008 (1) SA 223 (T).

<sup>341</sup> Churr “Realisation of a Child’s Right to a Basic Education” 2417–2418.

<sup>342</sup> S Woolman “Dignity” in S Woolman and M Bishop (eds) *Constitutional Law in South Africa* 2 ed (2014) 36– (24–25).

<sup>343</sup> Section 10 of the Constitution.

<sup>344</sup> Section 9(1)–(4) of the Constitution.

inequality thus allowing for measures to negate the impact of that history.<sup>345</sup> It is about the impact of conduct than mere difference in how persons are treated, hence it allows differentiation whose impact negates lived inequalities,<sup>346</sup> affirmative action for example. Equality in the right to education means that learners are protected against discrimination on any ground (race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth).<sup>347</sup>

Any measures adopted to realise the right to basic education and fulfil its components must do so in the context of the realisation of these other rights. For example, in *Madzodzo v Minister of Basic Education* the furniture crisis in the public schools located in deep rural areas was found to be a violation of the learners' right to equality.<sup>348</sup> Further, it was held that the state's persistent failure to address the shortage was also a violation of the learner's right to dignity.<sup>349</sup> Similarly, in *Minister of Basic Education v Basic Education for All* the Court held that expecting learners from poor schools to borrow books and make photocopies while other schools have textbooks for each learner was a violation of the learners' right to equality.<sup>350</sup> In *Komape v Minister of Basic Education* it was held that "[t]he systemic practice or policy, not to take active steps to equip schools in rural areas with safe and adequate toilets, and by allowing the lack of adequate sanitation to persist in those schools is viewed as a breach of human dignity".<sup>351</sup>

The right to basic education is further connected to other rights depending on the component at issue. In *Tripartite Steering Committee v Minister of Basic Education*, the Court relied on the right to freedom and security of the person, including the right to be free from all forms of violence from either public or private sources.<sup>352</sup> It was held that failure to provide scholar transport violated the right to basic education as well as

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<sup>345</sup> C Albertyn and B Goldblatt "Equality" in S Woolman and M Bishop (eds) *Constitutional Law in South Africa* 35– (6–7).

<sup>346</sup> Albertyn and Goldblatt "Equality" 6.

<sup>347</sup> Churr "Realisation of a Child's Right to a Basic Education" 2420.

<sup>348</sup> 2014 (3) SA 441 (ECM) para 36.

<sup>349</sup> *Ibid.*

<sup>350</sup> 2016 (4) SA 63 (SCA) para 49.

<sup>351</sup> [2018] ZALMPPHC 18 para 61.

<sup>352</sup> 2015 (5) SA 107 (ECG) para 13.

the right to freedom and security of the learners as the learners were susceptible to safety risks related to walking to school.<sup>353</sup> Similarly, in *Komape v Minister of Basic Education* it was held that the dangerous and harmful effects of inadequate or non-existing sanitation at toilets in schools is a violation of the right to an environment that is not harmful.<sup>354</sup>

It has been accepted that neither of the arms of government have established an absolute scope and content of the right to basic education.<sup>355</sup> Some scholars had problematised this,<sup>356</sup> however, others have reasoned that this is the favourable position as the right, like the definition of basic education,<sup>357</sup> needs to be flexible and adaptable to the changing needs of society which is in line with the transformative role the right is meant to play.<sup>358</sup> Courts have also stated that the right to basic education must be broad and encompassing.<sup>359</sup> In light of the flexible nature of the right, it can be argued that effective school governance is a component of the right to basic education, in the same sense that quality education is.

As mentioned above, internationally the right to basic education encompasses a school open to participation by everyone.<sup>360</sup> Nationally, this is underscored by the broad provision for parental and community participation in school governance as established in SASA.<sup>361</sup> The courts have also recognised the importance of SGBs and the partnership they have with provincial Heads of Department (HODs) and Members of the Executive Council (MECs) in the running of schools for the realisation of the right to basic education and the broader democratic dispensation in South Africa.<sup>362</sup>

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<sup>353</sup> 2015 (5) SA 107 (ECG) paras 13 and 19.

<sup>354</sup> [2018] ZALMPPHC 18 paras 62–63.

<sup>355</sup> Churr “Realisation of a Child’s Right to a Basic Education” 2408–2409.

<sup>356</sup> See Simbo “A Hexagonal Right” 127–129.

<sup>357</sup> 2021 (3) SA 323 (CC) paras 30–33.

<sup>358</sup> Churr “Realisation of a Child’s Right to a Basic Education” 2412.

<sup>359</sup> 2013 (2) SA 40 (GNP) para 22.

<sup>360</sup> Singh “Report of the Special Rapporteur” para 21.

<sup>361</sup> S Mansfield-Barry and L Stwayi “School Governance” in Veriava *et al Basic Education Rights Handbook* 80.

<sup>362</sup> See *Head of Department, Department of Education, Free State Province v Welkom High School* 2014 (2) SA 228 (CC) paras 36 and 123. See also *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (2) SA 415 (CC) para 56.

Further, South African scholars have endorsed this position stating that community leaders and parents can play a significant role to assist schools to be effective and provide quality education since parents are invested in their children's education.<sup>363</sup> The participation by and cooperation between different stakeholders involved in school governance must therefore make the school environment conducive to learning<sup>364</sup> thus enabling the realisation of the right to basic education. It is to this important aspect of the right to basic education that the discussion now turns.

#### 4.4. Public school governance

In order to make sense of the current provision for school governance, it is necessary to consider the history of the South African education system. Historical experiences are likely to influence the implementation of policies<sup>365</sup> because:

“In attempting educational reforms we are captives of history in two ways: all people and institutions are the product of history (past events); and, all people use history (an interpretation of past events) when they make choices about the present and future. Consequently educational reform (or planned change) is a ‘tinkering towards utopia’, that is, incremental or gradual changes towards an idealized state.”<sup>366</sup>

##### 4.4.1 A historical account of public school governance

Like any other part of South Africa which accommodated Blacks, Transkei provided Bantu Education in terms of the Bantu Education Act.<sup>367</sup> Generally, the education system in Bantustans was led by autocratic administrators who left little room for parental or community input.<sup>368</sup> After gaining its “independence”, the Transkei's Constitution Act<sup>369</sup> provided for the establishment of a department of education which would administer education in terms of the Transkei Education Act.<sup>370</sup> The community

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<sup>363</sup> Arendse “The South African Constitution's Empty Promise” 132–133.

<sup>364</sup> Singh “Report of the Special Rapporteur” para 77.

<sup>365</sup> JP Naidoo *Education Decentralization and School Governance in South Africa: From Policy to Practice* (Doctor of Education thesis, Harvard Graduate School of Education, 2004) 21–22.

<sup>366</sup> *Ibid.*

<sup>367</sup> Act 47 of 1953.

<sup>368</sup> J Bathon *et al* “Parent Participation in School Governance: A Legal Analysis of Experience in South Africa and Kentucky” (2011) 32 *Journal of School Public Relations* 349 at 351.

<sup>369</sup> Act 48 of 1963 and subsequently Act 2 of 1964.

<sup>370</sup> Act 2 of 1964.

schools which had been established and maintained by a Bantu authority/tribe/community, registered in terms of section 9 of the Bantu Education Act were transferred to the government of the Transkei.<sup>371</sup> These schools were managed and governed by school committees.<sup>372</sup> School committees had seven members “[t]wo of whom were nominated by the Secretary for Bantu Education to represent religious interest, and the rest were nominated by the tribal authority or by the chief, subject to the Secretary’s approval. Two of those were chosen to represent the authority of the chief and those were drawn from amongst the parents”.<sup>373</sup>

School committees were supervised at a regional/district level by school boards. The composition of school boards was similar to that of school committees.<sup>374</sup> The board members were appointed by traditional authorities and Bantu Commissioners (who were White) rather than by parents.<sup>375</sup> There were eight board members, six of which were appointed by a regional/district authority subject to the approval of the Secretary for Bantu Education.<sup>376</sup> These six appointed members were made up of two members from the department, while two members were parents chosen from the parents who were members of school committees, and two were representing religious leaders.<sup>377</sup> School boards employed teachers, maintained and controlled schools in their region, allocated school equipment, and supervised school committees’ financial management.<sup>378</sup>

It should be noted that between 1964 and 1994, Transkei, like other homelands, experienced a high level of political turmoil. Schools were often fertile grounds for political movements. This makes it difficult to discern the nature of school governance in Transkei during this period as “[g]overnance in schools in ... the Transkei ... was a highly uneven affair”<sup>379</sup> – meaning it varied from region to region and even from school

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<sup>371</sup> Short title and section 2 of Act 2 of 1964.

<sup>372</sup> Section 12 of Bantu Education Act.

<sup>373</sup> CJ Buthelezi *A Critical Analysis on Bantu School Boards, 1954–1978: Local Administration of Black Education in South Africa* (Doctor of Philosophy thesis, Michigan State University, 2000) 75.

<sup>374</sup> *Ibid.*

<sup>375</sup> *Ibid.*

<sup>376</sup> Buthelezi *A Critical Analysis on Bantu School Boards* 76.

<sup>377</sup> *Ibid.*

<sup>378</sup> *Ibid.*

<sup>379</sup> Meny-Gibert “State ‘Infrastructural Power’ and the Bantustans” 63.

to school depending on the political climate at the time. Nonetheless, it has been argued for the most part that, while the functions of school boards and committees were sound on paper, the execution of those functions was a problem. The members of school boards were neither trained nor adequately supported in performing their roles, they mainly had inadequate managerial skills for the tasks they were expected to execute.<sup>380</sup> Parents from rural and township schools “were marginalised, less involved and uncertain about their roles as opposed to parents in model C schools (then mainly for Whites) who played a more significant role in school governance”.<sup>381</sup>

Beyond issues of lack of capacitation, it has been argued that the school boards and committees provided a limited, or even a false sense of decentralisation since their very members were appointed by the central government rather than being elected by parents.<sup>382</sup> Save for one tribe, the chiefs who appointed some committee members were not democratically elected themselves,<sup>383</sup> and tended to be the puppets of the state for their own personal gain, ultimately, the decisions made by chiefs were in effect those of the state.<sup>384</sup> Further, teachers were appointed by the central government.<sup>385</sup> To remedy this, post-apartheid, the government’s intention was to decentralise and democratise school governance.<sup>386</sup> This would enable citizens to participate beyond the national elections in decision-making processes that would shape their future and that of their children.<sup>387</sup>

It must be noted that there are different views about the decision to decentralise school governance. Some scholars argue that the nationalist party’s commitment to decentralising the schooling system was rooted on the view that giving more control to parents, as persons responsible for school fees, would enhance efficiency, effectiveness, and quality which would mean more privilege to former model C

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<sup>380</sup> Buthelezi *A Critical Analysis on Bantu School Boards* abstract.

<sup>381</sup> Galetuke *School Governing Bodies’ Support* 6.

<sup>382</sup> Buthelezi *A Critical Analysis on Bantu School Boards* 31. See also Galetuke *School Governing Bodies’ Support* 6–7.

<sup>383</sup> Buthelezi *A Critical Analysis on Bantu School Boards* 77.

<sup>384</sup> Buthelezi *A Critical Analysis on Bantu School Boards* 78.

<sup>385</sup> Buthelezi *A Critical Analysis on Bantu School Boards* 5.

<sup>386</sup> Naidoo *Education Decentralization* 18 and 22. See also Mansfield-Barry and Stwayi “School Governance” 76 and 80.

<sup>387</sup> SG Lewis and J Naidoo “Whose Theory of Participation? School Governance Policy and Practice in South Africa” (2004) 6 *Current Issues in Comparative Education* 100 at 102.

schools.<sup>388</sup> At the same time, the government is criticised for prioritising individual freedoms and rights over social service provision issues—viewing individuals as consumers which is reflected in the discourse of parental choice and consumers' power.<sup>389</sup> The opposition political parties are said to have believed in community control/grassroots control as the state was seen as the oppressor, accordingly, decentralisation was sought to give unheard voices the platform.<sup>390</sup> It suffices to say that there was agreement in favour of decentralisation irrespective of the differences in the motivation thereof.

#### 4.4.2. Public school governance post 1994

A new school governance system based on citizen participation and partnership between the government, parents, learners, school staff and the community at large was established.<sup>391</sup> The Education White Paper 2: The Organisation, Governance and Funding of Schools, preceding the enactment of SASA, was explicit in its recommendation for a decentralised form of school governance.<sup>392</sup> For example, it states unequivocally that “[t]he new organisation and governance system ... involve a radical decentralisation of management and governance responsibilities to local schools and communities”.<sup>393</sup> SASA would then be designed to allow parents, learners and the community to have a greater role in managing the provision of education to realise the right to basic education.<sup>394</sup> The rules and regulations relating to school governance would also enable this envisioned community participation.<sup>395</sup> Further, the notion of grassroots control was later recognised by the Constitutional Court when it

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<sup>388</sup> Y Sayed “Discourse of the Policy of Educational Decentralisation in South Africa since 1994: An Examination of the South African Schools Act [1][2]” (1999) 29 *Compare: A Journal of Comparative and International Education* 141 at 142. See also Arendse “The South African Constitution’s Empty Promise” 128–131.

<sup>389</sup> Sayed “Discourse of the Policy of Educational Decentralisation” 142. See further V Dieltiens “The Fault-Lines in South African School Governance: Policy or Practice?” (2011) *Journal of Educational Studies* 30 at 35.

<sup>390</sup> Sayed “Discourse of the Policy of Educational Decentralisation” 143. See also Dieltiens “The Fault-Lines in South African School Governance” 32 and Arendse “The South African Constitution’s Empty Promise” 128–131.

<sup>391</sup> Lewis and Naidoo “Whose Theory of Participation?” 102.

<sup>392</sup> Education White Paper 2: The Organisation, Governance and Funding of Schools, GN 130, *Government Gazette* 16987, 14 February 1996.

<sup>393</sup> Education White Paper 2 para 4.2.

<sup>394</sup> Mansfield-Barry and Stwayi “School Governance” 80. See also V Mncube *et al* “Effective School Governing Bodies: Parental Involvement” (2011) 43 *Acta Academica* 210 at 214–215.

<sup>395</sup> Singh “Report of the Special Rapporteur” 18 para 77.

referred to SGBs as an example of “grassroots democracy” because they are a means through which the people who are directly affected by the right to education can be involved in realising it.<sup>396</sup>

However, neither SASA nor the EC Education Act define “governance” or “school governance”. In *Head of Department, Department of Education, Free State Province v Welkom High School* regard was had to the Oxford dictionary definition of governance – “(t)he action or manner of governing’, ‘(c)ontrolling, directing or regulating influence’ and ‘(t)he manner in which something is governed or regulated; method of management, system of regulations’”.<sup>397</sup> Despite the lack of a clear definition of school governance, the legislative framework is unequivocal that school governance is to be democratic. The term democracy, also not defined, has no simple meaning but at minimum it encompasses participation and representation.<sup>398</sup> The Education White Paper 2 states that the “governance policy for public schools is based on the core values of democracy” which are identified as representation of all stakeholder groups, participation, tolerance, rational discussion and collective decision-making.<sup>399</sup>

Accordingly, it has been argued that the post-apartheid education system entrenched values of representative and participatory democracy, cooperative governance and meaningful engagement with courts having confirmed the position.<sup>400</sup> Further, SGBs are expected to operate in accordance with the general principles of constitutional democracy such as *batho pele* principles and the values of *ubuntu*.<sup>401</sup>

Participatory democracy can be seen as a process in which staff members, who might be subordinates, share a significant degree of decision-making power with their

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<sup>396</sup> Mansfield-Barry and Stwayi “School Governance” 80.

<sup>397</sup> 2014 (2) SA 228 (CC) para 60.

<sup>398</sup> V Mncube and I Naicker “School Governing Bodies and the Promotion of Democracy: A Reality or a Pipe-Dream” (2011) 10 *Journal of Educational Studies* 142 at 144. See also Mncube *et al* “Effective School Governing Bodies” 211.

<sup>399</sup> Education White Paper 2 paras 3.1 and 3.6.

<sup>400</sup> Mansfield-Barry and Stwayi “School Governance” 80–81. Arendse “The South African Constitution’s Empty Promise” 134–136.

<sup>401</sup> Buka *et al* “Sustaining Good Management Practices” 104. See also Arendse “The South African Constitution’s Empty Promise” 135 and *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (2) SA 415 (CC) para 57.

immediate superiors.<sup>402</sup> Generally, parents would be expected to have more decision-making power as they always form the majority in SGBs.<sup>403</sup> Nonetheless, the shared decision-making power must be exercised by consulting with everyone whose needs are affected.<sup>404</sup> Linked to the idea of participatory democracy<sup>405</sup> is cooperative democracy in that all the parties involved in governing schools must work with each other in a supportive and collaborative manner.<sup>406</sup>

Meaningful engagement, a process used to resolve issues or disagreements that the parties may have with each other, forms part of co-operative governance.<sup>407</sup> The parties are encouraged to communicate constructively in order to provide clarity on a certain issue.<sup>408</sup> This is seen as the most effective way to resolve a dispute as the parties are better suited for this than the courts whose area of expertise is not school governance.<sup>409</sup> The understanding was that democratic school governance would facilitate improvement in schools as democratic schools are believed to be effective.<sup>410</sup> It was believed that despite the significant problems facing the educational system, SGBs provide a good prospect of enhancing local democracy and improving the quality of education for learners.<sup>411</sup>

Importantly, SGBs would be enabled to participate in the decision-making process and an enabling culture would be provided for their voices to be engaged with meaningfully.<sup>412</sup> At minimum, SGB members are expected to be well informed about issues of school governance and understand that democracy and social justice should be taken into consideration and be used as a way of enhancing school

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<sup>402</sup> AB Buthelezi and BT Gamede “Challenges Facing Secondary School Principals Regarding Effective Implementation of Participative Management in Patriarchal South Africa” (2019) 17 *Gender and Behaviour* 14547 at 14549.

<sup>403</sup> Arendse “The South African Constitution’s Empty Promise” 132–133.

<sup>404</sup> Mansfield-Barry and Stwayi “School Governance” 80.

<sup>405</sup> *Ibid.*

<sup>406</sup> *Ibid.* See also *Head of Department, Department of Education, Free State Province v Welkom High School* 2014 (2) SA 228 (CC) para 139.

<sup>407</sup> Mansfield-Barry and Stwayi “School Governance” 81.

<sup>408</sup> *Ibid.*

<sup>409</sup> *Ibid.*

<sup>410</sup> Mncube *et al* “Effective School Governing Bodies” 211.

<sup>411</sup> Mncube *et al* “Effective School Governing Bodies” 215.

<sup>412</sup> Arendse “The South African Constitution’s Empty Promise” 135–136.

effectiveness.<sup>413</sup> This is in tandem with the fact that SASA is meant to be a tool for addressing past social injustices.<sup>414</sup>

SASA outlines the main role players in school governance, their composition, term of office, and functions. It provides that the governance of a public school vests with the SGB<sup>415</sup> which stands in a position of trust towards the school.<sup>416</sup> Courts have also stated that SGBs are organs of state and discharge their duties as “part of the State machinery engaged in the crucial program of providing access to basic education to all the children of the country”.<sup>417</sup>

The governing body of a public school comprises elected members, the principal by virtue of his or her official capacity, and co-opted members.<sup>418</sup> The composition of SGBs depends on the type of school the SGB serves and the number of learners in the school. For secondary schools with more than 630 pupils, there are 17 elected members: nine members who are parents of learners in the school, three members who are educators, one member who is not an educator nor a parent of any learner in the respective school, and three learners.<sup>419</sup> Non-educator SGB members include parents of the learners in the school as well as administrative school staff members. Accordingly, in tandem with the notion of grassroots control, parents always make the majority in SGBs.<sup>420</sup>

SGB members serve for three years and may be re-elected or co-opted once their tenure has ended.<sup>421</sup> SGB members are not paid for their service, but the necessary costs relating to the execution of their duties may be reimbursed by the SGB.<sup>422</sup> SGBs are to adhere to a code of conduct determined by the MEC in consultation with

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<sup>413</sup> Mncube *et al* “Effective School Governing Bodies” 214.

<sup>414</sup> Preamble for SASA.

<sup>415</sup> Section 16(1) of SASA.

<sup>416</sup> Section 16(2) of SASA.

<sup>417</sup> *MEC Gauteng v Federation of Governing Bodies for South African Schools* 2015 JDR 2254 (SCA) para 11.

<sup>418</sup> Section 23(1) of SASA.

<sup>419</sup> See EC Regulations for Elections of SGBs 2017, Schedule A.

<sup>420</sup> Mncube *et al* “Effective School Governing Bodies” 213–214.

<sup>421</sup> Section 31(1) and (4) of SASA.

<sup>422</sup> Section 27(1) of SASA.

associations of governing bodies.<sup>423</sup> The code of conduct serves to establish a disciplined and purposeful school environment dedicated to the improvement and maintenance of a quality governance structure in public schools.<sup>424</sup> The MEC for basic education in the Eastern Cape has not published such a code of conduct.

SASA assigns a litany of SGB functions which must be performed in terms of a constitution to be adopted by the SGB.<sup>425</sup> The constitution must provide for a meeting of the SGB at least once per school term; SGB meetings with parents, learners and educators at least once per school year; minute recording of SGB meetings; and reporting to parents, educators and learners by the SGB.<sup>426</sup> The SGB constitution must comply with the minimum requirements determined by the MEC of which none have been made available by the MEC in the Eastern Cape.

In terms of SASA, SGBs are to establish various committees and subcommittees, or working committees, including the executive committee,<sup>427</sup> finance committee<sup>428</sup> or procurement committee, to fulfil certain functions. To establish an executive committee, the SGB must elect office bearers (which include a chairperson, a treasurer and a secretary) from its members.<sup>429</sup> The chairperson must be a parent member who is not employed at the school.<sup>430</sup> Office bearers serve for a year and may be re-elected.<sup>431</sup>

Before discussing the four main functions of SGBs in detail, it must be noted that the EC Education Act mirrors SASA in that it also provides for the composition of SGBs and empowers the MEC to promulgate regulations relating to the composition, elections, functions of SGB and procedures to be followed by SGBs.<sup>432</sup> The MEC published regulations relevant to SGBs in 2003, and 2017. The 2003 Eastern Cape

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<sup>423</sup> Section 18A of SASA.

<sup>424</sup> Section 18A(2) of SASA.

<sup>425</sup> Section 18(1) and 20(1)(b) of SASA.

<sup>426</sup> Section 18(2) of SASA.

<sup>427</sup> Section 30 SASA and section 24 of EC Education Act.

<sup>428</sup> Section 62(1)(a) of EC Education Act.

<sup>429</sup> Section 29(1) SASA.

<sup>430</sup> Section 29(2) SASA.

<sup>431</sup> Section 31(4) of SASA.

<sup>432</sup> Chapter 4 of the EC Schools Education Act.

regulations on SGBs for all public schools expand on what SASA and the EC Education Act provide for in terms of the composition of SGBs<sup>433</sup> and details the election processes<sup>434</sup> and meetings to be held by SGBs.<sup>435</sup> The 2017 regulations are substantially similar to the 2003 regulations and provide forms to be used during SGB elections and some diagrammatic/ tabular representation of SGB composition. The 2017 regulations also apply to schools for learners with special needs, while the 2003 regulations do not.<sup>436</sup>

There have been instances where SGBs are said to have not followed necessary policy provisions in relation to SGB elections. For example, in *School Governing Body of Mabogopedi Secondary School (Elected on 12 April 2018) v Member of the Executive Committee, Department of Education*<sup>437</sup> the SGB was elected outside the stipulated time frames. Consequently, the SGB had to be dissolved and a re-election was to be held. The dissolved SGB launched an application declaring its election valid and the subsequent elections not, essentially seeking that the dissolved SGB be declared legitimate and the subsequently elected SGB not.<sup>438</sup> The Department argued that elections are held from 1 to 31 March of the year that the previous term of SGBs comes to an end, and that permission from the HOD must be sought if there is to be a deviation from this time frame.<sup>439</sup> There were other compliance issues in this matter, one of which was the absence of an electoral officer to oversee the elections. Further, the declaration of elections was signed by the acting principal instead of the election officer.<sup>440</sup> The Court held that no declaratory relief could be granted because the Department's decision remained valid until successfully reviewed and set aside in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).<sup>441</sup>

#### 4.4.3. Chosen SGB functions

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<sup>433</sup> EC Regulations Relating to the Governing Bodies of Schools (Excluding Schools for Learners with Special Needs), GN R51, *Government Gazette* 1072, 04 September 2003 para 2.

<sup>434</sup> Regulations Relating to the Governing Bodies of Schools paras 7–16.

<sup>435</sup> Regulations Relating to the Governing Bodies of Schools paras 19–20.

<sup>436</sup> EC Regulations for Elections of SGBs 2017 para 24. The subsequent 2024 Regulations detail the SGB composition and election processes for both ordinary public schools and public schools for learners with special education needs and provide for three modes of elections including e-elections.

<sup>437</sup> (A5458/2018) [2019] ZALMPPHC 52 (31 October 2019).

<sup>438</sup> [2019] ZALMPPHC 52 paras 2–3.

<sup>439</sup> [2019] ZALMPPHC 52 para 4.

<sup>440</sup> [2019] ZALMPPHC 52 para 5.

<sup>441</sup> [2019] ZALMPPHC 52 para 10.

As stated above, SGBs have a litany of functions stipulated in SASA, provincial legislation and policies. This study focuses on four, i.e. financial management, staff recruitment, property management, and the making of school policies and rules in so far as it relates to these three functions. Further, in light of the fact that the schools that participated in this research have a section 21-status, relevant functions will be discussed and any other functions incidental to the functions focused on in this study.

#### *4.4.3.1. Financial management*

In relation to school finances, the executive must fund public schools from public revenue on an equitable basis.<sup>442</sup> In addition, SGBs must take all reasonable measures to supplement the resources provided by the state to improve the quality of education provided by the school.<sup>443</sup> This often includes fundraising or charging school fees.<sup>444</sup> SGBs are to establish and administer a school fund in accordance with directions issued by the provincial HOD.<sup>445</sup> Money received in trust, both as provided by the state and as supplemented by the SGB, must be paid into the school fund which the SGB must administer in a single banking account.<sup>446</sup> School funds must be used for educational purposes and the performance of SGB functions.<sup>447</sup>

The SGB must prepare a budget which sets out the estimated income and expenditure of the school for the following financial year,<sup>448</sup> and present it to parents at a general meeting for their approval before final approval thereof by the SGB.<sup>449</sup> At least 14 days prior to the general meeting, parents should be notified and given the opportunity to inspect the budget prepared by the SGB.<sup>450</sup> For schools where parents have resolved

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<sup>442</sup> Section 34(1) of SASA.

<sup>443</sup> Section 36(1) of SASA.

<sup>444</sup> Veriava "Basic Education Provisioning" 227. The HOD may give notice of schools that may not charge school fees. There are scholars who argue that the fact that school fees are payable even if in relation to certain schools is a violation of equality and international law as primary education must be free.

<sup>445</sup> Section 37(1) of SASA.

<sup>446</sup> Section 37(1)–(3) of SASA.

<sup>447</sup> Section 37(6)(a)–(c) of SASA.

<sup>448</sup> Section 38(1) of SASA.

<sup>449</sup> Section 38(1) and (20) of SASA.

<sup>450</sup> Section 38(3) of SASA.

that school fees are payable and established the exemption criteria, the SGB must implement the resolution.<sup>451</sup>

SGBs must maintain the school's financial records and statements, and prepare annual financial statements by no later than three months after the end of the school year.<sup>452</sup> The records must be audited by a registered auditor appointed by the SGB and submitted to the HOD within six months after the end of the financial year.<sup>453</sup>

In the Eastern Cape, most of the functions relating to school financial management are to be performed by the finance committee of the SGBs. The EC Education Act makes it mandatory for SGBs to establish a finance committee whose duty is to control and administer school funds.<sup>454</sup> The finance committee consists of five members, being the principal as an ordinary member<sup>455</sup> as well as the accounting officer of the school;<sup>456</sup> a parent member of the SGB; a teacher member of the SGB; a learner where applicable; and any other member of the SGB.<sup>457</sup> The finance committee shall form its own executive committee and report to the SGB at least twice a year.<sup>458</sup>

In instances where the SGB intends to procure goods or services from a state employee or to provide a state employee with any financial benefit for any reason, the SGB must obtain prior approval from the HOD.<sup>459</sup> This is with the exception of travel and subsistence expenses relating to official school activities, but such expenses may "not be greater than those that would be payable to a public servant in similar circumstances".<sup>460</sup>

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<sup>451</sup> Section 39(3) of SASA. In terms section 39(7) of SASA, the Minister may give notice of schools that may not charge school fees. There are scholars who argue that the fact that school fees are payable even if in relation to certain schools is a violation of equality and international law as primary education must be free.

<sup>452</sup> Section 42(a) and (b) of SASA.

<sup>453</sup> Section 43(1), (2) and (5) of SASA.

<sup>454</sup> Section 62(1)(a) of EC Education Act.

<sup>455</sup> Mestry "The Effective and Efficient Management" 3.

<sup>456</sup> Section 64(1) of EC Education Act.

<sup>457</sup> Section 62(2) of EC Education Act.

<sup>458</sup> Section 63 of EC Education Act.

<sup>459</sup> Section 38A of SASA.

<sup>460</sup> Section 38A(5) of SASA.

The devolution of decision-making about financial management to the SGB was intended to ensure that decisions about finances would be made by the SGB of a school to impact positively on learner performance.<sup>461</sup> The Constitutional Court held that SGBs are entrusted with public resources which must be managed not only in the interests of the learners and parents at the time but also in the interests of the broader community in which the school is located and in light of the values of the Constitution.<sup>462</sup> School financial management is therefore about the performance of managerial activities associated with school funds to provide quality education.<sup>463</sup> In relation to effective financial management in schools, studies indicate that effective management of school funds by the SGB can facilitate the alleviation of some of the problems often faced by schools.<sup>464</sup> For example, well managed school funds may leave the school with a surplus which can be utilised to employ more educators to alleviate overcrowding, and this in turn contributes towards high learner achievement.<sup>465</sup>

Research has revealed that some SGBs experience difficulties with budgeting and related procedures, which in turn lead to deviations from the budget.<sup>466</sup> This may be as a result of a lack of financial management skills, incomplete knowledge of policies, poor monitoring and control of funds, a lack of honesty, openness and trustworthiness,<sup>467</sup> as well as the lack of cooperation between principals and SGBs.<sup>468</sup> Finance committees in particular, sometimes lack understanding of their roles and responsibilities.<sup>469</sup> It has been argued that there is therefore a need for more financial

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<sup>461</sup> RN Marishane and RJ Botha “Empowering School-Based Management Through Decentralised Financial Control” (2004) 1 *Africa Education Review* 95 at 95–96.

<sup>462</sup> *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo* 2010 (2) SA 415 (CC) para 80.

<sup>463</sup> AY Aina and K Bipath “School Financial Management: Insights for Decision Making in Public Primary Schools” (2020) 40 *South African Journal of Education* 1 at 1.

<sup>464</sup> Mestry “The Effective and Efficient Management” 7 and 8.

<sup>465</sup> *Ibid.* Mestry’s study was in relation to urban fee-charging schools, and this thesis focuses on rural no-fee schools. There thus may be differences. Nonetheless, it can be accepted that, for the provision of quality education in general, it is essential that SGBs manage school funds (whether from government or raised through payment of school fees) effectively and efficiently (Mestry “The Effective and Efficient Management” 3).

<sup>466</sup> MI Xaba “The Possible Cause of School Governance Challenges in South Africa” (2011) 31 *South African Journal of Education* 201 at 206.

<sup>467</sup> Aina and Bipath “School Financial Management” 2.

<sup>468</sup> Xaba “The Possible Cause of School Governance Challenges” 206.

<sup>469</sup> Marishane and Botha “Empowering School-Based Management” 100.

monitoring by the district.<sup>470</sup> Other challenges include time constraints with SGB teacher members finding that their roles in finance committees take a lot of their teaching time.<sup>471</sup> Such problems result in poor financial management which may even leave room for financial mismanagement which might negatively affect the execution of other functions (property maintenance) as funds are central to those.

Consequently, a school may end up with inadequate resources to sustain itself until it receives the next tranche of funding from the provincial department.<sup>472</sup> This may negatively impact teaching and learning. For schools in rural areas where the SGB is unable to raise extra funds even if not precluded from doing so, any financial mismanagement of already limited funds may make matters worse.

#### *4.4.3.2. Staff recruitment*

SGBs are responsible for the recommendation and employment of educator<sup>473</sup> and non-educator staff.<sup>474</sup> The SGB must make the recommendation within two months of being requested to do so, otherwise the HOD is authorised to appoint an educator without such a recommendation.<sup>475</sup> The SGB may establish posts to employ additional educator and non-educator staff.<sup>476</sup> In employing the staff, the SGB must comply with the values enshrined in section 195 of the Constitution<sup>477</sup> and consider factors such as the ability of a candidate; the principle of equality; the need to redress injustices of the past; the need for representivity, and any applicable employment and labour-related laws.<sup>478</sup>

Generally, the process is that the HOD determines the educator post establishment for public schools.<sup>479</sup> The HOD must use the prescribed model and consider several

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<sup>470</sup> Marishane and Botha "Empowering School-Based Management" 106.

<sup>471</sup> Marishane and Botha "Empowering School-Based Management" 101.

<sup>472</sup> This is exacerbated by the gap between a school's financial year and the state's financial year. In terms of section 44 of SASA, a school financial year begins on the 1<sup>st</sup> of January and ends on the 31<sup>st</sup> of December of each year. Proper planning and execution are therefore imperative for schools.

<sup>473</sup> Section 20(1)(i) of SASA and section 6(3)(a) of Employment of Educators Act.

<sup>474</sup> Section 20(1)(j) of SASA.

<sup>475</sup> Section 6(3)(l) of Employment of Educators Act.

<sup>476</sup> Section 20(4) and (5) of SASA.

<sup>477</sup> The basic rules of public administration which include serving with impartiality, ensuring efficiency and accountability.

<sup>478</sup> Section 20(8) of SASA and section 6(3)(b) read with 7(1) of the Employment of Educators Act.

<sup>479</sup> Section 5(2) of the Employment of Educators Act.

factors outlined in the Creation of Educator Posts in a Provincial Department of Education and the Distribution of such Posts to the Educational Institutions of such a Department,<sup>480</sup> and related regulations and policies. In terms of the provincial guidelines for interviews as provided by the Provincial Education Labour Relations Chamber, and the Personnel Administration Measures (PAM), the department must do the initial sifting before sending the applications to the respective schools.<sup>481</sup> SGBs must invite observers from relevant unions to observe the interview process and there should also be a departmental representative.<sup>482</sup> The guidelines make provision for the procedure to be taken should a departmental official not be present, for example, the interview must not continue if the post is that of a principal.<sup>483</sup>

Once the post has been established and advertised, the SGB must meet to establish an interview committee as well as to elect amongst themselves a secretary and a chairperson of that committee. The interview committee must meet to discuss the interview questions and adopt shortlisting criteria in line with the needs and interests of the school and the requirements of the post.<sup>484</sup> The guidelines detail the procedure during the interviews and thereafter and must be followed.<sup>485</sup> For example, the candidates must all be afforded equal time, and the SGB must not inform any of them about the success or failure of their application, as that is the department's role as the employer.<sup>486</sup> The interview committee must meet with the SGB and present the results for deliberation, ensuring that the recommendation is that of the SGB, not the interview committee.<sup>487</sup> The minutes of the proceedings must be sent to the Department.

The issues with recruitment range from SGBs not making a proper recommendation and the HOD failing to clearly articulate the reasons for declining to make appointments as per recommendations. In *Kimberley Girls' High School v Head*,

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<sup>480</sup> Regulations published in GN 1676, *Government Gazette* 19627, 18 December 1998 as amended, Annexure 1.

<sup>481</sup> Provincial Education Labour Relations Chamber: Eastern Cape para 4.1.2.

<sup>482</sup> Provincial Education Labour Relations Chamber: Eastern Cape paras 4.1.3 and 4.1.4.

<sup>483</sup> Provincial Education Labour Relations Chamber: Eastern Cape para 4.1.5.

<sup>484</sup> Provincial Education Labour Relations Chamber: Eastern Cape para 4.2

<sup>485</sup> Provincial Education Labour Relations Chamber: Eastern Cape para 4.3.

<sup>486</sup> The procedure might change out of necessity in relation to teachers not employed by the department but employed by the SGB.

<sup>487</sup> Provincial Education Labour Relations Chamber: Eastern Cape para 4.4.3.

*Department of Education, Northern Cape Province*<sup>488</sup> the HOD had declined to appoint a teacher as recommended by the SGB, stating that the interview committee disregarded three qualified disadvantaged Black educators.<sup>489</sup> The Court found that the exclusion of the three Black candidates from interviews was unjustified as they had comparable qualifications with the non-Black candidates shortlisted for interviews.<sup>490</sup> Majiedt J held that it could hardly be argued that the three Black candidates were afforded a fair and equal treatment.<sup>491</sup> The SGB argued that the post required that the candidates have English as a home language, yet it had shortlisted a candidate whose home language was Afrikaans.<sup>492</sup> The Court held that the SGB failed to redress the imbalances of the past at the school as far as personnel were concerned.<sup>493</sup>

There are also instances where SGBs do not fully understand the qualifications requirements for certain posts. In *Douglas High School v Head of the Department of Education, Northern Cape*<sup>494</sup> the SGB recommended candidates for the post of an HOD in Physical Sciences and Agricultural Sciences, but the recommendation was declined in terms of section 6(3)(e) of the Employment of Educators Act. The HOD reasoned that none of the recommended candidates qualified for the post, and it had to be re-advertised.<sup>495</sup> The SGB invoked PAJA to seek written reasons, but none were provided, and a review application was launched.<sup>496</sup> It was only then that the HOD elaborated on the reasons for declining the recommendation and asked the SGB to withdraw the application, but it refused.<sup>497</sup>

The Court held that a recommendation of candidates who do not meet the educational qualifications requirements is no recommendation at all, and the HOD had no authority to appoint such candidates.<sup>498</sup> The Court rejected the SGB's argument that the post

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<sup>488</sup> 2005 (5) SA 251 (NC).

<sup>489</sup> 2005 (5) SA 251 (NC) para 7.

<sup>490</sup> 2005 (5) SA 251 (NC) para 8.

<sup>491</sup> 2005 (5) SA 251 (NC) para 17.2.

<sup>492</sup> 2005 (5) SA 251 (NC) para 18.

<sup>493</sup> *Ibid.*

<sup>494</sup> (1118/2019) [2023] ZANCHC 5 (20 January 2023).

<sup>495</sup> [2023] ZANCHC 5 para 9.

<sup>496</sup> [2023] ZANCHC 5 paras 10–11.

<sup>497</sup> [2023] ZANCHC 5 paras 12–13.

<sup>498</sup> [2023] ZANCHC 5 para 22.

had not specified the subjects one's Diploma or Degree must have. It was held that it would be rather inconceivable that an HOD of a subject would be someone who has no knowledge of that subject, while the general class teacher must have it.<sup>499</sup> This case is not just about the SGB's misunderstandings, but the tendency of the HOD to fail to give clear reasons for declining recommendations even when asked by the SGB to give such reasons in writing.

In *Mdlankomo Junior Secondary School, Libode v Member of Executive Council for Department of Education, Eastern Cape*<sup>500</sup> the HOD refused to appoint a principal as recommended, and the SGB sought to review and set aside the decision.<sup>501</sup> The SGB had recommended two candidates without consultation and getting approval from the HOD, and there were issues of missing information such as the candidate's registration number with the South African Council for Educators and a signature of the SGB, among other deficiencies.<sup>502</sup> One of the defences raised was that the HOD was represented by the principal of the school in the process so the HOD was consulted and gave approval for a recommendation of less than three candidates. This was a clear misunderstanding of the requirements of section 6(3)(c) of the Employment of Educators Act.<sup>503</sup>

In another instance, the SGB, concerned that there were serious internal disagreements, delegated their functions to the district office to hold interviews and make recommendations, *School Governing Body of Ntilini J.S.S. v Makhitshi*.<sup>504</sup> The HOD accepted the district's recommendation and appointed a principal.<sup>505</sup> The appointment was challenged by the SGB. Ultimately, the Full Court confirmed the High Court's decision that the SGB's resolution to delegate its powers to the district was null and void as the Employment of Educators Act or SASA<sup>506</sup> does not provide for such delegation.<sup>507</sup> This demonstrates a lack of understanding not only on the SGB's

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<sup>499</sup> [2023] ZANHC 5 para 42.

<sup>500</sup> (3743/2017) [2018] ZAECMHC 42 (7 August 2018).

<sup>501</sup> [2018] ZAECMHC 42 para 2.

<sup>502</sup> [2018] ZAECMHC 42 para 12.

<sup>503</sup> [2018] ZAECMHC 42 paras 15–16.

<sup>504</sup> (615/2008) [2010] ZAECMHC 4 (25 March 2010) para 6–7 at 4 and para 15 at 6.

<sup>505</sup> [2010] ZAECMHC 4 para 5 at 3.

<sup>506</sup> [2010] ZAECMHC 4 para 18 at 8.

<sup>507</sup> [2010] ZAECMHC 4 at 7 and 8.

part but the Department itself because the district had accepted the delegation and the HOD had given effect to the district's recommendation.

#### 4.4.3.3. SGBs and the NSNP

Linked to recruitment and financial management are the duties of SGBs in relation to the NSNP. This function was not one of the functions to be focused on in this study, however, it was raised in interviews by SGB members from one school. The function is therefore discussed within this limited context. The Eastern Cape NSNP: School Implementation Guidelines state that the school must establish an NSNP committee whose composition includes one SGB member.<sup>508</sup> This committee in conjunction with the procurement and the finance committees must assist the SGB and the principal to implement the NSNP. The SGB, through the finance committee, must manage the funds for the NSNP. The NSNP committee plans the day-to-day functioning of the programme and reports to the SGB.<sup>509</sup>

The SGB facilitates the appointment of food handlers – the people responsible for preparing and serving meals to learners at the school.<sup>510</sup> Before the start of every financial year, the SGB must notify parents about the voluntary opportunity (with a monthly stipend) to assist as food handlers and explain the associated duties. Template forms are provided in relation to the application, registration and evaluation of food handlers.<sup>511</sup> The SGB must use the evaluation template to record all applications received and to indicate the basis on which the successful candidates were selected. The guidelines state that interviews must be conducted where applicable or appropriate, but provide no detail on when that may be the case.<sup>512</sup> The SGB and the food handler should formalise the engagement by signing the food handler contract. Needless to say, SGB members are not eligible to apply to be food handlers.

#### 4.4.3.4. School property management

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<sup>508</sup> Eastern Cape NSNP Implementation Guidelines 5.

<sup>509</sup> *Ibid.*

<sup>510</sup> Eastern Cape NSNP Implementation Guidelines 12.

<sup>511</sup> *Ibid.*

<sup>512</sup> *Ibid.*

SGBs must administer and control school property, buildings and grounds occupied by the school and the service systems.<sup>513</sup> School grounds include walls, fences, and playgrounds while service systems refers to access control, sanitation, waste disposal, and safety and security.<sup>514</sup> The National Policy on an Equitable Provision of an Enabling School Physical Teaching and Learning Environment aims to regulate and formalise the provision of school infrastructure and to provide guidelines towards an equitable provision of an enabling physical teaching and learning environment for learners.<sup>515</sup> The policy also seeks to redress the imbalances of the past with regard to school facilities and resources and to increase access to schools for all learners. It states that if well maintained, school facilities provide conducive environments which translate to the provision of quality education.<sup>516</sup>

Academics have argued that there is a link between school facilities and learner achievement.<sup>517</sup> Effective schools tend to maintain clean and orderly school buildings.<sup>518</sup> If well managed, school facilities provide conducive environments that translate into quality education<sup>519</sup> and in turn learner achievement.<sup>520</sup>

#### 4.4.3.5. School policy and rule-making

In keeping up with the main aim of democratising school governance, SASA gives SGBs the power to make school policies and rules in consultation with parents, learners and teachers.<sup>521</sup> Policies made by SGBs range from matters of language policy,<sup>522</sup> admission policy,<sup>523</sup> up to policies on how SGBs ought to perform specified

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<sup>513</sup> Section 20(1)(g) of SASA.

<sup>514</sup> Ml Xaba "A Qualitative Analysis of Facilities Maintenance- A School Governance Function in South Africa" (2012) 32 *South African Journal of Education* 215 at 216.

<sup>515</sup> The Policy is made in terms of section 3(4) of the National Education Policy Act.

<sup>516</sup> Section 4.107 of the National Policy on an Equitable Provision of an Enabling School Physical Teaching and Learning Environment.

<sup>517</sup> C Uline and M Tschannen-Moran "The Walls Speak: The Interplay of Quality Facilities, School Climate, and Student Achievement" (2008) 46 *Journal of Educational Administration* 55 at 55.

<sup>518</sup> E Young *et al* "Do K-12 School Facilities Affect Education Outcomes? A Staff Information Report" (2003) <https://files.eric.ed.gov/fulltext/ED479494.pdf> (accessed on 2 February 2023).

<sup>519</sup> Section 4.107 of the National Policy on an Equitable Provision of an Enabling School Physical Teaching and Learning Environment.

<sup>520</sup> Xaba "A Qualitative Analysis" 216.

<sup>521</sup> N Diko "Changes and Continuities: Implementation of Gender Equality in a South African High School" (2007) 54 *Africa Today* 107 at 111.

<sup>522</sup> Section 6(2) of SASA.

<sup>523</sup> Section 5(5) of SASA.

functions like procuring goods and services. SASA has therefore confirmed the establishment of SGBs in the entire public school system as well as the nature of their powers, namely, that SGBs would have “substantial decision-making powers” pertaining to “policy determination”.<sup>524</sup>

The SGB must adopt a code of conduct for learners<sup>525</sup> and rules on religious observances.<sup>526</sup> The code of conduct is meant to establish a “disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process”.<sup>527</sup> Amongst other things, the code of conduct must provide for processes safe guarding the interests of the learner and any party involved in disciplinary proceedings as well as the support structures such as counselling for learners involved in disciplinary proceedings.<sup>528</sup> The SGB must adhere to the processes in the code of conduct when disciplining learners.<sup>529</sup>

SGBs are also responsible for developing a mission statement of the school,<sup>530</sup> determining the school hours,<sup>531</sup> and supporting the principal, educators, and other school staff in the performance of their professional functions.<sup>532</sup> To further guide SGBs in the performance of their functions, SASA empowers the Minister of Basic Education to promulgate regulations on the norms and standards for school governance, which the Minister has not published yet.<sup>533</sup> However, the Minister has promulgated other regulations as empowered by SASA such as regulations in relation to the curriculum,<sup>534</sup> school infrastructure,<sup>535</sup> and safety measures in public schools.<sup>536</sup>

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<sup>524</sup> Education White Paper 2 at paras 3.1 and 3.7.

<sup>525</sup> Section 20(1)(d) of SASA.

<sup>526</sup> Section 7 of SASA.

<sup>527</sup> Section 8(2) of SASA.

<sup>528</sup> Section 8(5)(a) and (b) of SASA.

<sup>529</sup> Section 8 of SASA.

<sup>530</sup> Section 20(1)(c) of SASA.

<sup>531</sup> Section 20(1)(f) of SASA.

<sup>532</sup> Section 20(1)(e) of SASA.

<sup>533</sup> Section 12(3)(b) of SASA.

<sup>534</sup> Regulations on the Implementation of the National Curriculum Statement Grades R–12, GN R878, *Government Gazette* 34696, 20 October 2011.

<sup>535</sup> Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, GN R920, *Government Gazette* 37081, 29 November 2013.

<sup>536</sup> Regulations for Safety Measures at Public Schools, GN R1040, *Government Gazette* 22754, 12 October 2001.

In the last decade, there have been issues regarding policy making, mainly instances where SGBs adopted policies that are not in accordance with regulations and the broader notion of equality and equity. These instances have been further complicated by the provincial departments' often *ultra vires* responses. For example, in *Head of Department, Department of Education, Free State Province v Welkom High School* a 16-year-old doing grade 10 in Harmony High School fell pregnant and continued attending classes and even returned the following year for the first two terms in grade 11. The learner gave birth during winter school holidays (June/July) and returned to school during the third term but was told that in terms of the school policy she could only return the following year.<sup>537</sup> The HOD's intervention was sought by the parent and the school was asked to review its decision in light of the provincial regulations which stipulated that pregnancy policies must not be punitive but supportive, and schools cannot expel learners for pregnancy.<sup>538</sup> The school refused to reconsider its decision and the Free State Department of Education met with the SGB and asked that it convenes to reconsider the exclusion.<sup>539</sup> Before the SGB could convene, the HOD sent a letter instructing the school to allow the learner to attend school and provide her with catch-up sessions for missed classes.<sup>540</sup> The SGB met and refused to readmit the learner and asked the HOD to rescind his letter readmitting the learner. A subsequent meeting between the Department and the SGB took the issue no further as no agreement could be reached on the way forward.<sup>541</sup>

A similar situation with a grade 9 learner arose in Welkom High School, and the policy was such that the learner would leave school during the third term and only return the following year at the end of the first term.<sup>542</sup> The SGB's attention was also drawn to the circular prohibiting this kind of a policy but the SGB, like that of Harmony High School, still decided to enforce the school policy.<sup>543</sup> The HOD sent a similar letter to

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<sup>537</sup> 2014 (2) SA 228 (CC) para 8.

<sup>538</sup> 2014 (2) SA 228 (CC) para 9.

<sup>539</sup> 2014 (2) SA 228 (CC) para 10.

<sup>540</sup> 2014 (2) SA 228 (CC) para 11.

<sup>541</sup> 2014 (2) SA 228 (CC) paras 12 and 13.

<sup>542</sup> 2014 (2) SA 228 (CC) paras 15 and 16.

<sup>543</sup> 2014 (2) SA 228 (CC) para 18.

Welkom High School.<sup>544</sup> These two instances resulted in court proceedings and were heard together as they were similar and made it to the Constitutional Court.

The Constitutional Court in its judgment on appeal, per Khampepe J, invoked section 172(1)(b) of the Constitution to grant a just and equitable remedy. The Court found the policies *prima facie* unconstitutional as they violated the learners' rights to equality, basic education, human dignity, privacy and bodily and psychological integrity and the principle of the best interests of the child as they were rigid.<sup>545</sup> Nonetheless, the Court refrained from declaring the policies unconstitutional as the SGBs had made no submissions on the issue.<sup>546</sup> Further, refraining from ruling on the policies would also allow the schools and the HOD to cooperate meaningfully and for SGBs to review the policies as they were ordered to.<sup>547</sup> Froneman J and Skweyiya J separately elaborated on, and emphasised, the principles of cooperative governance.<sup>548</sup> The conduct of the HOD was found to be unlawful as he had no power to instruct the principals to ignore the school policy.

In *MEC for Education, Gauteng Province v Governing Body, Rivonia Primary School*, the position was different because the provincial legal framework empowered the HOD to deviate from the school admission policy. In this case, the school refused a grade 1 learner admission, stating that it had reached full capacity in terms of its policy. The HOD found that the school actually had capacity, but its admission policy limited intake and would leave it with available unused places. He therefore instructed the school to admit the learner immediately.<sup>549</sup> The principal refused to admit the learner and said there would have to be an urgent SGB meeting to decide the issue. The HOD revoked the principal's admission powers and delegated them to chosen departmental officials who then admitted the learner.<sup>550</sup> The school approached the high court urgently to declare the HOD's decision to override the admission policy, force admission of a

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<sup>544</sup> 2014 (2) SA 228 (CC) para 19.

<sup>545</sup> 2014 (2) SA 228 (CC) paras 111–112.

<sup>546</sup> 2014 (2) SA 228 (CC) para 110.

<sup>547</sup> 2014 (2) SA 228 (CC) paras 125 and 128.

<sup>548</sup> 2014 (2) SA 228 (CC) para 140.

<sup>549</sup> 2013 (6) SA 582 (CC) para 12.

<sup>550</sup> 2013 (6) SA 582 (CC) paras 13–14.

learner, and withdraw the principal's admission functions unlawful, and to interdict the HOD.<sup>551</sup>

On appeal, the Constitutional Court held that SGBs can determine capacity when determining the admission policy.<sup>552</sup> However, that power is not absolute, it may be subject to provincial law and is of cause to be understood in the broader constitutional scheme considering equality, equity and redress of past injustices.<sup>553</sup> The SGB determines the admission policy, the principal implements it and takes some decisions necessary for that, and the MEC is the safety valve in terms of section 5(9) of SASA which allows for a consideration of admission refusals and the overturning of decisions taken at school level.<sup>554</sup>

Mhlantla J held that the scheme of SASA in relation to admissions indicates that the Department maintains ultimate control over the implementation of admission decisions. Importantly, the Gauteng Regulations afforded the Gauteng HOD the specific power to overturn a principal's rejection of a learner's application for admission unlike in *Head of Department, Department of Education, Free State Province v Welkom High School*.<sup>555</sup>

Further, it was held that admission policies are to be applied in a flexible manner to cater for the principle of the best interests of the child and so the HOD's discretion could not be rigidly limited by school policy.<sup>556</sup> The school itself had applied the policy flexibly and admitted four learners, thus exceeding its capacity, so the principal or the HOD could, with good reason, depart from the policy.<sup>557</sup> What was important was that the decision to depart must be made in a procedurally fair manner and reasonably, and this is where the HOD was found to have acted unlawfully.<sup>558</sup> The principles of cooperative governance were again emphasised for the best interests of the child.<sup>559</sup>

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<sup>551</sup> 2013 (6) SA 582 (CC) para 16.

<sup>552</sup> 2013 (6) SA 582 (CC) para 40.

<sup>553</sup> 2013 (6) SA 582 (CC) para 41.

<sup>554</sup> 2013 (6) SA 582 (CC) para 44.

<sup>555</sup> 2013 (6) SA 582 (CC) para 52.

<sup>556</sup> 2013 (6) SA 582 (CC) para 56.

<sup>557</sup> *Ibid.*

<sup>558</sup> 2013 (6) SA 582 (CC) para 58

<sup>559</sup> 2013 (6) SA 582 (CC) para 77.

Another instance where an admission policy was found questionable is in *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo*. The policy committed the school to the Afrikaans-only medium.<sup>560</sup> Similarly, there were learners who needed to be placed in school and be taught in English but the school refused to admit them. The SGB chairperson was adamant that the learners were welcome as long as they would agree to be taught in Afrikaans.<sup>561</sup> Relying on the fact that the school had about 34 Black learners being taught in Afrikaans, the school argued that the admission policy was not discriminatory.<sup>562</sup> Similarly, the HOD had instructed and effected the admission of the concerned learners, thus intervening in an unlawful manner.

#### 4.4.3.6. Section 21 schools

SGBs may apply to the HOD to be allocated functions that are usually centralised, such as maintaining, improving or renovating school property and school buildings;<sup>563</sup> procuring textbooks and other LTSM; payment of services rendered to the school, such as electricity and water supply;<sup>564</sup> and determining the extramural curriculum.<sup>565</sup> The MEC also has the power to, without an application from a school, determine that some governing bodies may exercise the aforementioned functions.<sup>566</sup> The allocation of these functions to schools is accompanied by the allocation of funds from the provincial department to ensure that schools can perform the functions efficiently.<sup>567</sup>

Section 21 status comes with a degree of financial autonomy for schools in that they can select their own suppliers and can negotiate for better prices and obtain substantial discounts from suppliers.<sup>568</sup> Such autonomy is not to be confused with the autonomy fee-paying schools have in relation to spending the funds the school raised. Section 21 schools, fee-paying or not, are still to spend all the money from the state in terms of the norms and standards set by DBE. This is unlike fee-paying schools, which,

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<sup>560</sup> 2010 (2) SA 415 (CC) para 6.

<sup>561</sup> 2010 (2) SA 415 (CC) para 17

<sup>562</sup> 2010 (2) SA 415 (CC) para 9.

<sup>563</sup> Section 21(1) of SASA.

<sup>564</sup> Section 2(1)(c) and (d) of SASA.

<sup>565</sup> Mestry "The Effective and Efficient Management" 8.

<sup>566</sup> Section 21(6) of SASA.

<sup>567</sup> Marishane and Botha "Empowering School-Based Management" 96.

<sup>568</sup> Mestry "The Effective and Efficient Management" 8.

while still utilising the state subsidy in accordance with norms and standards, can utilise the funds raised by the school as they deem fit.

Due to the increased responsibilities and financial resources of section 21 schools, the need for effective financial management cannot be overstated. The SGB must adhere to the finance policy and ensure that the established finance committee effectively oversees its implementation.<sup>569</sup> In fact, a school is awarded a section 21 status if it is believed to have proven capacity to manage its own affairs, hence section 21 status is seen as a measure of effectiveness of SGBs by the provincial education department.<sup>570</sup> This much is evinced by the fact that the HOD or the MEC must be convinced that the school to be awarded section 21 functions has the capacity to effectively fulfil those functions.<sup>571</sup> A section 21 status is therefore taken as a sign of good governance which then enables good academic performance.<sup>572</sup> As is the case on SGB functions in general, a section 21 status is also associated with the notion of decentralisation of power to foster democracy post-apartheid.<sup>573</sup> All the participant schools in this research successfully applied for additional financial functions in terms of section 21.

Research in respect of section 21 schools has shown that some schools thrive, but some do not, as section 21 functions require specialised skills which makes them a bit more onerous than the other tasks. For example, the maintenance of school facilities is said to be highly specialised as it relates to the repair, replacement, and general upkeep of physical features as found in school buildings, grounds, and safety systems done mainly for safety and creating learning conducive environments.<sup>574</sup> Xaba explains that “while not particularly explored in South Africa the significance of facilities maintenance to school functionality is recognised worldwide”.<sup>575</sup> If well maintained,

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<sup>569</sup> Galetuke *School Governing Bodies' Support* 38.

<sup>570</sup> J Heystek and M Nyambi “Section Twenty-One Status and School Governing Bodies in Rural Schools” (2007) 39 *Acta Academica* 226 at 229.

<sup>571</sup> Section 21(2) and 21(6)(a) of the SASA.

<sup>572</sup> Heystek and Nyambi “Section Twenty-one Status” 234.

<sup>573</sup> Heystek and Nyambi “Section Twenty-one Status” 234.

<sup>574</sup> Xaba “A Qualitative Analysis” 216–217.

<sup>575</sup> Xaba “A Qualitative Analysis” 215.

school facilities provide conducive environments that translate into quality education<sup>576</sup> and, in turn, learner achievement.<sup>577</sup>

Xaba concludes that, in light of the significant role school facilities maintenance has, it is necessary that it be accorded priority in order to promote teaching and learning goals and effectiveness.<sup>578</sup> Research has demonstrated instances of poor school property maintenance, although some of it was exacerbated by vandalism, theft and underfunding.<sup>579</sup> When school property is not well managed or not well taken care of, it may depreciate to the point of being unsuitable for its intended purposes thus negatively impacting teaching and learning in schools.

#### *4.4.3.7. General challenges in public school governance*

The EC Strategic Plan 2015/2016 to 2019/2020 noted poor management and governance by principals, SMTs and SGBs which contribute to dysfunctionality in schools.<sup>580</sup> The high illiteracy rate of SGB members leads to their inability to effectively exercise their functions.<sup>581</sup> The lack of capacity caused by low literacy levels leads to instances where parents feel undermined or intimidated by those who seem more knowledgeable, as they eventually find themselves merely endorsing decisions made by others.<sup>582</sup> Teachers and parents ultimately blame each other<sup>583</sup> which breeds a lack of collaboration.<sup>584</sup> To further compound the matter, principals, sometimes, also become autocratic.<sup>585</sup>

In some instances, there is no usurping of power by the principals or teachers; some SGB parent members are unwilling to participate in decision-making and simply absent themselves from SGB meetings.<sup>586</sup> Others tacitly renounce their respective

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<sup>576</sup> Section 4.107 of the National Policy on an Equitable Provision of an Enabling School Physical Teaching and Learning Environment.

<sup>577</sup> Xaba "A Qualitative Analysis" 216.

<sup>578</sup> *Ibid.*

<sup>579</sup> Xaba "The Possible Cause of School Governance Challenges" 207.

<sup>580</sup> ECDBE Strategic Plan 2015/2016–2019/2020 at 46 <https://eceducation.gov.za/resource-centre/documents-library/28/strategic-documents> (accessed 6 February 2022).

<sup>581</sup> *Ibid.*

<sup>582</sup> Xaba "The Possible Cause of School Governance Challenges" 202.

<sup>583</sup> Xaba "The Possible Cause of School Governance Challenges" 208.

<sup>584</sup> Xaba "The Possible Cause of School Governance Challenges" 202 and 206.

<sup>585</sup> Xaba "The Possible Cause of School Governance Challenges" 208.

<sup>586</sup> Xaba "The Possible Cause of School Governance Challenges" 205.

roles when they realise that they do not have the capacity to perform them.<sup>587</sup> One must not make the mistake of assuming that principals and teachers are not as troubled. A study in 2019 demonstrated that school principals too, experience difficulties in understanding and implementing the school governance legislative and policy framework.<sup>588</sup> The incapacity of principals may lead to human resources mismanagement, which could result in the principal's failure to properly support and guide staff members.

Poor governance and management in schools may also lead to non-compliance with available reporting and accountability systems. Consequently, this impedes the timely identification and resolution of problems while learners' performance continues to be negatively affected. Ultimately, poor school governance negatively affects the quality of teaching and learning, as it impacts the fulfilment of the other components of the right to basic education. Accordingly, it has been argued that there is generally a need for effective training of SGBs.<sup>589</sup> The delayed provision of training, often occurring long after new SGB members have been in operation, has also been identified as a significant issue.<sup>590</sup>

A further challenge arises from the ambiguous dual role of principals, who simultaneously represent the HOD while functioning *de facto* as SGB members, potentially creating conflicts of interest.<sup>591</sup> Kruger and others take it a step further and argue that principals wear three proverbial hats: *ex officio* members of the SGB, representatives of the SMT, and representatives of the provincial HOD.<sup>592</sup> As a result, public school principals find themselves in a precarious position, as they must balance the interests of multiple stakeholders. Having several roles and seemingly being a member of almost every school committee like principals seems to elevate them to a higher status when all SGB members were meant to be equal. This is exacerbated by

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<sup>587</sup> Xaba "The Possible Cause of School Governance Challenges" 208.

<sup>588</sup> ST Makhuvale *et al* "Capacity of School Governing Bodies in Interpreting and Implementing Legislative Frameworks and Policies" (2019) *Ubuntu: Journal of Conflict and Social Transformation* 189 at 203.

<sup>589</sup> Marishane and Botha "Empowering School-Based Management" 106.

<sup>590</sup> Xaba "The Possible Cause of School Governance Challenges" 201.

<sup>591</sup> Xaba "The Possible Cause of School Governance Challenges" 209.

<sup>592</sup> Kruger *et al* "The Management and Governance Conundrum in South African Public Schools: Principals' Perspectives" (2022) 40 *Perspectives in Education* 312 at 313–314.

the fact that principals are necessarily qualified professionals and assume a much more permanent and longer service to the school, hence they become more knowledgeable and experienced.

Teacher SGB members also face challenges. These SGB members tend to act in the interests of educators rather than in the interests of the school.<sup>593</sup> Without properly balancing conflicting interests, teacher SGB members further contribute towards the distrust and lack of cooperation between them and parent SGB members.

The SACMEQ III Project in South Africa reports serious challenges in relation to the capacity of SGB members in rural areas to discharge their responsibilities in ways that enhance the functionality of schools. Case studies in historically disadvantaged schools and schools in rural areas have also demonstrated that not only are SGBs plagued with a lack of skills to govern schools, but there is also a lack of effective training to capacitate them.<sup>594</sup>

In 2007, a study was conducted in high schools in rural areas of the Eastern Cape aimed at determining whether school-reform policies, as implemented by schools, were mitigating the imbalances caused by the provision of inequitable education under apartheid, particularly those concerning gender inequity.<sup>595</sup> The study revealed that some SGB members perceived principals as the main decision makers, as they have the experience parents may not have.<sup>596</sup> Further, parents had low literacy levels and “they knew the unwritten rules that constrain their behaviour in the SGB”.<sup>597</sup> Teachers, like parents, were also not eager to challenge the principal’s authority.<sup>598</sup>

A case study conducted in Tlokoeng in 2011 demonstrated that SGBs need more training and the development of a comprehensive capacity-building programme.<sup>599</sup>

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<sup>593</sup> Xaba “The Possible Cause of School Governance Challenges” 202.

<sup>594</sup> Lumadi “Critical Path to a Sustainable Future” 4.

<sup>595</sup> Diko “Changes and Continuities” 109.

<sup>596</sup> Diko “Changes and Continuities” 111.

<sup>597</sup> Diko “Changes and Continuities” 111–112.

<sup>598</sup> Diko “Changes and Continuities” 112.

<sup>599</sup> LY Picane *School Governing Bodies (SGBs) and Appointment Procedures: A Study from Mount Fletcher District, Eastern Cape Province* (Magister Technologiae Education thesis, Tshwane University of Technology 2011) 75.

Another case study, conducted in 2014 in the Uitenhage District, demonstrated the need for appropriately skilled and capable SGB members.<sup>600</sup> The research further demonstrated that, without proper capacity-building programmes, SGBs are unable to effectively govern schools<sup>601</sup> and this can negatively affect the academic performance of learners.<sup>602</sup> Another study conducted in 2018 in the Eastern Cape and KwaZulu-Natal in unnamed districts in the same context of schools in rural areas also demonstrated that SGB parent members tend to have low literacy levels, which often negatively affect the functioning of SGBs.<sup>603</sup> It must be noted that the DBE has also identified problems with SGBs- their lack of understanding of their roles and the resultant ineffective fulfilment thereof, among others.<sup>604</sup>

For completeness sake, it is important to note that SASA provides that should the SGB fail to perform its functions, the HOD may appoint sufficient persons to perform the functions for a period not exceeding three months<sup>605</sup> which the HOD can extend but not for over a year.<sup>606</sup> The HOD must ensure that elections are held to elect SGB members within a year after the appointment of the people governing the school in the interim.<sup>607</sup> *Buchner v Head of Department of Education, Free State* is an example of an instance where the HOD removed SGB members for failure to perform their functions.<sup>608</sup>

#### 4.4.3.8. Concluding remarks

It has been demonstrated that SGBs play a crucial role in ensuring that the components of the right to basic education are provided in schools. In the execution of their functions, SGBs contribute towards the fulfilment of the other components of the right to basic education as discussed above. It has also been shown that, while the different functions relating to school governance are provided for in the statutory

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<sup>600</sup> Mbengashe *Improving School Performance* 77.

<sup>601</sup> Mbengashe *Improving School Performance* 20–21.

<sup>602</sup> Mbengashe *Improving School Performance* 24.

<sup>603</sup> Mohapi and Netshitangani “Views of Parent Governors’ Roles” 8–9.

<sup>604</sup> See DBE: Strategy to Improve Governance and Management in Schools 3–4 <https://www.education.gov.za/Portals/0/Documents/Publications/Principals/STRATEGY%20TO%20IMPROVE%20SCHOOL%20MANAGEMENT%20AND%20GOVERNANCE%20IN%20SCHOOLS.pdf?ver=2018-06-27-103843-220> (accessed 12 March 2021).

<sup>605</sup> Section 25(1) of SASA.

<sup>606</sup> Section 25(2) of SASA.

<sup>607</sup> Section 25(3) of SASA.

<sup>608</sup> [2021] ZAFSHC 59.

and policy framework, the different role-players do not always comply with or implement the framework.

There are several problems with school governance, ranging from encroachment by SGBs, SMTs, provincial HODs or MECs on each other's roles to mere failure by any of these stakeholders to perform their functions. Where SGBs fail to perform their functions, or perform their functions not in the manner provided for in the framework, it negatively affects the provision of the other components of the right to basic education. This, in turn negatively impacts teaching and learning.

Furthermore, research at an international level demonstrates that the quality of school governance positively correlates with the provision of quality education, which in turn leads to good academic achievement among learners.<sup>609</sup> An empirical study in 8 countries (United Kingdom, Sweden, Canada, United States of America (USA), Germany, Italy, Brazil and India) demonstrated that higher quality school management is strongly associated with better educational outcomes.<sup>610</sup> This position has been accepted by domestic researchers. For instance, Buka argues that good management and leadership in schools can be assumed to result in effective schools and ultimate delivery of quality education.<sup>611</sup>

Buka concludes that there is a correlation between leadership styles and school effectiveness, stating that leadership styles influence student academic performance in one way or another.<sup>612</sup> Accordingly, for purposes of this research, effective school governance shall be in this context; the performance of SGB functions as stipulated in the discussed legal framework, in a manner that positively impact teaching and learning thus contributing towards good academic performance in learners.

In light of several challenges in school governance as discussed above, it is imperative to investigate whether SGBs understand and perform their roles effectively and whether they are being capacitated to do so, almost three decades since the new

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<sup>609</sup> N Bloom *et al* "Does Management Matter in Schools" (2015) 125 *The Economic Journal* 647 at 661.

<sup>610</sup> Bloom *et al* "Does Management Matter in Schools" 647–648.

<sup>611</sup> Buka *et al* "Sustaining Good Management Practices" 102.

<sup>612</sup> *Ibid.*

schooling system. Most importantly for this study is the fact that the participating schools had under-performed in one way or another, as was discussed in chapter 3. It will be important to investigate whether such underperformance can be attributable to school governance and whether the ECDBE had adequately played its role in capacitating the SGBs.

#### **4.5. State legal obligations in respect of the right to basic education**

Following the discussion on the scope of the right to basic education and the responsibilities of various functionaries in school governance, attention now turns to the legal obligations associated with these responsibilities as they are central to realising the right to basic education. In what follows, the legal obligations as established in international, regional, national and provincial instruments will be outlined. This is necessary to determine the legal standard for the assessment of the adequacy of measures adopted to realise this right.

##### **4.5.1. General international and regional obligations**

In terms of the ICESCR, South Africa must take steps that are deliberate, concrete, and targeted towards the full realisation of the right to education.<sup>613</sup> It must take appropriate measures, including allocating resources, to upgrade the quality of education delivered.<sup>614</sup>

Regionally, as a signatory to the African Charter on the Rights and Welfare of the Child, South Africa must take all necessary and appropriate measures, including legislation and policies, to achieve the full realisation of the right to education.<sup>615</sup> It must ensure that necessary financial, human, and other resources are made available to effectively discharge responsibilities relating to the implementation of the Charter.<sup>616</sup>

Further, General Comment 5 on the African Charter on the Rights and Welfare of the Child provides that state parties are required to exercise due diligence applicable to

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<sup>613</sup> See also C Ngwena and R Cook "Rights Concerning Health" in D Brand and C Heyns (eds) *Socio-Economic Rights in South Africa* (2005) 113.

<sup>614</sup> Article 2(1) of the ICESCR.

<sup>615</sup> Article 11(3)(a) of the African Charter on the Right and Welfare of the Child.

<sup>616</sup> General Comment 5 at 11.

human rights in the Charter.<sup>617</sup> Due diligence means that states are required to be efficient and adequate in the implementation of measures undertaken to enforce legislative, administrative and other measures meant to realise human rights.<sup>618</sup> Both internationally and regionally, state parties are at liberty to set minimum standards for their education systems provided they adhere to the obligations outlined herein and other related obligations.<sup>619</sup>

#### 4.5.2. Obligation to respect, protect and fulfil rights

Both internationally and domestically, legal obligations in respect of rights are generally classified as the obligation to respect, protect and fulfil (facilitate and provide) rights.<sup>620</sup> The obligation to respect requires state parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires state parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil imposes positive obligations on states to adopt measures that enable and assist individuals and communities to enjoy the right to education.

As a general principle, state parties bear the obligation to fulfil rights where individuals or groups, due to circumstances beyond their control, are unable to realise those rights through their own means. Article 13 of the ICESCR obliges states to provide different levels of education. The obligations imposed by article 13 on state parties vary across the different levels of education in a manner that coincides with the law and practice of many state parties.<sup>621</sup> Nonetheless, in general, states have an obligation to respect, protect and fulfil each of the “essential features” (availability, accessibility, acceptability, adaptability) of the right to education. For example, a state must:

- “respect the availability of education by not closing private schools;
- protect the accessibility of education by ensuring that third parties, including parents and employers, do not stop girls from going to school;

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<sup>617</sup> General Comment 5 at 15.

<sup>618</sup> *Ibid.*

<sup>619</sup> Article 13(4) of the ICESCR.

<sup>620</sup> General Comment 13 para 46.

<sup>621</sup> General Comment 13 para 48.

- fulfil (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all;
- fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world; and
- fulfil (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying them domestically competitive salaries.<sup>622</sup>

Nationally, section 7(2) of the Constitution provides that the state has an obligation to respect, protect, promote and fulfil all the rights in the Bill of Rights.<sup>623</sup> The state's duty in relation to respecting rights entails negative obligations.<sup>624</sup> The state must not act in ways that hinder the ongoing enjoyment of rights.<sup>625</sup> The duty to protect rights imposes positive obligations.<sup>626</sup> The state must take positive steps to ensure that the existing enjoyment of rights is not interfered with by other parties.<sup>627</sup> The duties to promote and fulfil rights also impose positive obligations on the state.<sup>628</sup>

The duty to promote rights requires the state to adopt measures that create conditions in which individuals can realise their rights.<sup>629</sup> To fulfil rights, the state is required to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to ensure that the right bearers enjoy their rights.<sup>630</sup> This means that the state must adopt appropriate measures to promote and fulfil the established components of the right to basic education in this case. Similarly, the state must fulfil

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<sup>622</sup> General Comment 13 para 50.

<sup>623</sup> Section 7(2) of the Constitution.

<sup>624</sup> I Currie and J De Waal *The Bill of Rights Handbook* 6 ed (2013) 568.

<sup>625</sup> D Brand *et al South African Constitutional Law in Context* (2014) 494.

<sup>626</sup> Brand *et al South African Constitutional Law* 495.

<sup>627</sup> Brand *et al South African Constitutional Law* 494.

<sup>628</sup> Currie and De Waal *The Bill of Rights Handbook* 572.

<sup>629</sup> Brand *et al South African Constitutional Law* 495.

<sup>630</sup> Brand *et al South African Constitutional Law* 495 and 514.

all other obligations related to the right, regardless of whether these obligations stem from legislative or policy provisions.<sup>631</sup>

#### 4.5.3. Section 29(1) and qualified socio-economic rights

The right to basic education is not internally qualified, unlike other socio-economic rights such as the right to access to healthcare resources, sufficient food, water and social security, and further education.<sup>632</sup> Accordingly, the reasonableness approach is not applicable in determining whether the state has fulfilled its obligations regarding the right to basic education.<sup>633</sup>

Nonetheless, to understand what immediate realisability means as a legal standard, and to ultimately establish a standard to measure the effectiveness of the plans on school governance, it is imperative to understand the reasonableness standard. This is because the reasonableness standard is often referred to in contrast with the immediate realisability of the right to basic education, and one is used to understand the other.<sup>634</sup> It is only for this limited purpose that the reasonableness standard will be discussed.

The reasonableness standard was well articulated by the Constitutional Court in *Government of the Republic of South Africa v Grootboom*<sup>635</sup> and further clarified, one way or another, to varying degrees in subsequent cases including *Minister of Health v Treatment Action Campaign*,<sup>636</sup> *Khosa v Minister of Social Development*; *Mahlaule v Minister of Social development*,<sup>637</sup> *Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street Johannesburg v City of Johannesburg*,<sup>638</sup> *City of Johannesburg v Blue*

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<sup>631</sup> There is clearly a distinction between the binding force of statutory provisions on one hand and those from policy provisions on the other hand. Policy provisions are not necessarily legally binding. However, courts have not hesitated to consider policy documents in conjunction with legislation and the conduct of the state in providing the content of the right to basic education. For example, see *Section 27 v Minister for Education*, and *Tripartite Steering Committee v Minister of Basic Education*.

<sup>632</sup> Section 27(1) and 29(1)(b) of the Constitution.

<sup>633</sup> Simbo "A Hexagonal Right" 131.

<sup>634</sup> Arendse "The South African Constitution's Empty Promise" 104. It must be noted that the reasonableness standard is a well-established standard of which a lot has been written on it. All of that cannot be covered in this study as that standard is not the focus of this study, it is discussed only in so far as it is necessary to demonstrate what the standard on basic education is not about.

<sup>635</sup> 2001 (1) SA 46 (CC).

<sup>636</sup> 2002 (5) SA 721 (CC).

<sup>637</sup> 2004 (6) SA 505 (CC).

<sup>638</sup> 2008 (3) SA 208 (CC).

*Moonlight Properties*,<sup>639</sup> *Mazibuko v City of Johannesburg*<sup>640</sup> and lately in *Commando v City of Cape Town*.<sup>641</sup>

Fundamentally, measures intended to realise a socio-economic right are reasonable if they are capable of facilitating the realisation of that right and meet the state's obligations in relation to the right concerned.<sup>642</sup> Generally, it is the national sphere's duty to ensure that laws, policies, programmes and strategies are adequate to meet the state's obligations in relation to a particular socio-economic right.<sup>643</sup> The courts have emphasised that the reasonableness enquiry is not about whether there are other desirable measures that could have been adopted instead of the ones adopted by the state.<sup>644</sup> It is also not about whether the state could have used public resources more effectively.

The enquiry is whether the measures adopted are reasonable.<sup>645</sup> The state is required to explain the choices it made.<sup>646</sup> The information that the executive considered when creating policy and the process it followed to determine that policy must be evaluated to determine whether the explanation it gave is reasonable in terms of the reasonableness standard.<sup>647</sup> The court will then evaluate the reasonableness of the conduct considering the explanation given. The conduct could be the implementation of the very legislative framework through the adoption or implementation of policy or a programme.<sup>648</sup> In *Mazibuko v City of Johannesburg* for example, the city was found to have given a reasonable explanation concerning the policy on providing access to water.<sup>649</sup>

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<sup>639</sup> 2012 (2) SA 104 (CC).

<sup>640</sup> 2010 (4) SA 1 (CC).

<sup>641</sup> 2025 (3) SA 1 (CC).

<sup>642</sup> 2001 (1) SA 46 (CC) para 41.

<sup>643</sup> 2001 (1) SA 46 (CC) para 40.

<sup>644</sup> 2001 (1) SA 46 (CC) para 41.

<sup>645</sup> *Ibid.*

<sup>646</sup> 2010 (4) SA 1 (CC) para 71.

<sup>647</sup> *Ibid.*

<sup>648</sup> 2001 (1) SA 46 (CC) para 42.

<sup>649</sup> 2010 (4) SA 1 (CC) para 168.

The measures must be reasonable both in conception and implementation.<sup>650</sup> Policies and programmes are reasonable if they are appropriate, well-directed and comply with the relevant legislation. For this, a programme must clearly allocate responsibilities and tasks to the different spheres of government and ensure that appropriate financial and human resources are made available.<sup>651</sup> Programmes must also be balanced, flexible, comprehensive, and coherent in that they take cognisance of short, medium, and long-term goals.

Programmes must not exclude certain segments of society or a significant sector of society, and they must be reviewed continuously to keep up with the changes in the situation.<sup>652</sup> In *Government of the Republic of South Africa v Grootboom* for example, a group of people were homeless after being evicted from a private property on which they had established their informal settlements.<sup>653</sup> Those people sought an order requiring the government to provide them with basic shelter or housing until they obtained permanent accommodation.<sup>654</sup> The nationwide housing programme was found unreasonable<sup>655</sup> for failure “to recognise that the state must provide for relief for those in desperate need”.<sup>656</sup> The lack of immediate amelioration of the circumstances of people in desperate need of access to adequate housing meant that the programme ignored the needs of a particular group of people.<sup>657</sup>

Similarly, the policy in *Minister of Health v Treatment Action Campaign* had excluded a certain segment of society. There, the Court had to determine whether the measures taken by the Department of Health to prevent mother-to-child transmission of HIV/AIDS were reasonable.<sup>658</sup> It was held that the policy for reducing the risk of mother-to-child transmission of HIV/AIDS was unreasonable in that it restricted the use of nevirapine to the research and training sites.<sup>659</sup> In so doing, the policy focused

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<sup>650</sup> 2001 (1) SA 46 (CC) para 42.

<sup>651</sup> 2001 (1) SA 46 (CC) para 39.

<sup>652</sup> 2001 (1) SA 46 (CC) para 43.

<sup>653</sup> 2001 (1) SA 46 (CC) paras 3 and 4.

<sup>654</sup> 2001 (1) SA 46 (CC) para 4.

<sup>655</sup> 2001 (1) SA 46 (CC) para 69.

<sup>656</sup> 2001 (1) SA 46 (CC) para 66.

<sup>657</sup> 2001 (1) SA 46 (CC) para 69.

<sup>658</sup> 2002 (5) SA 721 (CC) para 93.

<sup>659</sup> 2002 (5) SA 721 (CC) para 95.

on evaluating programmes for reducing mother-to-child transmission while ignoring the need to provide access to healthcare to mothers and babies who did not have access to the research and training sites.<sup>660</sup>

Factors to be considered in determining the reasonableness or not, of measures include the relevant social, economic, and historical context surrounding the circumstances.<sup>661</sup> The reasonableness of measures is also to be understood in the context of cooperative governance between the three spheres of government (national, provincial and local government) as well as the cooperation in the executive and the legislative branches.<sup>662</sup> Further, the reasonableness of measures is to be understood in the context of the Bill of Rights as a whole, given that rights are interconnected and interdependent.<sup>663</sup>

In *Khosa v Minister of Social Development; Mahlaule v Minister of Social Development*, the Court had to determine the reasonableness of the legislative measures adopted to realise the right to social security. The legislative provisions established a social security scheme that disqualified permanent residents from qualifying for the benefits provided in the scheme unless they were South African citizens.<sup>664</sup> The Court considered the impact the measures had on the human dignity, equality, and freedom of the permanent residents who, but for their lack of citizenship, would have qualified to benefit from the social security scheme.<sup>665</sup>

In evaluating the reasonableness of measures adopted to realise a socio-economic right, it is acknowledged that the executive has the liberty to determine its obligations and set its priorities in terms of the adopted measures. However, it cannot establish obligations and set priorities that make it impossible to comply with constitutional and international obligations.<sup>666</sup>

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<sup>660</sup> 2002 (5) SA 721 (CC) para 67.

<sup>661</sup> 2001 (1) SA 46 (CC) para 43.

<sup>662</sup> 2001 (1) SA 46 (CC) paras 39 and 40.

<sup>663</sup> 2001 (1) SA 46 (CC) para 44.

<sup>664</sup> 2004 (6) SA 505 (CC) para 49.

<sup>665</sup> 2004 (6) SA 505 (CC) para 104.

<sup>666</sup> *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes (Centre on Housing Rights and Evictions, Amici Curiae)* 2010 (3) SA 454 (CC) para 252.

Inherent in the reasonableness standard is the internal limitation that the state, within available resources, has to progressively realise the internally limited socio-economic rights. This limitation of progressive realisation is the acknowledgement that circumscribed socio-economic rights will not necessarily be realised immediately.<sup>667</sup> However, the state must take steps to ensure that accessibility to an adequate good or service provided for by the right is progressively facilitated.<sup>668</sup> There is an element of both continuity and incrementation in this qualification. Legal, administrative, operational, and financial obstacles must be examined frequently over time and measures to effectively mitigate them must be adopted.<sup>669</sup>

The qualification of progressive realisation is a necessary flexible device that reflects the realities and difficulties in realising socio-economic rights.<sup>670</sup> On the other hand, the progression should not be merely about assisting many people; it should also be about assisting a wide range of different groups/categories of people.<sup>671</sup> The need to reach a wide range of people stems from the fact that no group of people should be left behind. The Constitutional Court adopted the interpretation in General Comment 3 of the committee on the ICESCR, 1990 in this regard. Further, progressive realisation is about progressing as expeditiously and as effectively as possible in the realisation of these rights.<sup>672</sup> Accordingly, any retrogressive measures would have to be convincingly justified by reference to the totality of the rights in the Constitution and the context of the full use of maximum available resources.<sup>673</sup> The fact that the realisation of the rights can only be achieved progressively does not alter the obligation on the state to take those reasonable steps that are within its power immediately and other steps as soon as possible to fulfil rights.<sup>674</sup>

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<sup>667</sup> 2001 (1) SA 46 (CC) para 45.

<sup>668</sup> *Ibid.*

<sup>669</sup> *Ibid.*

<sup>670</sup> *Ibid.*

<sup>671</sup> *Ibid.*

<sup>672</sup> *Ibid.*

<sup>673</sup> *Ibid.*

<sup>674</sup> D Bilchitz "Towards a Reasonable Approach to the Minimum Core: Laying the Foundations for Future Socio-economic Rights Jurisprudence" (2003) 19 *South African Journal for Human Rights* 1 at 11–12.

In *City of Johannesburg v Blue Moonlight Properties*, the respondent had bought a property that was partly used for residential purposes for six months by about 86 people.<sup>675</sup> The property was to be redeveloped and all existing lease agreements were cancelled.<sup>676</sup> The residents were to be evicted, which would leave most of them homeless.<sup>677</sup> The respondent successfully applied for an eviction order in the High Court.<sup>678</sup> The Supreme Court of Appeal upheld the eviction order and declared the housing policy of the city (which had been cited because of the requirements in the Prevention of Illegal Evictions from and Unlawful Occupation of Land Act 19 of 1998 and its obligations in terms of the right to access to housing) unconstitutional as it did not make provision for temporary emergency accommodation.<sup>679</sup>

The positive obligations placed on the state by socio-economic rights should not demand more of it than what available resources permit.<sup>680</sup> The measures to be adopted are controlled by the available resources meant for such purposes, so is the rate at which they are implemented.<sup>681</sup> Therefore, socio-economic rights may be limited by the lack of resources.<sup>682</sup> Disregarding this limitation would lead to court orders that cannot be enforced. This would be a waste of time and resources and would undermine the public's respect for and trust in the judiciary. The qualification regarding the availability of resources is also understood to grant the state some discretion in selecting the means for achieving socio-economic rights.<sup>683</sup> However, resource scarcity does not relieve the state of its duty to perform its obligations. The state must strive to ensure the widest possible enjoyment of the relevant rights under prevailing circumstances. As more resources become available, more must be done to fulfil the rights.

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<sup>675</sup>2012 (2) SA 104 (CC) para 7.

<sup>676</sup> 2012 (2) SA 104 (CC) para 8.

<sup>677</sup> 2012 (2) SA 104 (CC) para 6.

<sup>678</sup> 2012 (2) SA 104 (CC) para 12.

<sup>679</sup> 2012 (2) SA 104 (CC) para 13.

<sup>680</sup> 2001 (1) SA 46 (CC) para 46.

<sup>681</sup> *Ibid.*

<sup>682</sup> *Soobramoney v Minister of Health, Kwazulu-Natal* 1997 (12) BCLR 1696; 1998 (1) SA 765 (CC) para 11.

<sup>683</sup> 2001 (1) SA 46 (CC) para 41.

Importantly, the state cannot justify a limitation if the resource constraints are its own making. For example, in *City of Johannesburg v Blue Moonlight Properties*, the city argued that it was the duty of the provincial spheres to provide the resources for the housing of the occupiers. Van der Westhuizen J, for the Court, held that there was nothing in the Housing Act/Code that precludes the municipality from using its own resources for temporary emergency housing for those in desperate need.<sup>684</sup> The Court held that the city must plan proactively and have a plan for emergency housing.<sup>685</sup>

The Court did not empathise with the city's submission that it had no resources. It was held that this was a product of its own misunderstanding, as it had made plans on the premise that it had no duty to provide emergency housing.<sup>686</sup> The Court reasoned that the determination of the reasonableness of measures within available resources could not be restricted by budgetary and other decisions that may have resulted from a misunderstanding of constitutional and legislative obligations.<sup>687</sup> While the eviction order was upheld, the municipality was ordered to find alternative housing for the occupiers and to pay the respondent for the duration of the occupiers' stay until they vacate, once it has provided temporary accommodation for them.<sup>688</sup>

One can appreciate that if the state must utilise its maximum resources and even make more available in relation to qualified socio-economic rights, surely more is required for unqualified rights where resource constraints cannot even begin to justify non-fulfilment of a right. Similarly, if the state must act immediately on some aspects of qualified socio-economic rights, then surely the immediacy in relation to unqualified socio-economic rights must be of a higher level if there were levels. Biltchitz AJ's partial dissent in *Commando v City of Cape Town* adopts a seemingly more substantive and robust approach which fully engages international obligations and standards in light of the fact that South Africa has ratified the ICESCR.<sup>689</sup>

#### 4.5.4. Section 29(1) and other unqualified socio-economic rights

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<sup>684</sup> 2012 (2) SA 104 (CC) para 63.

<sup>685</sup> 2012 (2) SA 104 (CC) para 66.

<sup>686</sup> 2012 (2) SA 104 (CC) para 69.

<sup>687</sup> 2012 (2) SA 104 (CC) para 74.

<sup>688</sup> 2012 (2) SA 104 (CC) para 96.

<sup>689</sup> 2025 (3) SA 1 (CC) para 145.

As already stated, the state's positive obligations in relation to the right to basic education are not subject to the reasonableness standard as the right is not internally qualified. Children's socio-economic rights are also not internally qualified. Accordingly, to establish a standard for the assessment of measures to ensure effective school governance, an analysis of how children's socio-economic rights have been adjudicated on might be instructive.

In *Centre for Child Law v MEC for Education, Gauteng*, children were housed in a school in terms of section 15(1)(d) of the Child Care Act of 1983.<sup>690</sup> The school of industry was in deplorable conditions, most dormitories had no windows, no cubicles for privacy in the showers, no doors in some toilets, and ceiling boards were broken.<sup>691</sup> The bedding was old and the dormitories had no electricity, in some instances. There was also a deficiency of blankets<sup>692</sup> while some children were said to have no proper clothing, as they sold it to have money for drugs.<sup>693</sup> All this exposed the children to the cold. The applicants submitted that the conditions in the school violated the children's rights in section 28, the right to dignity, as well as the right not to be subjected to cruel, inhuman or degrading treatment.<sup>694</sup> The applicants sought an order compelling the Member of the Executive Council to provide each child with a sleeping bag, and to put in place proper access control and psychological support structures.<sup>695</sup>

The respondents did not dispute the terrible conditions at the school or the consequences thereof.<sup>696</sup> Instead, they argued that their budget was stretched.<sup>697</sup> Given that many students were not in attendance as it was during the holiday season, the respondents proposed that the blankets that it had provided be distributed among those in attendance.<sup>698</sup> The Court held that such a temporary solution did not pass

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<sup>690</sup> 2008 (1) SA 223 (T) 225C.

<sup>691</sup> 2008 (1) SA 223 (T) 226G.

<sup>692</sup> 2008 (1) SA 223 (T) 226I.

<sup>693</sup> 2008 (1) SA 223 (T) 227A.

<sup>694</sup> 2008 (1) SA 223 (T) 225C–D.

<sup>695</sup> 2008 (1) SA 223 (T) 225E.

<sup>696</sup> 2008 (1) SA 223 (T) 227D.

<sup>697</sup> 2008 (1) SA 223 (T) 227E.

<sup>698</sup> 2008 (1) SA 223 (T) 227F.

constitutional muster.<sup>699</sup> It held that the right to basic education, as it was also implicated, was not subject to available resources.<sup>700</sup>

Similarly, in *Equal Education v Minister of Basic Education*, Potterill ADJP held that:

“The children’s right in [section] 28 of the Constitution are not subject to internal limitations such as the availability of resources or progressive realization. These rights are unqualified and immediate with the only limitation under [section] 36 of the Constitution. The NSNP cannot be rolled out grade by grade.”<sup>701</sup>

On the other hand, in *National Association of Welfare Organisation and Non-Governmental Organisations v MEC of Social Development, Free State*<sup>702</sup> the Court reached a different conclusion. In this case, the Department of Social Development’s policy in respect of funding non-profit organisations (NPOs) that provide welfare services was at issue.<sup>703</sup> Some of the services offered by these organisations include the provision of child youth care centres to street children and those found in difficult circumstances at home.<sup>704</sup> The youth care centres needed about 2000 beds, of which only 1085 were available, and 765 of those were provided by the applicants.<sup>705</sup> One of the applicants also provided care for the elderly. It had a project for the provision of residence, community-based care, and sub-economic and economic housing for the elderly.<sup>706</sup> This applicant also operated a care facility for disabled persons, a day-care facility for adult disabled persons, and some prevention and development programmes in respect of HIV/AIDS, sexual molestation and alcohol and drug abuse.<sup>707</sup> In all this, about 40% of the services meant to be performed by the Department of Social Development were performed by the applicants.<sup>708</sup>

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<sup>699</sup> 2008 (1) SA 223 (T) 227H.

<sup>700</sup> 2008 (1) SA 223 (T) 227H–I.

<sup>701</sup> 2021 (1) SA 198 (GP) para 54.

<sup>702</sup> (1719/2010) [2010] ZAFSHC 73 (5 August 2010).

<sup>703</sup> [2010] ZAFSHC 73 para 2.

<sup>704</sup> [2010] ZAFSHC 73 para 12.

<sup>705</sup> [2010] ZAFSHC 73 para 13.

<sup>706</sup> [2010] ZAFSHC 73 para 15.

<sup>707</sup> [2010] ZAFSHC 73 para 16.

<sup>708</sup> [2010] ZAFSHC 73 para 18.

The applicants sought to have the Department's policy declared flawed and revised or redrafted.<sup>709</sup> The policy allowed the applicants to apply for financial assistance from the Department for certain categories of services, including services to children and families, youth development services, victim empowerment services, services to people with disabilities, services to older persons, and prevention and support services for alcohol and substance abuse.<sup>710</sup> The challenge faced by the applicants was that without an increase in subsidy, they would be unable to continue providing some of these services adequately.<sup>711</sup>

Kruger J for the Court acknowledged that the children's rights in section 28 have no internal qualifiers.<sup>712</sup> The Court also acknowledged that the care of the children taken away from their parents, as was the case here, is a key responsibility of the state.<sup>713</sup> It established that section 28 rights are realised, among other measures, through the Children's Act.<sup>714</sup> It then went on to hold that, however, in terms of section 4(2) of the Children's Act, the state's obligation in relation to these rights was to take reasonable measures to the maximum extent of its available resources.<sup>715</sup> The constitutional subsidiary principle is such that, until an applicant challenges the constitutionality of the applicable legislation, that applicant is bound to rely on the legislation and the court will have to deal with the matter in light of the legislation as it is.<sup>716</sup>

The Court applied the reasonableness test and held that when developing a method to assess budgetary allocations for NPOs, it is reasonable for the Department to take into account that NPOs have resources of their own.<sup>717</sup> Further that a reasonable policy would have to provide a fair, equitable and transparent method of fund allocation.<sup>718</sup> The Court held that the Department had no such in its policy.<sup>719</sup>

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<sup>709</sup> [2010] ZAFSHC 73 para 21.

<sup>710</sup> [2010] ZAFSHC 73 para 26.

<sup>711</sup> [2010] ZAFSHC 73 para 35.

<sup>712</sup> [2010] ZAFSHC 73 para 39.

<sup>713</sup> [2010] ZAFSHC 73 para 40.

<sup>714</sup> [2010] ZAFSHC 73 para 44.

<sup>715</sup> [2010] ZAFSHC 73 para 42.

<sup>716</sup> [2010] ZAFSHC 73 para 41.

<sup>717</sup> [2010] ZAFSHC 73 para 48.

<sup>718</sup> [2010] ZAFSHC 73 para 49.

<sup>719</sup> *Ibid.*

Accordingly it was held that the policy was indeed in need of redrafting.<sup>720</sup> Importantly, in this case the rights of children were subjected to the reasonableness standard due to the application of the constitutional subsidiary principle.

Similarly, in *Government of the Republic of South Africa v Grootboom*, the children's right to shelter was also at issue. The Court stated that the right to shelter is to be read together with the right to family care or parental care or appropriate alternative care when removed from the family environment.<sup>721</sup> Yacoob J held that the obligation to provide shelter is imposed primarily on the parents or family, and only alternatively on the state.<sup>722</sup> Given that the children in this case were within their family environment and not in alternative care, and the aim was not to provide them with shelter independently from their parents, the Court found that the primary obligation to provide shelter still rested with the parents.<sup>723</sup> The state's obligation in relation to children in family environments is to provide the legal and administrative infrastructure necessary to ensure that children are accorded the protection contemplated in section 28 (passing laws and creating enforcement mechanisms for the maintenance of children as well as their protection from maltreatment, abuse, neglect or degradation).<sup>724</sup>

Ultimately, the Court's interpretation of the right to care and the right to shelter meant that the children's socio-economic right to shelter had to be adjudicated in conjunction with the right to access to housing which is subject to the reasonableness standard. Otherwise, unfairness and injustice would result as parents with children would have an advantage on housing programmes at the disadvantage of people without children under their care.<sup>725</sup>

It can be established that children's socio-economic rights may directly or in effect be subjected to the reasonableness standards for technical reasons or where they are intertwined with those of other persons such as parents. Ultimately, whether or not the socio-economic rights of children are subjected to the reasonableness standard when

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<sup>720</sup> [2010] ZAFSHC 73 para 51.

<sup>721</sup> 2001 (1) SA 46 (CC) para 76.

<sup>722</sup> *Ibid.*

<sup>723</sup> 2001 (1) SA 46 (CC) para 79.

<sup>724</sup> 2001 (1) SA 46 (CC) para 78

<sup>725</sup> 2001 (1) SA 46 (CC) para 71.

being adjudicated upon seems to depend on the nature of the other socio-economic rights at issue and the surrounding circumstances.

SASA does not have provisions similar to those of the Children's Act, which subject the realisation of any of the components of the right to progressive realisation within available resources. Further, it is impossible for the right to basic education to be an issue for both a child and its parents in the same sense that housing or shelter can be.<sup>726</sup> It can therefore be concluded that the right to basic education occupies a unique position and any limitation to it is difficult to justify, though the right is not absolute like all rights.

#### 4.5.5. Immediate realisability

Both internationally and domestically, the right to basic education is immediately realisable. General Comment 13 on the ICESCR states that basic education must be prioritised, as the obligation to provide primary education for all is an immediate duty of all state parties.<sup>727</sup> The Constitutional Court's judgment in *Governing Body of the Juma Masjid Primary School v Essay N.O* clarifying the immediate realisability of the right to basic education<sup>728</sup> might have taken the standard even higher than mere prioritisation of the right. However, the Court did not necessarily detail the meaning of immediate realisability as a legal standard, especially in relation to the state's positive obligations, as that case was about the state's negative obligations. Subsequent cases on positive obligations towards this right also saw the lower courts reiterating that the DBE cannot rely on resource/budgetary constraints to justify its failure to provide the components of the right,<sup>729</sup> instead of actually giving meaning to immediate realisability as a legal standard.

In *Equal Education v Minister of Basic Education*, the Minister made regulations whose effect was that the provision of school infrastructure was made subject to the

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<sup>726</sup> The right to basic education includes the right to adult basic education. The realisation standard is the same. However, the delivery site for adult basic education is often different from the delivery site for basic education for children.

<sup>727</sup> General Comment 13 para 51.

<sup>728</sup> 2011 (8) BCLR 761 (CC).

<sup>729</sup> Simbo "A Hexagonal Right" 131.

availability of resources.<sup>730</sup> The limitation was accordingly found to be an unjustified and unreasonable limitation of the right to basic education.<sup>731</sup> The applicants posited that, indeed, resource availability issues and other issues of practicality cannot be divorced from the provision of the components of this right. However, those issues should be “located in areas appropriate to an analysis of the circumstances”- the section 36 proportionality analysis.<sup>732</sup> The applicants further posited that:

“[T]he effect of sub-regulation 4(5)(a) is to render the norms and standards ineffective, because it makes the duty of the Minister under the regulations subject to unspecified and indeterminate qualifications which may be superimposed by other (unspecified) organs of state, because they decline to co-operate, or because they choose not to make resources or infrastructure available for this purpose, or because they are not competent in providing it.”<sup>733</sup>

The Court dismissed the Minister’s argument that her hands were tied.<sup>734</sup> It held that the Minister could allocate resources accordingly; failing this, a justification had to be provided in terms of section 36.<sup>735</sup> The sub-regulation was found inconsistent with the Constitution and thus declared unlawful and invalid.<sup>736</sup> Notably, the Minister had provided no acceptable justification for failing to allocate resources.

In *Madzozo v Minister of Basic Education*, the applicants sought an order specifying that all of the furniture required must be delivered to the identified schools by 31 May 2014 which was three months after the matter was heard.<sup>737</sup> The Department argued that it could not meet the impossibly short time frames given that it is also limited by budgetary constraints<sup>738</sup> and the lack of available resources.<sup>739</sup> It further argued that it could only provide “a reasonable plan of action to provide furniture to learners within the shortest period of time”.<sup>740</sup>

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<sup>730</sup> 2019 (1) SA 421 (ECB) para 83.

<sup>731</sup> *Ibid.*

<sup>732</sup> 2019 (1) SA 421 (ECB) para 88.

<sup>733</sup> 2019 (1) SA 421 (ECB) para 63.

<sup>734</sup> 2019 (1) SA 421 (ECB) paras 181–185.

<sup>735</sup> 2019 (1) SA 421 (ECB) para 185.

<sup>736</sup> 2019 (1) SA 421 (ECB), the order.

<sup>737</sup> 2014 (3) SA 441 (ECM) para 11.

<sup>738</sup> 2014 (3) SA 441 (ECM) para 31

<sup>739</sup> 2014 (3) SA 441 (ECM) para 22.

<sup>740</sup> 2014 (3) SA 441 (ECM) para 12.

When challenged about subjecting the right to basic education to the internal limitation of availability of resources, the Department relied on the norms and standards on infrastructure and the fact they envisaged a progressive realisation for the provision of infrastructure.<sup>741</sup> The Court dismissed this argument, holding that the policy document was not furnished and that, “in any event, it was not submitted that the norms and standards determined for public schools override the constitutional imperative provided by section 29”.<sup>742</sup> Goosen J, for the Court, explained that the nature of the right requires the state to take all measures to realise it with immediate effect.<sup>743</sup> Therefore, eliminating the progressive realisation qualifier in section 29(1)(a) must point to the fact that, basic education is not subjected to over time provision but rather to immediate provision.<sup>744</sup>

Similarly, in *Equal Education v Minister of Basic Education*, the phased-in approach to the NSNP was found not only to subject the right to basic education to progressive realisation, but also to constitute a regressive measure.<sup>745</sup> Regressive measures are highly scrutinised even for internally limited rights, as seen from the above analysis on the reasonableness standard. Therefore, the state had to meet a high standard in justifying its actions of suspending the NSNP in the totality of all the other interrelated and interconnected rights, and it failed.<sup>746</sup> The regressive approach was accordingly found to be an unjustified and unreasonable limitation of the right to basic education.<sup>747</sup>

Finally, the right to basic education is not only without expressed internal qualifiers, but it is also not phrased as an access to a right, unlike some socio-economic rights.<sup>748</sup> Bearers of the right to basic education have the right to an actual good or service being

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<sup>741</sup> 2014 (3) SA 441 (ECM) para 22.

<sup>742</sup> *Ibid.*

<sup>743</sup> 2014 (3) SA 441 (ECM) para 17.

<sup>744</sup> Simbo “A Hexagonal Right” 131.

<sup>745</sup> 2021 (1) SA 198 (GP) para 59.

<sup>746</sup> 2021 (1) SA 198 (GP) para 46.

<sup>747</sup> 2021 (1) SA 198 (GP) para 55.

<sup>748</sup> Joubert “Incorporating International Standards” 13–14. See also T Boezaart *Child Law in South Africa* 2 ed (2017) 520. It has been argued that section 7(2) of the Constitution makes the phrase “access to” superfluous. Accordingly, the real internal limitation is the reasonable measure subject to progressive realisation within available resources (M Buchner-Eveleigh “Children’s Rights of Access to Health Care Services and to Basic Health Care Services: A Critical Analysis of Case Law, Legislation and Policy” (2016) 49 *De Jure* 307 at 310.).

basic education.<sup>749</sup> Accordingly, it has been argued that the absence of the word “access” was meant to ensure that the state does not only unlock a system to ensure access to basic education but that it actually provides basic education.<sup>750</sup> This means that every learner has a direct claim to be provided with a particular entitlement necessary for their education. This, in turn, requires that the government do everything possible to ensure that such an entitlement is provided to each learner.<sup>751</sup> The government is therefore required to budget effectively which is implicit in the fact that the resource constraints argument is unacceptable.<sup>752</sup>

Constitutionally, no right is absolute, all rights may be limited in terms of section 36. Scholars differ on the possibilities in relation to circumstances where the DBE’s limitation of the right to basic education could be found justified and reasonable. Some argue that the lack of internal qualifiers makes it extremely difficult for the state to successfully justify limiting this right, especially because the limitation often hinges on resources. However, this is also not to say that the availability of resources is irrelevant, it just will not justify the limitation of the right since section 36 considers the very nature of the right and cannot introduce qualifiers not originally provided for in the right as phrased in the Constitution.<sup>753</sup> Simbo gives the postponement of NSC examinations due to leaked papers as an example of a limitation that could be justified.<sup>754</sup>

In cases where the state argued resource constraints, one of the reasons provided by courts for rejecting the argument tends to be the lack of evidence to support the averment. Msizi AJ in *Equal Education v Minister of Basic Education* stated:

“I cannot fathom a reason why, given the nature of the right in question, and the huge crisis, the respondent cannot develop a plan and allocate resources in accordance with her obligations. In the event that she alleges that she is unable

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<sup>749</sup> L Arendse “Slowly but Surely: The Substantive Approach to the Right to Basic Education of the South African Courts Post-Juma Masjid” (2020) 20 *African Human Rights Law Journal* 285 at 288–289.

<sup>750</sup> Simbo “A Hexagonal Right” 130.

<sup>751</sup> Veriava “Basic Education Provisioning” 233.

<sup>752</sup> *Ibid.*

<sup>753</sup> Simbo “A Hexagonal Right” 132–133.

<sup>754</sup> Simbo “A Hexagonal Right” 133.

to do so, it is incumbent upon her to justify that failure under s 36 or 172(1)(a) of the Constitution. This she has not done.”<sup>755</sup>

This then seems to leave room, although arguably narrow in light of the issues of poor planning and administration in departments,<sup>756</sup> for the argument that if the state could adduce evidence, it could justify a limitation, even the sort that is based on resource constraints. Here, there would have to be proof that the government, at all levels, did not fail to budget effectively, it was not misguided about its obligations, and there simply is no money, not even the sort that could be lawfully reshuffled from other expenses.

Others posit that a limitation might be unjustified but allowed if the DBE could demonstrate that immediate relief would not be a just and equitable remedy/order under section 172(1)(b) of the Constitution.<sup>757</sup> No matter the correct position, it suffices to say that there is a difference between the legal standard for the realisation of a right and what a just and equitable remedy in certain circumstances would be.

The determination of an appropriate remedy necessitates an enquiry into what is practically feasible so that courts do not grant unenforceable or unimplementable orders.<sup>758</sup> This is not to deny the fact that legal standards for the realisation of a right are highly determinative of what a just and equitable remedy would be. The point is that practical considerations cannot be ignored when it comes to remedies. Importantly, the fact that for practical purposes, the components of the right to basic education might be provided over time in terms of plans does not mean that the right is not immediately realisable in law. An argument could be made that the five-year plans are unconstitutional,<sup>759</sup> however, those may remain the only sound option or

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<sup>755</sup> 2019 (1) SA 421 (ECB) para 184.

<sup>756</sup> For example, in *Madzodzo v Minister of Basic Education*, the state adduced evidence demonstrating that the budget allocated to address the dire furniture shortages would not adequately do so in the near future. The Court held that the state should have planned and budgeted better as the shortage was well known for a considerable time (paras 34–35).

<sup>757</sup> C McConnachie and C McConnachie “Concretising the Right to a Basic Education” (2012) 129 *South African Law Journal* 554 at 564.

<sup>758</sup> C Amsterdam “Adequacy in the South African Context: A Concept Analysis” (2006) 24 *Perspectives in Education* 25 at 30.

<sup>759</sup> Simbo “A Hexagonal Right” 133.

approach on certain components to avoid impracticalities and absurdities. The question on how one assesses the adequacy of such plans remains.

#### 4.5.6. Adequacy as a legal standard

Adequacy as a legal standard remains unexplored in South Africa. It has been broadly utilised in other jurisdictions such as the USA, especially in relation to litigation in financing education rights.<sup>760</sup> While not neatly defined, one way of defining adequacy (the term has been used synonymously with terms like efficient, sufficient and appropriate) is asking how much is enough to achieve intended goals as planned.<sup>761</sup> Such questions were historically left to the legislature and the executive, as the constitutional provisions were believed to have no discernible standards by which courts were to answer such questions.<sup>762</sup>

Another way of defining adequacy is looking into the inputs (means) such as resources, goods or services needed to provide education<sup>763</sup> and the desired goals and outcomes (prospects) of providing those services.<sup>764</sup> Further, some scholars argue that equity and equality have been deemed inherent in adequacy issues in that the standard is also about reducing inequalities of educational outcomes for the disadvantaged.<sup>765</sup>

Efficiency, which is also said to include adequacy and equitability, has also been defined in terms of the objectives the education system seeks to achieve.<sup>766</sup> Systems are inefficient once they fail to achieve those objectives.<sup>767</sup> For states whose constitutions oblige them to provide an effective system, effective has been given its

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<sup>760</sup> See WH Clune “Educational Adequacy: A Theory and its Remedies” (1995) 28 *University of Michigan Journal of Law Reform* 481. See also M Moran “Standards and Assessments: The New Measure of Adequacy in School Finance Litigation” (1999) 25 *Journal of Education Finance* 33; PF First and LF Miron “The Social Construction of Adequacy” (1991) 20 *Journal of Law and Education* 421; and AA Lindseth *The Legal Backdrop to Adequacy* (Chapter 2).

<sup>761</sup> First and Miron “The Social Construction of Adequacy” 426. See also Clune “Educational Adequacy” 481.

<sup>762</sup> Lindseth *The Legal Backdrop to Adequacy* 45.

<sup>763</sup> Amsterdam “Adequacy in the South African Context” 27.

<sup>764</sup> First and Miron “The Social Construction of Adequacy” 427.

<sup>765</sup> First and Miron “The Social Construction of Adequacy” 428. See also *Edgewood Independent School District v. Kirby* 777 S.W.2d 391 (Texas 1989) pdf 8.

<sup>766</sup> First and Miron “The Social Construction of Adequacy” 436.

<sup>767</sup> *Rose v. Council for Better Education* 790 S.W.2d 186 (Kentucky 1989). See also First and Miron “The Social Construction of Adequacy” 436–437.

ordinary meaning – producing intended results (results may be expressed in terms of student academic achievement)<sup>768</sup> with little waste of resources.<sup>769</sup> A system that fails to provide the components of the right to basic education (facilities, textbooks, equipment, an appropriate curriculum and qualified teachers)<sup>770</sup> is inadequate to the extent of the lack of any of the necessary components.<sup>771</sup>

Notions of efficiency and the obligation to take necessary and appropriate steps have been already mentioned as demanded by international, regional and domestic law. Domestically, courts have acknowledged that, as a matter of practicality and depending on the circumstances, the state must still take all the necessary measures – ranging from budgeting and procurement to the delivery of resources – to realise the right to basic education. For example, in *Tripartite Steering Committee v Minister of Basic Education*, the ECDBE was allowed about four weeks to provide learners with scholar transport.<sup>772</sup> Similarly, in *Madzodo v Minister of Basic Education* the ECDBE was given eight days to file a report identifying schools in need of furniture and then subsequently 90 days to provide the furniture to those schools.<sup>773</sup>

It has been argued that, while still encompassing equality, adequacy demands more, and may better assist where the progress through the lenses of equality is slow.<sup>774</sup> The reason is that an adequacy standard necessitates that policymakers define a basic education, determine the cost of such an education, and provide the necessary funding for such an education.<sup>775</sup> The concern has been that this might require far more financial resources than the state may be willing or able to provide, leaving it as a mere dream. Further that courts might have some reluctance to order remedies in this regard due to the risk of unenforceability or impossibility.<sup>776</sup> It must be acknowledged that at times, non-compliance with court orders stems not from

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<sup>768</sup> Amsterdam “Adequacy in the South African Context” 27.

<sup>769</sup> First and Miron “The Social Construction of Adequacy” 438. See also *Edgewood Independent School District v. Kirby* 777 S.W.2d 391.

<sup>770</sup> Amsterdam “Adequacy in the South African Context” 27

<sup>771</sup> First and Miron “The Social Construction of Adequacy” 438–439.

<sup>772</sup> 2015 (5) SA 107 (ECG) para 67.

<sup>773</sup> 2014 (3) SA 441 (ECM) para 41.

<sup>774</sup> Amsterdam “Adequacy in the South African Context” 31.

<sup>775</sup> *Ibid.*

<sup>776</sup> *Ibid.*

impossibility but from a lack of political will, thereby forcing litigants to devise monitoring and enforcement mechanisms in addition to creative remedies.<sup>777</sup> All this has not stopped the wide acceptance that, while not the only requirement, sufficient financial provisioning is a constituent of an adequate education system.<sup>778</sup>

That the state must provide financial resources for the realisation of the right to basic education has also been reiterated domestically by courts. In *Basic Education For All v Minister of Basic Education*<sup>779</sup> it was noted that the content of the right to basic education is not unrelated to the resources available to the state.<sup>780</sup> The Court held that the state must manifestly budget for the realisation of this right and others.<sup>781</sup> Tuchten J stated that:

“The right to a basic education, on the other hand, is subject to no such limitations. And yet, the content of the right to a basic education, like all other constitutional rights which require the participation of the state 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.”<sup>782</sup>

Local scholars have a similar take on adequacy, although also mainly spoken of in financing education. It has been defined as sufficient input levels to ensure student achievement of learning goals.<sup>783</sup> Reliance on the jurisprudence of the USA has been motivated by the fact that both South Africa and the USA “travelled similar paths in the quest for equity in education. Both have a history of racial segregation and inequality in education and in both contexts, equity emerged as a dominant principle in the allocation of resources after major political changes”.<sup>784</sup>

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<sup>777</sup> WS Koski “Achieving Adequacy in the Classroom” (2007) 27 *Boston College Third World Law Journal* 13 at 30. Amsterdam “Adequacy in the South African Context” 30. See also Mathenjwa “The Realisation of the Right to a Basic Education” 7.

<sup>778</sup> First and Miron “The Social Construction of Adequacy” 428. See also Amsterdam “Adequacy in the South African Context” 27–28.

<sup>779</sup> 2014 (4) SA 274 (GP).

<sup>780</sup> 2014 (4) SA 274 (GP) para 43. See also *National Association of Welfare Organisation and Non-governmental Organisations v MEC Social Development, Free State*.

<sup>781</sup> 2014 (4) SA 274 (GP) para 43.

<sup>782</sup> 2014 (4) SA 274 (GP) para 67.

<sup>783</sup> Amsterdam “Adequacy in the South African Context” 25.

<sup>784</sup> Amsterdam “Adequacy in the South African Context” 26.

Yet, there are major differences between the USA and the South African Constitutions' phraseology of the provisions relating to the right to education. Further, in the South African democracy, the Constitution operates from a point of clear commitments to equality and equity as the Blacks are the majority seeking justice from the apartheid.<sup>785</sup>

There are also foreseeable challenges in implementing adequacy as a legal standard in the South African education system. These include the fact that a clear conceptualisation of the standard is still wanting.<sup>786</sup> While there is a link between resource input and outcomes, it is insufficient to merely rely on the NSC results to assess an entire system when there are multiple socio-economic rights which depend on state resources for their realisation.<sup>787</sup>

Further, it has been accepted that what is adequate now may not be so in 10 years' time and what is adequate for one community may not be for another.<sup>788</sup> This might also make it undesirable for an adequacy standard for the same reason that it is undesirable to define basic education or the entitlements in the right to it in absolute terms. One needs to bear in mind that the absence of some standard in relation to the plans adopted for the realisation of the right to basic education stems from the very fact that the right was never an entitlement to an "adequate" plan but a right to the specific components to provide education. Ultimately, any standard on the adequacy of plans runs the risk of subjecting the right to the reasonableness standard or some standard akin to it.<sup>789</sup>

Nonetheless, the benefits of adopting some kind of a standard to assess the measures meant to realise the right to basic education in this context (and not the whole education system, as the adequacy standard has been used), include forcing the Department and schools to examine their expenditure so they can track the flow of

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<sup>785</sup> *Ibid.*

<sup>786</sup> Amsterdam "Adequacy in the South African Context" 31.

<sup>787</sup> Amsterdam "Adequacy in the South African Context" 31–32.

<sup>788</sup> First and Miron "The Social Construction of Adequacy" 428.

<sup>789</sup> A further concern about the pursuit of adequacy through the court is the amount of time it takes for a case to make its way through the courts. Some argue that inadequacies are allowed to persist while the courts hear the case and the legislature work out remedies (See Amsterdam "Adequacy in the South African Context" 30).

resources.<sup>790</sup> It could help them see how the money is spent and hopefully prompt a reconsideration of spending priorities at all levels.<sup>791</sup> Centering education efforts on learner outcomes could contribute meaningfully to South Africa's human resource development goals.<sup>792</sup>

It has been argued that the South African courts adopt an approach that emphasises the physical and material conditions of the schools (input-driven)<sup>793</sup> and the adequacy standard might require both an input and outcomes-based approach. This is so that the adequacy of the provision of basic education, and that of the measures adopted to fulfil the right, is measured based on both the capacities to be gained by the learner as well as school funding laws.<sup>794</sup> Regardless of what the appropriate standard may be, the absence of any standard (even a minimum one that allows for evolving needs), creates space for further violations until judicial intervention is sought.

It can be argued that, for effective checks and balances, one need not have to wait for a gross violation; the measures should be assessable somehow. Otherwise, one would be accepting that whatever the state chooses to define as adequate is adequate since the provision of education is mainly a state function.<sup>795</sup> This would mean that, in practice, the DBE can therefore have as poor a programme which could not even pass the very reasonableness standard. Further, not being able to assess measures meant to realise such an important right might be contributing towards the piecemeal litigation in education while systemic issues persist.<sup>796</sup> Relatedly, constitutional and sometimes legislative provisions are not self-explanatory; holders of rights need to know what is due to them in order to effectively enforce and enjoy their rights.<sup>797</sup>

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<sup>790</sup> Amsterdam "Adequacy in the South African Context" 32.

<sup>791</sup> *Ibid.*

<sup>792</sup> *Ibid.*

<sup>793</sup> O Basol "A Comparative Legal Analysis of the Right to Adequate and Quality Education" (2024) 7 *Tihek Academic Journal* 159 at 169.

<sup>794</sup> Basol "A Comparative Legal Analysis" 189.

<sup>795</sup> First and Miron "The Social Construction of Adequacy" 424.

<sup>796</sup> This is not to say that there have not been systemic remedies over the litigation so far, it merely is to acknowledge that there seems to still be a long way to go. Many programmes including the ASIDI is a systemic relief that resulted from litigation.

<sup>797</sup> Simbo "A Hexagonal Right" 127–128.

It cannot be denied that plans are exactly that, plans and are therefore subject to change. This may make it undesirable to have an “adequacy standard” on the plans and the implementation thereof. However, it cannot be denied that the DBE has some plans and programmes that are quite set in the same sense that some programmes in relation to internally qualified socio-economic rights are. Those plans and programmes can therefore be assessed conclusively had there been a legal standard for such an assessment. The courts have on several occasions also ordered the provincial departments to adopt necessary plans to realise the right to basic education.

For example, in *Section 27 v Minister of Education*, the Limpopo Department of Education was ordered to develop a catch-up plan for grade 10 learners who were behind in terms of the curriculum due to the Department’s failure to timeously provide them with textbooks. Kollapen J ordered that the plan must, among other things, provide a time frame in respect of which it would be implemented.<sup>798</sup> The plan was to have mechanisms in place to monitor its implementation.<sup>799</sup> Further, the Limpopo Department of Education was to ensure that the plan would be comprehensive to the extent that it would cover all affected grade 10 learners.<sup>800</sup> Finally, the Department would recognise that the nature of the interventions may differ from school to school due to differing contexts, the plan had to be flexible enough to cater for different circumstances.<sup>801</sup>

Similarly, in *Madzodzo v Minister of Basic Education*, the Department was also directed to make a comprehensive plan for the provision of school furniture.<sup>802</sup> So too, in the case of in *Equal Education v Minister of Basic Education* where the Department was ordered to make a plan to implement the NSNP.<sup>803</sup> Despite being raised in the context of a remedial plan, there is nothing to suggest that the factors raised by Kollapen J and other judges in these cases should not be considered under normal circumstances when establishing a plan for the fulfilment of measures meant to realise the right to basic education.

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<sup>798</sup> 2013 (2) SA 40 (GNP) para 43.

<sup>799</sup> *Ibid.*

<sup>800</sup> *Ibid.*

<sup>801</sup> *Ibid.*

<sup>802</sup> 2014 (3) SA 441 (ECM) para 5.

<sup>803</sup> 2021 (1) SA 198 (GP) para 103.11.

In light of the above discussion on international, regional and domestic legal obligations in relation to the right to basic education, the relevant factors for the assessment of the adequacy of measures meant to ensure effective school governance are summarised below. At minimum, the plans or programmes must:

- make provision for human and financial resources;
- be flexible to accommodate different circumstances and changing times<sup>804</sup>;
- provide clear timelines on the implementation thereof;
- provide some monitoring mechanism to monitor the implementation thereof; and
- be comprehensive and cover all aspects of the issue to which they relate to.

At the heart of the application of the adequacy standard on measures in school governance is the fact that it is not enough to assess the input, this being both the financial and human resources invested in capacitating SGBs. One must necessarily assess, with robustness, whether the intended outcomes were met. Implicit in this is that the state is trusted to have set outcomes that are nothing short of what the right to basic education must provide for. This being in light of what this right is intended for and given that it is immediately realisable. On the other hand, it is not the end of the road if the state set outcomes that fall short of the intended purpose of this right because there is sufficient clarity, as discussed above, as to what it means for SGBs to effectively perform their functions. The ECDBE's measures must be directed at ensuring that SGBs are accordingly capacitated. One can then determine where the gap is.

#### **4.6. Conclusion**

This chapter demonstrated the importance of effective school governance in the provision of the other components of the right to basic education thus the realisation of the right to basic education. A history of school governance in Transkei has also

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<sup>804</sup> This would counter the challenge that what is adequate today may not be tomorrow or and may not be for another community.

been explored, which demonstrated nuances in school governance and that parental involvement was, for the most part, on paper than in reality. The constitutional dispensation saw the decentralisation and democratisation of school governance. Challenges experienced in school governance were also outlined further demonstrating the need to curb obstacles and ensure effective school governance.

The legal obligations on the government in realising the right to basic education were discussed with the aim of determining a legal standard for measuring the adequacy and effectiveness of measures adopted to ensure effective school governance. With the reasonableness standard being inapplicable, the study adopts the adequacy standard. The challenges with this standard were noted, ranging from the lack of the conceptualisation of the standard, to its historic use being mainly in financing education, up to the undesirability of having a measuring standard in relation to measures meant to fulfil an immediately realisable right like basic education.

Nonetheless, it has been concluded that, with no standard in place, the study shall utilise the adequacy standard. This standard adopts both an inputs and outcomes-based approach on the realisation of the right to basic education. Further, this is done without leaving it entirely to the executive to determine both what constitutes sufficient input for the desired outcomes and the very definition of those outcomes in the first place.

## **5. MEASURES TO IMPROVE PUBLIC SCHOOL GOVERNANCE**

### **5.1. Introduction**

In chapter 4, the components of the right to basic education were discussed. The chapter explained the importance of school governance, not only as arguably one of the components of the right to basic education, but the role it has in effecting the rest of the components of the right to basic education. With such a pivotal role, it is expected that the DBE and the ECDBE, in particular, would have developed measures to ensure effective school governance in public schools. Therefore, this chapter investigates the measures adopted in relation to school governance, mainly on the capacitation of SGB members. The implementation of such measures (in the context of the case study area of Tlokoeng) and the adequacy thereof shall be assessed in

chapters 6 and 7 respectively to determine if and to what extent problems with school governance continue to negatively impact quality teaching and learning in rural areas.

## 5.2. Measures relating to public school governance

### 5.2.1. Legislative and policy provisions

SASA provides for the enhancement of the capacity of SGBs to be able to perform their functions optimally.<sup>805</sup> Provincial legislatures must provide the necessary funding for the capacity building of SGB members.<sup>806</sup> The HOD in every province is responsible for providing introductory training for newly elected SGB members as well as continued training for SGBs to promote effective performance of SGB functions.<sup>807</sup> Several policies have been made by the national government (across different departments) as well as the national and provincial departments of basic education in order to fulfil these statutory obligations.

In September 2012, the government of South Africa adopted a National Development Plan seeking to eliminate poverty and reduce inequality by 2030.<sup>808</sup> One of the ways in which the government planned to do this was through ensuring quality education.<sup>809</sup> This plan is continuously implemented through a five-year plan, Medium-Term Strategic Framework (MTSF), developed by the governing party's national cabinet.<sup>810</sup> One of the priority outputs of the 2014–2019 MTSF was strengthening accountability and improving management in schools, communities and districts.<sup>811</sup> The 2019–2024 MTSF was silent on school governance, but focused on other components of the right to basic education such as capable teachers.<sup>812</sup>

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<sup>805</sup> Section 19 of SASA.

<sup>806</sup> Section 19(1) of SASA.

<sup>807</sup> *Ibid.*

<sup>808</sup> Medium-Term Strategic Framework 2014–2019 at 4 <https://www.nationalplanningcommission.org.za/assets/Documents/Frameworks/mtsf-2019-2024.pdf> (accessed 26 February 2021). See also the National Development Plan foreword pdf 5.

<sup>809</sup> National Development Plan 17.

<sup>810</sup> Medium-Term Strategic Framework 2014–2019 at 4–5.

<sup>811</sup> Medium-Term Strategic Framework 2014–2019 at 16.

<sup>812</sup> Medium-Term Strategic Framework 2019–2024 at 72 [https://www.dpme.gov.za/keyfocusareas/outcomesSite/MTSF\\_2019\\_2024/2019-2024%20MTSF%20Comprehensive%20Document.pdf](https://www.dpme.gov.za/keyfocusareas/outcomesSite/MTSF_2019_2024/2019-2024%20MTSF%20Comprehensive%20Document.pdf) (accessed 23 February 2023).

Like all provinces, the Eastern Cape has its Development Plan: Vision 2030.<sup>813</sup> One of the goals set in the Eastern Cape Development Plan is an educated, innovative and empowered citizenry.<sup>814</sup> Strategic actions to fulfil this goal include effective leadership and management in schools, and improved leadership and support for schools from the district and sub-district levels of the ECDBE.<sup>815</sup>

The DBE adopted an Action Plan 2019; Towards Schooling 2030<sup>816</sup> while the ECDBE adopted the Education Systems Transformation Plan (the first was for the years 2016–2019 followed by the one for the years 2019–2024)<sup>817</sup> to give effect to the National Development Plan. The DBE Action Plan 2019; Towards Schooling 2030 outlined 27 goals for the national learning outcomes from 2019 until 2030.<sup>818</sup> These national learning outcomes include ensuring that there are basic annual management processes that contribute towards a functional school environment, and improving parent and community participation in the governance of schools.<sup>819</sup> The DBE planned to achieve these outcomes partly by improving the frequency and quality of the monitoring and support services provided to schools by district offices, amongst others.<sup>820</sup> Similarly, one of the focus areas in the ECDBE Education Systems Transformation Plan is school finance and governance whose objective is to ensure sufficient monitoring and governance in schools.<sup>821</sup>

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<sup>813</sup> EC Provincial Development Plan: Vision 2030  
[https://www.ecsecc.org/documentrepository/informationcentre/ec-vision-2030-planoctober-post-exco\\_14935.pdf](https://www.ecsecc.org/documentrepository/informationcentre/ec-vision-2030-planoctober-post-exco_14935.pdf) (accessed 6 February 2022).

<sup>814</sup> EC Provincial Development Plan: Towards 2030 at i.

<sup>815</sup> EC Provincial Development Plan: Towards 2030 at 21.

<sup>816</sup> DBE Action Plan 2019; Towards Schooling 2030  
<https://www.education.gov.za/Portals/0/Documents/Publications/Action%20Plan%202019.pdf> (accessed 6 February 2022).

<sup>817</sup> ECDBE Revised Education Systems Transformation Plan 2019–2024 at 3  
<https://eceducation.gov.za/resource-centre/documents-library/28/strategic-documents> (accessed 12 March 2025). See also the Eastern Cape Treasury Annual Performance Plan 2018/2019 at 13 stating that the ECDBE Education System Transformation Plan is meant to ensure a functional schooling environment through improved school management processes and greater accountability of schools to communities and departmental district offices, among other things.

<sup>818</sup> DBE Action Plan 2019; Towards Schooling 2030 at 2–3.

<sup>819</sup> DBE Action Plan 2019; Towards Schooling 2030 at 3.

<sup>820</sup> *Ibid.*

<sup>821</sup> ECDBE Education System Transformation Plan 2019/2024 at 16.

In line with the DBE's institutional plans and to give effect thereto,<sup>822</sup> the ECDBE also planned to improve school functionality through effective governance, management and monitoring (this is goal 6).<sup>823</sup> This was meant to be achieved through recruiting and training principals and supporting SMTs; improving the quality of monitoring and support provided to schools; and improving systems for effective management and administration of schools.<sup>824</sup>

To give effect to the National Development Plan in so far as the role of the provincial, district and circuit offices and the interaction of these role-players are concerned, the DBE adopted The National Policy on the Organisation, Roles and Responsibilities of Education Districts.<sup>825</sup> This policy stipulates that the provincial department must administer the training of SGBs and school principals for the performance of their various roles.<sup>826</sup> The policy further states that the provincial HOD has oversight over the districts and provides them with needed resources.<sup>827</sup> District directors in turn have oversight over circuits,<sup>828</sup> and circuit managers have oversight over schools.<sup>829</sup>

In terms of the National Policy on the Organisation, Roles and Responsibilities of Education Districts, district directors also directly engage with SGB chairpersons and principals and ensure the implementation of policies and plans.<sup>830</sup> In ensuring the implementation of policies and plans, district directors must support and advise SGBs and principals.<sup>831</sup> Circuit managers are essentially the link of communication between

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<sup>822</sup> See DBE Annual Performance Plan 2018/2019 at 44–46, 2019/2020 at 48–50 and 2020/2021 at 58 and 60 <https://www.education.gov.za/Resources/Reports.aspx> (accessed 2 February 2023).

<sup>823</sup> See ECDBE Annual Performance Plan 2018/2019 at 6, 2019/2020 at 6 and 2020/2021 at 103. <https://eceducation.gov.za/resource-centre/documents-library/3/annual-performance-plans> (accessed 12 March 2023). See also the ECDBE Head Office Operational Plan 2018/2019 at 16 <https://eceducation.gov.za/resource-centre/documents-library/15/operational-plans?page=2> (accessed 12 March 2023).

<sup>824</sup> ECDBE Annual Performance Plan 2018/2019 at 7, 2019/2020 at 6–7 and 2020/2021 at 51 and 97. See also the ECDBE Head Office Operational Plan 2018/2019 at 16 and 21.

<sup>825</sup> National Policy on the Organisation, Roles and Responsibilities of Education Districts, GN R300, *Government Gazette* 36324, 3 April 2013 para 10.

<sup>826</sup> Policy on the Organisation, Roles and Responsibilities of Education Districts para 62.

<sup>827</sup> Policy on the Organisation, Roles and Responsibilities of Education Districts para 41. This is in tandem with section 19(2) of SASA which stipulates that the HODs must ensure that the principals and other officers of the department render all necessary assistance to SGBs.

<sup>828</sup> Policy on the Organisation, Roles and Responsibilities of Education Districts paras 42.

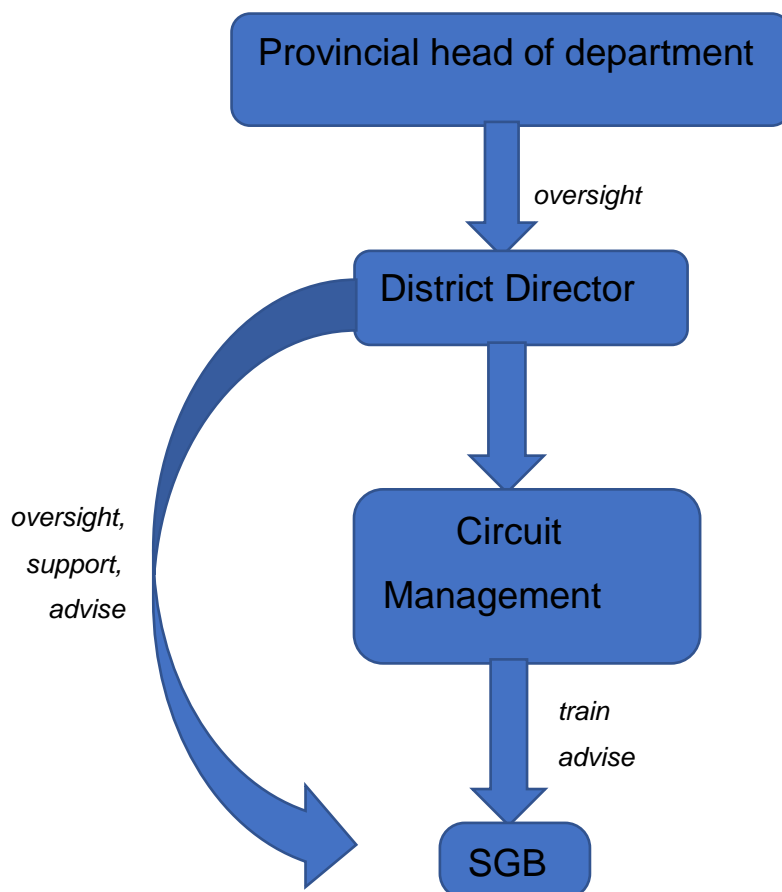
<sup>829</sup> Policy on the Organisation, Roles and Responsibilities of Education Districts para 59.

<sup>830</sup> Policy on the Organisation, Roles and Responsibilities of Education Districts paras 42 and 47.4.

<sup>831</sup> Policy on the Organisation, Roles and Responsibilities of Education Districts para 50.2.

district offices and schools.<sup>832</sup> They facilitate training for principals, SMTs and SGBs<sup>833</sup> and like the district offices, must specifically advise schools that are performing poorly.<sup>834</sup> The HOD of the province must establish necessary programmes to give effect to these policies.<sup>835</sup>

**Figure 5:** *Diagram representing how SGBs are capacitated*



At a practical level, the DBE, ECDBE and the district offices map out the plans (mainly operational plans,<sup>836</sup> annual performance plans, and annual reports<sup>837</sup>) setting out

<sup>832</sup> Policy on the Organisation, Roles and Responsibilities of Education Districts para 62(a).

<sup>833</sup> Policy on the Organisation, Roles and Responsibilities of Education Districts para 62(d).

<sup>834</sup> Policy on the Organisation, Roles and Responsibilities of Education Districts paras 51 and 59.

<sup>835</sup> Section 19(1) of SASA.

<sup>836</sup> The ECDBE's available Operational Plan is for 2018/2019 and then 2023/2024 of which the latter will not be considered in this study. Similarly, the Joe Gqabi District Operational Plan available is for the year 2018/2019. The DBE does not have Operational Plans.

<sup>837</sup> The Joe Gqabi District has no available Annual Performance Plans and Annual Reports.

measures to implement the legislative and policy provisions referred to above. The ECDBE's annual performance plans and annual reports consisted of seven programmes<sup>838</sup> of which the two that spoke to school governance were:

1. Programme 1: Administration
2. Programme 2: Public Ordinary School Education

Programme 1 was adopted by the DBE to provide for the management and support of the education system (in grades R–12).<sup>839</sup> This programme had been incorporated into the ECDBE Annual Performance Plans with the objective of providing effective governance and financial management in schools, amongst other things.<sup>840</sup> The DBE had also adopted the Teachers, Education Human Resources and Institutional Development Programme meant to promote quality teaching and institutional performance through the effective supply, development and utilisation of human resources.<sup>841</sup> This Programme was also meant to provide for the monitoring of the basic functionality of schools and SGBs to improve school effectiveness and accountability.<sup>842</sup> The Programme had been incorporated in the ECDBE annual plans as programme 2: Public Ordinary School Education to ensure quality basic education to all learners in grades R–12; to enhance the governance capacity of public schools; and to create an environment conducive to teaching and learning.<sup>843</sup>

### 5.2.2. Training, monitoring, and supporting SGBs

From the legislative framework and the national, provincial and district plans, it can be concluded that, in essence, the ECDBE had planned to ensure effective school governance through training, monitoring, and supporting schools, and SGBs in particular. In all the years in question, 2018/2019 to 2020/2021, the ECDBE had planned to prioritise the training of SGBs.<sup>844</sup> In both 2018/2019 and 2019/2020, the

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<sup>838</sup> See ECDBE Annual Performance Plan 2018/2019 at 32–77, 2019/2020 at 33–77, and 2020/2021 at 45–86. See also the ECDBE Annual Report 2018/2019 at 32–85, 2019/2020 at 39–88 and 2020/2021 at 44–72 <https://eceducation.gov.za/resource-centre/documents-library/4/annual-report> (accessed 12 March 2023).

<sup>839</sup> DBE Annual Performance Plans 2018/2019 at 26, 2019/2020 at 31, 2020/2021 at 39.

<sup>840</sup> ECDBE Annual Performance Plan 2018/2019 at 32, 2019/2020 at 33 and 2020/2021 at 45.

<sup>841</sup> DBE Annual Performance Plan 2018/2019 at 42 and 2020/2021 at 57.

<sup>842</sup> DBE Annual Performance Plan 2019/2020 at 46.

<sup>843</sup> ECDBE Annual Performance Plan 2018/2019 at 41, 2019/2020 at 40 and 2020/2021 at 51.

<sup>844</sup> ECDBE Annual Performance Plan 2018/2019 at 42, 2019/2020 at 40 and 2020/2021 at 52. See also the ECDBE Head Office Operational Plan 2018/2019 at 12.

training of newly elected SGB members was to be prioritised and their election process was meant to include an effective induction programme.<sup>845</sup> The ECDBE would develop training modules to train SGBs and host SGB indaba.<sup>846</sup> It would also monitor the impact of such training.<sup>847</sup>

Similarly, in all the years in question, the ECDBE had planned to prioritise supporting SGBs in general.<sup>848</sup> In 2018/2019 it was envisioned that support would be through focused visits.<sup>849</sup> The ECDBE would develop a school visit plan (with and through district offices)<sup>850</sup> and a monitoring tool, and verify visits to schools by sampling the schools that would be reported to have been visited by districts.<sup>851</sup> The district offices were meant to establish multi-disciplinary teams and train them to support schools.<sup>852</sup> After the teams had been sent to visit schools, the district office had planned to verify school visits and determine whether intervention was still needed.<sup>853</sup>

In relation to financial management, the ECDBE had planned to capacitate SGBs on the utilisation of funds as well as to monitor and support them.<sup>854</sup> In relation to the monitoring of such financial management in particular, the ECDBE planned to monitor the implementation of policies, review audited financial statements, and embark on site visits.<sup>855</sup> The district was to manage and monitor the budget and expenditure of schools.<sup>856</sup>

Regarding the monitoring and supporting of SGBs in relation to the employment of school staff, the ECDBE (with and through district offices)<sup>857</sup> planned to compile a

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<sup>845</sup> ECDBE Annual Performance Plan 2018/2019 at 42 and 2019/2020 at 41. See also the ECDBE Head Office Operational Plan 2018/2019 at 16.

<sup>846</sup> ECDBE Head Office Operational Plan 2018/2019 at 83.

<sup>847</sup> ECDBE Head Office Operational Plan 2018/2019 at 85.

<sup>848</sup> ECDBE Annual Performance Plan 2018/2019 at 42, 2019/2020 at 40 and 2020/2021 at 52. See also the ECDBE Head Office Operational Plan 2018/2019 at 12.

<sup>849</sup> ECDBE Annual Performance Plan 2018/2019 at 42.

<sup>850</sup> Joe Gqabi Operational Plan 2017/2018 at 13 <https://eceducation.gov.za/resource-centre/documents-library/15/operational-plans?page=2> (accessed 12 March 2023).

<sup>851</sup> ECDBE Head Office Operational Plan 2018/2019 at 16.

<sup>852</sup> Joe Gqabi Operational Plan 2017/2018 at 13.

<sup>853</sup> *Ibid.*

<sup>854</sup> ECDBE Head Office Operational Plan 2018/2019 at 104.

<sup>855</sup> ECDBE Head Office Operational Plan 2018/2019 at 40–42.

<sup>856</sup> Joe Gqabi Operational Plan 2017/2018 at 23.

<sup>857</sup> Joe Gqabi Operational Plan 2017/2018 at 25.

vacancy list of educator and non-educator staff for advertisement, as well as to facilitate the recruitment and placement of such staff.<sup>858</sup> The district office would monitor the recruitment processes to ensure adherence to the employment equity policy.<sup>859</sup> As for the monitoring and support of SGBs in relation to school property management, the district was meant to record and verify asset registries and report on lost assets.<sup>860</sup>

### 5.2.3. Programme performance measures/indicators and resource allocation

Programme performance measures and indicators were to be used to evaluate the ECDBE's performance on the established plans. A performance measure or indicator would assess the fulfilment of a specified objective or goal within the concerned program. These performance measures incorporated and integrated measures established nationally in the MTSF and those established provincially.<sup>861</sup>

A large number of the indicators were expressed mainly in numerical terms. In respect of the training of SGBs, the performance indicator would be the number of SGBs trained.<sup>862</sup> Insofar as the training of principals and SMTs was concerned, the performance measure would be the number of principals trained in leadership and management.<sup>863</sup> In relation to the provincial office's monitoring and supporting of district offices, the number of districts visited would be used to indicate whether district offices were supported and monitored.<sup>864</sup> To assess the effectiveness of schools, reliance would be on school self-evaluation, which the provincial office would monitor.<sup>865</sup> As for effective management and governance in schools in particular, the indicators were mainly:

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<sup>858</sup> ECDBE Head Office Operational Plan 2018/2019 at 44 and 51.

<sup>859</sup> Joe Gqabi Operational Plan 2017/2018 at 18.

<sup>860</sup> Joe Gqabi Operational Plan 2017/2018 at 21.

<sup>861</sup> ECDBE Annual Performance Plan 2019/2020 at 12.

<sup>862</sup> ECDBE Head Office Operational Plan 2018/2019 at 85.

<sup>863</sup> *Ibid.*

<sup>864</sup> ECDBE Head Office Operational Plan 2018/2019 at 23.

<sup>865</sup> ECDBE Head Office Operational Plan 2018/2019 at 66.

- The percentage of schools that produced a minimum set of management documents that were at a required standard.<sup>866</sup> The management documents included the school budget and the school improvement plan.<sup>867</sup>
- The percentage of schools whose SGBs met the minimum criteria in terms of effectiveness every year.<sup>868</sup>
- The percentage of school principals which rated district support services as satisfactory.<sup>869</sup>

In this way, the ECDBE would determine the extent to which schools adhered to good management practices.<sup>870</sup> In respect of the percentage of schools whose SGBs met the minimum criteria of effectiveness, the criteria were outlined in the SGB functionality tool that was developed by the DBE to assess the effectiveness of SGBs<sup>871</sup> and general compliance with the legislation.<sup>872</sup> The assessment required both the principal and a departmental official to evaluate the SGB's performance in relation to its various functions as set out in SASA.<sup>873</sup>

The performance measure of school principals rating district support as satisfactory was based on a sample survey given to principals to rate the district support on a scale of one to four, with one indicating "not useful" and four indicating "very useful".<sup>874</sup> The basis on which principals were required to rate the ECDBE's support to SGBs or schools in general was not stipulated. The provincial office would consult schools to assess the level of services offered by the district.<sup>875</sup>

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<sup>866</sup> ECDBE Annual Performance Plan 2018/2019 at 44–45, 2019/2020 at 43–44 and 2020/2021 at 54 and 103.

<sup>867</sup> ECDBE Annual Performance Plan 2020/2021 at 103. See also the ECDBE Head Office Operational Plan 2018/2019 at 82.

<sup>868</sup> ECDBE Annual Performance Plan 2018/2019 at 44–45 and 2019/2020 at 37. See also the ECDBE Head Office Operational Plan 2018/2019 at 83.

<sup>869</sup> ECDBE Annual Performance Plan 2018/2019 at 15 and 2019/2020 at 37. See also the ECDBE Head Office Operational Plan 2018/2019 at 18.

<sup>870</sup> ECDBE Annual Performance Plan 2020/2021 at 103.

<sup>871</sup> ECDBE Annual Performance Plan 2018/2019 at 102 and 2019/2020 at 41.

<sup>872</sup> ECDBE Annual Performance Plan 2018/2019 at 102.

<sup>873</sup> SGB Functionality Tool [https://www.gbf.org.za/download/2020-sgb-functionality-tool\\_approved-version/](https://www.gbf.org.za/download/2020-sgb-functionality-tool_approved-version/) (accessed 6 February 2022).

<sup>874</sup> ECDBE Annual Performance Plan 2019/2020 at 98.

<sup>875</sup> ECDBE Head Office Operational Plan 2018/2019 at 18.

Some indicators were specific to the monitoring of school financial management, recruitment processes, and property management. In relation to financial management, the provincial office planned to monitor the implementation of financial management policies, review audited financial statements, and embark on site visits to check value for money.<sup>876</sup> Similarly, the provincial office would monitor the recruitment processes with the goal of having the placement of women in principal positions and other posts.<sup>877</sup> Regarding the monitoring of property management, the provincial office would rely on the number of reconciled asset registers and the general ledgers for monitoring asset management. It planned to record and conduct physical verification of assets, record disposed assets, reconcile asset registers and the general ledger, report lost assets, and report donated assets.<sup>878</sup>

Seemingly linked to the indicator on district support was the number of schools visited by the district office for support and monitoring at least twice a year, which would be used to determine whether support was given to schools.<sup>879</sup> The plan was that the provincial office would rely on the reports provided by the district offices to evaluate and monitor district support on schools.<sup>880</sup> However, that support seemed to have been more about school management than governance, as the 2019/2020 Annual Performance Plan states that professional support meant support given to “the principal, SMT and teachers in a school receiving support or capacitation in areas identified as part of their core duties, e.g. management and leadership, teacher development, and subject teaching”.<sup>881</sup> Nonetheless, the indicator on schools visited by the district office remained relevant due to the link between the two: school management and governance.<sup>882</sup>

Regarding the resource allocation for executing these plans, detailed budgetary allocations were primarily outlined in the operational plans. The provincial office had

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<sup>876</sup> ECDBE Head Office Operational Plan 2018/2019 at 40–42.

<sup>877</sup> ECDBE Head Office Operational Plan 2018/2019 at 30.

<sup>878</sup> ECDBE Head Office Operational Plan 2018/2019 at 34.

<sup>879</sup> ECDBE Annual Performance Plan 2019/2020 at 36–38.

<sup>880</sup> ECDBE Head Office Operational Plan 2018/2019 at 16.

<sup>881</sup> ECDBE Annual Performance Plan 2019/2020 at 95.

<sup>882</sup> See Chapter 1.3.

set aside R6 500 000 in 2018/2019 for the training of SGBs.<sup>883</sup> The provincial office also set aside R43 542 for the 2018/2019 year to consult with schools on the support received from district offices.<sup>884</sup> For visits to monitor and support district offices, R146 400 for the same year was allocated.<sup>885</sup> For the capacitation of SGBs on the utilisation of funds, R73 096 000 was set aside for the year 2018/2019.<sup>886</sup> R500 000 was allocated for the monitoring of asset management<sup>887</sup> while R143 827 was set aside for the same year to monitor schools on school self-evaluation.<sup>888</sup> For the remainder of the activities (monitoring of financial management<sup>889</sup> and recruitment processes<sup>890</sup> as well as the training of principals and SMTs<sup>891</sup>), no specific budget was allocated.

The rest of the budgetary allocations reflected in the ECDBE annual performance plans and reports were generally too broad as they were set per programme, sub-programme,<sup>892</sup> and per economic classifications.<sup>893</sup> Economic classifications referred to the financial allocations grouped by the type of expenditure. The 2019/2020 Annual Performance Plan also summarised projected allocations of anticipated budget per strategic priority.<sup>894</sup> Strategic priorities included maintenance and capacitation.<sup>895</sup> However, the annual plan did not explain if maintenance included the maintenance of schools. It was also not explained whether the capacitation referred to included that of SGBs.

**Figure 6:** *Diagram demonstrating economic classifications in terms of which budgetary allocations are made as per Annual Plans and Reports*<sup>896</sup>

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<sup>883</sup> ECDBE Head Office Operational Plan 2018/2019 at 85.

<sup>884</sup> ECDBE Head Office Operational Plan 2018/2019 at 18.

<sup>885</sup> ECDBE Head Office Operational Plan 2018/2019 at 23.

<sup>886</sup> ECDBE Head Office Operational Plan 2018/2019 at 104.

<sup>887</sup> ECDBE Head Office Operational Plan 2018/2019 at 34.

<sup>888</sup> ECDBE Head Office Operational Plan 2018/2019 at 62 and 66.

<sup>889</sup> ECDBE Head Office Operational Plan 2018/2019 at 40–42.

<sup>890</sup> ECDBE Head Office Operational Plan 2018/2019 at 30.

<sup>891</sup> ECDBE Head Office Operational Plan 2018/2019 at 85.

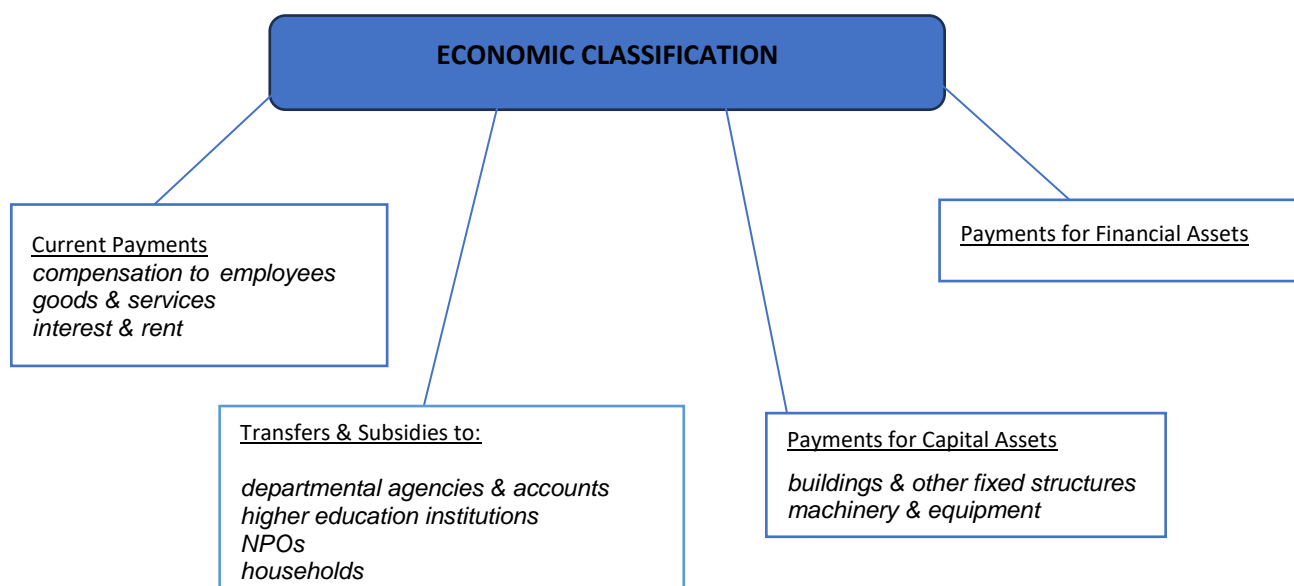
<sup>892</sup> ECDBE Annual Performance Plan 2018/2019 at 29 and 39, 2019/2020 at 49 and 2020/2021 at 56.

<sup>893</sup> ECDBE Annual Performance Plan 2018/2019 at 30, 2019/2020 at 31 and 2020/2021 at 57.

<sup>894</sup> ECDBE Annual Performance Plan 2019/2020 at 84.

<sup>895</sup> *Ibid.*

<sup>896</sup> As extracted from the ECDBE Annual Reports for 2018/2019–2020/2021.



**Table 4:** Strategic goals, strategic objectives, performance measures and the budgetary allocation per programme<sup>897</sup> as per the ECDBE Annual Plans and Reports

Programme	Strategic Goal (SG)	Strategic Objective (SO)	Programme performance measure (PPM)	Budgetary allocation	Portfolio of evidence from districts to ECDBE
Administration	<b>SG6</b> Improved school functionality through effective governance, management and monitoring	<b>SO6.2</b> Improve quality of monitoring and support provided to schools	<b>PPM104</b> Percentage of schools visited at least twice a year by district officials for monitoring and support purposes	2018/19- R0 2019/20-not given 2020/21-not given	Reports
			<b>PPM107</b> percentage of principals	2018/19- R0 2019/20-not given	Principals Satisfaction

<sup>897</sup> As extracted from the ECDBE Annual Reports for 2018/2019–2020/2021.

			rating the support services of districts as satisfactory	2020-not given	Survey Report
Public Ordinary School Education	<b>SG6</b> Improved school functionality through effective governance, management and monitoring	<b>SO6.3</b> Improve systems for effective management and administration of schools	<b>PPM220</b> Percentage of schools producing a minimum set of management documents at a required standard	2018/19- R0 2019/20-not given 2020/21-not given	Monitoring tools and reports.
			<b>PPM221</b> Number and percentage of SGBs in sampled schools that meet minimum criteria in terms of effectiveness every year	2018/19- R0 2019/20-not given 2020/21-not given	Administered functionality tools
			<b>PPM222</b> Percentage of schools with more than one financial responsibility	2018/19- R0 2019/20-not given 2020/21-not given	List of schools with section 21 status (schools that manage their own finances)

			on the basis of assessment		and procurement of LTSM)
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**Table 5:** Programmes, strategic goals and objectives, programme performance measures and the budgetary allocation per programme as per Joe Gqabi District Operational Plan 2018/2019

<b>Program me</b>	<b>Strategic Goal (SG)</b>	<b>Strategic Objective (SO)</b>	<b>Programme performance measure (PPM) or Performance Indicator (PI)</b>	<b>Budgetary allocation per annum</b>	<b>Monthly activities covered by this budget</b>
Administr-ation	SG6 Improved school functionality through effective governance, management and monitoring	SO6.2 Improve quality of monitoring and support provided to schools	PPM104 Number of schools visited by district officials for monitoring and support purposes	R1364206	-Develop school visit plan -Establish multi-disciplinary teams & train them -Verify school visits & check if intervention is still needed -Compile reports
			PI108 Percentage of reconciled asset registers and	R0	-Recording and verification of assets -Recording of recycled and disposed assets

			the general ledger		-Reconciliation of the asset registers and the general ledgers -Reporting on lost assets
Public Ordinary School Education	<b>SG6</b> Improved school functionality through effective governance, management and monitoring	<b>SO6.3</b> Improve systems for effective management and administration of schools	<b>PI105 &amp; 106</b> Percentage of women in Principalship posts & percentage of women employees	R0	-Monitor the recruitment process to ensure adherence to employment equity policy
			<b>PI 110</b> Compliance with the submission of In-year-monitoring (IYM) and submissions of budget	R0	-Manage and monitor budget -Monitor expenditure -Prepare and submit budget estimates -Prepare and submit Section 40(4) – cash flow projections -Coordinate, prepare and load budget
			<b>PI 112</b> Percentage of non-educator staff	R0	-Identify vacant posts and submit to Head

			employed in public ordinary schools		Office for advertisement -Facilitate the recruitment and placement of non-educator staff
			<b>PI 113</b> Percentage of schools where allocated teaching posts are all filled	R0	-Identify vacant posts and submit to Head Office for advertisement -Facilitate the recruitment and placement of non-educator staff

### 5.3. Conclusion

This chapter outlined the measures adopted by the ECDBE to ensure effective school governance which are mainly training, supporting and monitoring SGBs. Both the provincial and district offices undertook to manage and monitor the budget and expenditure of schools as well as the recruitment processes to ensure adherence to finance policies and employment equity policies, respectively. Further, they undertook to record and verify asset registries and report on lost assets. The implementation of these plans and the impact thereof on the functioning of the SGBs in the participant schools will be assessed in chapter 6 below.

## 6. IMPLEMENTATION OF MEASURES RELATING TO PUBLIC SCHOOL GOVERNANCE

### 6.1. Introduction

This chapter details the implementation of the ECDBE plans outlined in chapter 5. This is to determine whether the ECDBE capacitated (trained, monitored and supported)

SGBs to perform selected SGB functions properly. The understanding is that capacitated SGBs will be able to govern schools properly and contribute towards learners' academic performance, thus helping realise the learners' right to basic education.

In this chapter, reliance is on the ECDBE's annual plans and reports, particularly the sections on measures/ indicators adopted by the ECDBE to assess its performance in capacitating SGBs. Further reliance is on the information gathered through semi-structured interviews on the experience, knowledge, and opinions of SGBs concerning their training, support, and monitoring by the ECDBE. Lastly, the school documents were also used for the same purpose. It should be noted that this chapter does not deal with the adequacy or effectiveness of the ECDBE's plans, as that is assessed in chapter 7. This chapter is mainly about whether and to what degree the ECDBE has implemented the plans it made in 2018/2019 to 2020/2021 and the impact thereof on the functioning of participant SGBs.

## **6.2. ECDBE's Annual Plans and Reports**

The ECDBE annual plans and reports recorded several achievements in respect of the capacitation of SGBs. In relation to improving school functionality through effective governance, monitoring and support, the ECDBE recorded that during the 2018/2019 financial year, it appointed 33 circuit managers to support schools.<sup>898</sup> No details are provided on where these managers were appointed. In the same year, the ECDBE reported that it trained 831 school principals and SGB members.<sup>899</sup> Similarly, it did not indicate the districts, circuits or schools from which the trained SGBs and principals were from and whether the training yielded the intended outcomes.

In 2019/2020, the ECDBE continued to support SGBs and utilised the SGB functionality tool to assess school effectiveness.<sup>900</sup> The annual report does not document the outcome of the assessment and/ or any remedial measures planned or undertaken based on the assessment. In the same year, the ECDBE reported that it

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<sup>898</sup> ECDBE Annual Performance Plan 2018/2019 at 33.

<sup>899</sup> ECDBE Annual Report 2018/2019 at 31.

<sup>900</sup> ECDBE Annual Performance Plan 2019/2020 at 41.

conducted appointments and induction of circuit managers.<sup>901</sup> No details were reported regarding the placement of the trained circuit managers or the effectiveness of the training.

In its 2019/2020 Annual Report, the ECDBE reported an increase in schools participating in the principal's online survey: 140 schools had participated during the 2018 school year, 371 schools participated in 2019, and 599 schools participated in 2020.<sup>902</sup> The principal's online survey was not mentioned in any of the annual plans for the years under consideration in this study. Similarly, neither of the other annual reports (the 2018/2019 and the 2020/2021 reports) makes mention of the online survey. Accordingly, one cannot tell what the targets were in relation to this tool, as well as the purpose thereof. Finally, the 2020/2021 Annual Plan and Report made no specific comment on the Department's capacitation of SGBs, the reports were in relation to the ordinary indicators tabled and discussed below.

The 2018/2019 First Quarterly Performance Report (April to June) reports that schools were monitored and supported in respect of school functionality, school management, leadership and governance issues through the use of Building Blocks of effective school management and the SGB functionality tool.<sup>903</sup> At the end of the first quarter, 48% of sampled schools were monitored while the target was 100%.<sup>904</sup> It was also reported that SGB elections were held from 1 to 31 March 2018 as planned.<sup>905</sup> The ECDBE recorded that during the first quarter, it supported SGBs in creating a platform for parents to participate in their children's education.<sup>906</sup> The SGB functionality tool was also reportedly used to assess effectiveness in schools.<sup>907</sup> About 220 tools were administered in the first quarter.<sup>908</sup> One of the challenges identified in this regard was

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<sup>901</sup> ECDBE Annual Report 2019/2020 at 40.

<sup>902</sup> ECDBE Annual Report 2019/2020 at 41.

<sup>903</sup> ECDBE First Quarterly Performance Report 2018/2019 at 19 <https://eceducation.gov.za/resource-centre/documents-library/20/quarterly-reports> (accessed 2 February 2023).

<sup>904</sup> ECDBE First Quarterly Performance Report 2018/2019 at 19.

<sup>905</sup> ECDBE First Quarterly Performance Report 2018/2019 at 23.

<sup>906</sup> *Ibid.*

<sup>907</sup> *Ibid.*

<sup>908</sup> *Ibid.*

a lack of monitoring capacity due to inadequate resources, personnel, and working tools.<sup>909</sup>

The 2018/2019 Fourth Quarterly Performance Report stated that the interns from the South African Institute of Chartered Accountants were trained on school finances with the aim of placing them in schools in the 2019/2020 financial year to assist SGBs with the management of school finances.<sup>910</sup> It was further reported that the training of SGBs continued in the fourth quarter of 2018/2019,<sup>911</sup> as did the training of circuit managers and SGB coordinators on the roles and responsibilities of SGBs.<sup>912</sup> Out of the 524 schools sampled (which represent 10% of the schools in the province), only 198 SGBs met the minimum criteria in terms of effectiveness, indicating that only 38% of the sampled schools in the province had functional SGBs.<sup>913</sup>

Further, only 8% of the schools produced the minimum set of management documents; most of the schools did not submit the documents at all.<sup>914</sup> The target regarding the number of schools rating district support as satisfactory was 70% and only 47% was achieved.<sup>915</sup> While the target for school-visits was 100% per quarter, the highest achieved was 55% in quarter three, with 10% in quarter four being the lowest.<sup>916</sup> However, R90 000 out of R100 000 allocated for the year was spent on monitoring.<sup>917</sup>

Annual plans and reports indicate that in 2018/2019 only 14% of schools produced the minimum set of management documents that were of the required standard,<sup>918</sup> while 38% of the schools were visited at least twice per year by district offices for monitoring and support. The ECDBE improved in 2019, as 80% of schools produced the minimum set of management documents at a required standard, while 65% of schools were

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<sup>909</sup> ECDBE First Quarterly Performance Report 2018/2019 at 25.

<sup>910</sup> ECDBE Fourth Quarterly Performance Report 2018/2019 at 25 <https://eceducation.gov.za/resource-centre/documents-library/20/quarterly-reports> (accessed 2 February 2023).

<sup>911</sup> ECDBE Fourth Quarterly Performance Report 2018/2019 at 25.

<sup>912</sup> *Ibid.*

<sup>913</sup> ECDBE Fourth Quarterly Performance Report 2018/2019 at 46.

<sup>914</sup> ECDBE Fourth Quarterly Performance Report 2018/2019 at 45.

<sup>915</sup> ECDBE Fourth Quarterly Performance Report 2018/2019 at 22.

<sup>916</sup> ECDBE Fourth Quarterly Performance Report 2018/2019 at 19.

<sup>917</sup> ECDBE Fourth Quarterly Performance Report 2018/2019 at 46.

<sup>918</sup> ECDBE Annual Performance Plan 2020/2021 at 54.

visited at least twice a year by the district for monitoring and support. The report did not identify the districts visited. Details regarding the monitoring and support in those districts were not recorded in the ECBDE's annual plans and reports.

In 2019/2020, the rating of the support from the district increased to 67%,<sup>919</sup> while SGBs meeting the minimum criteria decreased to about 81% which was above the target.<sup>920</sup> Schools visited twice increased to 65%,<sup>921</sup> which was still below the target. The target was met in relation to schools producing the minimum school management documents. In 2020/2021 the percentage of principals rating district support as satisfactory, and the SGBs that met the criteria of effectiveness did not appear in the annual report. Further, schools visited for monitoring, and SGBs producing the minimum set of management documents were the lowest at 51% and 35% respectively.

**Table 6: ECDBE's performance measures and achievements as recorded on annual plans and reports**

Indicator	2017/2018		2018/2019		2019/2020		2020/2021	
	Target	Actual	Target	Actual	Target	Actual	Target	Actual
% of principals rating support as satisfactory	66	89.4	70	58.2	77	67	80	Not given
% of sampled SGBs that meet minimum criteria of effectiveness	100	12	100	88.8	70	80.6	70	Not given
% of schools that produce the minimum set of management documents at the	80	50	80	14	80	80	80	51.4

<sup>919</sup> ECDBE Annual Report 2019/2020 at 45.

<sup>920</sup> *Ibid.*

<sup>921</sup> ECDBE Annual Report 2019/2020 at 42. See also ECDBE 2019–2024 Revised Education System Transformation Plan 16.

required standard								
% of schools visited at least twice a year	<i>Target</i>	<i>Actual</i>	<i>Target</i>	<i>Actual</i>	<i>Target</i>	<i>Actual</i>	<i>Target</i>	<i>Actual</i>
	99	89	100	38	90	65	90	35

For 2018/2019, the variance in the rating of support is said to be the lack of multidisciplinary support.<sup>922</sup> The shortfall in meeting the target for schools visited in 2018/2019 is attributed to inadequate record-keeping.<sup>923</sup> In relation to the produced minimum management tools, the deficit was reported as a result of the COVID-19 outbreak, which resulted in the prohibition of visits for document collection.<sup>924</sup> The reason for the shortfall in visited schools in 2019/2020 was not provided; it was reported that the focus was on underperforming schools.<sup>925</sup> It is not clear what this means; it could mean that only underperforming schools were visited (to the exclusion of schools deemed to be performing well), and it remains unclear as to the reason this would have had to be the case.

The unmet target relating to the schools visited was also attributed to regulations prohibiting visits due to COVID-19, and so the department officials could not make the necessary trips.<sup>926</sup> The ECBDE reported that there was a poor response to the survey meant to collect information in relation to minimum management tools, and that it planned accordingly to improve its reporting systems to remedy this.<sup>927</sup>

The 2019/2020 annual report indicates the following in relation to the condition of assets at schools:<sup>928</sup>

- Excellent Condition: 4,9%
- Good Condition: 42,2%

<sup>922</sup> ECDBE Annual Report 2018/2019 at 36.

<sup>923</sup> ECDBE Annual Report 2018/2019 at 35 and 52.

<sup>924</sup> ECDBE Annual Report 2020/2021 at 52.

<sup>925</sup> ECDBE Annual Report 2019/2020 at 42.

<sup>926</sup> ECDBE Annual Report 2020/2021 at 46.

<sup>927</sup> ECDBE Annual Report 2018/2019 at 45.

<sup>928</sup> ECDBE Annual Report 2019/2020 at 98.

- Fair Condition: 38,8%
- Poor Condition: 10,5%
- Very Poor Condition: 3,7%

The report did not identify the schools, the circuits, or the districts in which the assets were situated. It is also unclear whether this relates to assets to be maintained by the ECDBE or those maintained by the SGBs.

There is evidence of the execution of the ECDBE plans established to ensure effective school governance. However, as demonstrated above, the ECDBE's reporting system did not provide a substantive report on the implementation of its plans. Due to the lack of substance in the reports, no definite correlation can be drawn between the ECDBE's self-reported achievements and the state of governance, including training, monitoring, and support of SGBs in participating schools in Tlokoeng. Accordingly, one had to engage with the participant SGBs to establish whether the plans to ensure effective school governance were implemented in these schools and the impact thereof.

### 6.3. Analysis of data from interviews and school documents

This analysis begins with a table summarising details of the interviewed SGB members, followed by the results drawn from both the interviews and school documents. All this is followed by an analysis of the results to determine whether and to what degree the ECDBE implemented its plans about capacitating SGBs in order to ensure effective school governance.

**Table 7:** *Information on interviewed SGB members*

School	SGB member's gender & age	Highest academic qualification	Duration of SGB membership in the participant school	Position/Portfolio	Was an SGB member at another school before 2018 & duration	Reference
A	Male, 77	Grade 6	3	treasurer	no	A1
	Male, 54	Grade 8	8	chairperson	yes, 3	A2

	Male, 63	Grade 9	3	vice-chairperson	yes, 3	A3
	Female, 59	Grade 9	3	ordinary (non-office bearer) parent member	yes, 3	A4
	Female, 54	Grade 9	3	secretary	no	A5
B	Male, 55	Grade 11	3	chairperson	yes, 6	B1
	Female,	Bachelor's Degree in Education (BEd)	3	secretary	no	B2
	Female,	unknown	unknown	ordinary	unknown	B3
	Female,	unknown	unknown	ordinary	unknown	B4
	Male, 65	Grade 2	3	vice-chairperson	yes, 4	B5
C	Female,	BEd	3	ordinary teacher member	no	C1
	Male, 65	Grade 4	5	ordinary parent member	no	C2
	Male, 47	BEd	3	chairperson	no	C3
	Female, 52	NSC	3	vice-secretary	yes	C4
	Male, 64	Post-graduate Diploma in Higher Education	23	principal	yes, 8	C5
D	Male, 63	NSC	2	chairperson	no	D1
	Male, 45	Grade 9	1	ordinary	no	D2
	Male, 47	NSC	3	ordinary	yes, 3	D3
	Male, 64	Doctor of Education	30	principal	yes, 2	D4
	Female, 54	Grade 9	3	ordinary	yes, 2	D5

Two more males than females participated in the interviews. The age range of participants is from 45 to 77, with an average of 58. The education level of the participants is disparate, ranging from grade 2 to a doctorate in education. All but one participant served the selected school for at least three years during the 2018 – 2020 period. Six participants had been SGB members in other schools before serving as SGB members of the schools forming part of the study.

From the interviews, it was gathered that 13 out of 20 participants had attended at least one training session organised by the CMC in 2018 – 2020. Of the 13 participants who attended training, four are from school A,<sup>929</sup> three are from school B,<sup>930</sup> two are from school C<sup>931</sup> and four are from school D.<sup>932</sup> Of the seven that were not trained in 2018 – 2020, participants C2 and B4 had been trained before 2018 when serving as SGB members in other schools, while A4, B5, C1, C4 and D5 never received training.

Participant C1 mentioned a scheduled induction training for SGBs in her circuit in 2018. However, she said that training was never conducted, as it kept being postponed due to the unavailability of SGB members tied up with other commitments. It is not clear how C1 missed the induction session that C3 attended. It might be that the induction that C3 attended was mainly for the office bearers (chairperson, secretary, treasurer)<sup>933</sup> of the SGB, of which C1 was not. Nonetheless, C1 explained that the principal would conduct sessions to explain the roles and responsibilities of the SGB.

Participant C5 said he had never received training on being an *ex officio* member of the SGB as a principal. He used a green book called “First Steps of SGB Training” for guidance and did a school leadership course at the then Nelson Mandela Metropolitan University.<sup>934</sup> Participant C5 reported that the only workshop organised by the ECDBE that he attended was on financial management in East London for a week. The workshop was in 2017 for schools with a large number of learners only. The ECDBE outsourced the training to someone from the private sector in Pretoria. He concluded that:

“The workshop was top-class. On my return, I told my district officials that if they could bring that trainer to workshop all principals, there would be a huge difference in school financial management.”

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<sup>929</sup> Participants A1, A2, A3 and A5.

<sup>930</sup> Participants B1, B2 and B3.

<sup>931</sup> Participants C3 and C5.

<sup>932</sup> Participants D1, D2, D3 and D4.

<sup>933</sup> Section 29(1) of SASA.

<sup>934</sup> The book could not be accessed.

On average, participants reported that the ECDBE workshop sessions lasted three hours. The number of workshops attended by SGB members during the period of three years (2018–2020) varied significantly. Three participants had attended one workshop<sup>935</sup> while 13 participants reported that they attended at least two workshops. These workshops were mostly conducted by the officials in the CMC. Participant D1 mentioned that there had been training sessions for the whole SGB often held at school D, while the training for the office bearers of the SGB would be held in another town, requiring participants to travel at the Department's expense. Similarly, participant B1 stated that they had attended a workshop for chairpersons and treasurers in East London, where they had also been given some policy documents.

From the participants' reports, it is evident that the ECDBE, through the district and the CMC, conducted workshop sessions for SGBs. The impact of the training shall be assessed through the participants' understanding of effective school governance, their functions and how they performed the four functions the study focused on. However, a direct question on whether they found the sessions helpful was also asked.

#### 6.3.1. Did SGB members find the training helpful?

Twelve out of 13 SGB members who had attended a workshop found it useful as it brought them clarity and helped them better understand what their roles were and how best to perform their functions. The two participants (C2 and B4) who had attended the workshops before 2018 had also found those useful. Participant A5 explained that the training sessions were especially important for them in school A as most of the parents are illiterate or uneducated but committed to contributing to their children's learning in a meaningful way. This participant viewed the workshops as empowering in this context. She explained that some of the parents need the skills they acquire through the training for their own lives. The training thus also aided their personal development.

Some SGB members recalled the things that were emphasised in the training such as coordination so that no one interfered with another in the performance of their

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<sup>935</sup> Participants B3, C3 and D3.

functions.<sup>936</sup> Overall, the majority of the SGB members benefited from the workshops irrespective of the period in which they were trained.

On the other hand, participant C2 differed and criticised the training in comparison to the training attended in 2014 – 2017 and said: “Our workshops were very informative. Look now, people are doing as they please without proper guidance because people are not as trained anymore”.

### 6.3.2. Were SGBs monitored and supported?

Seven participants said the ECDBE monitored them,<sup>937</sup> nine expressed the opposite view,<sup>938</sup> while two were not sure.<sup>939</sup> In relation to how SGBs were monitored, some participants stated that the CMC officials would visit the school and check SGB meeting minutes to assess whether the SGB was functioning well.<sup>940</sup> The officials would sometimes offer advice during their visits.<sup>941</sup> For example, participant A1 explained that she engaged with the circuit manager and other officials who visited the school and they advised her (in her capacity as a secretary) to focus on the main points of discussion and conclusions reached in a meeting instead of attempting to record the discussions verbatim.

Participant D1 said that the circuit manager would join their meetings to observe how those were conducted. Other participants reported that they also submitted the SGB functionality tool and audited financial reports to the circuit on an annual basis for monitoring.<sup>942</sup> The staff meeting minutes for school B show that the school established a committee to ensure that it produced all documents required by the ECDBE for monitoring purposes.

On the other hand, some participants were adamant that the ECDBE visited schools but not to engage or monitor SGBs.<sup>943</sup> The ECDBE would engage with the principal or

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<sup>936</sup> Participant A5.

<sup>937</sup> Participants A1, A5, B1, C2, C3, D1 and D4.

<sup>938</sup> Participants A2, A3, A4, B2, B3, B5, C1, C4 and C5.

<sup>939</sup> Participants D2 and D5.

<sup>940</sup> Participants A5, B1, and C2.

<sup>941</sup> Participants A1 and C2.

<sup>942</sup> Participants C3 and D4.

<sup>943</sup> Participants B5 and C5.

the SMT and the administrative clerk, get school reports and leave. Participant C5 said that:

“The Department does not monitor SGBs. They only monitor the schools, but not SGBs. They come in January to ask questions about school readiness. After that, they go forever and come back the following year for the same purpose.”

Participant C1 acknowledged the existence of the SGB functionality tool but said they never submitted it to the ECDBE. Instead, the SGB scheduled, planned and held its own reflection sessions which assisted the SGB to identify areas that needed improvement and those that required total change.<sup>944</sup>

There is evidence of some monitoring of SGBs by the ECDBE. However, generally, the ECDBE seems to have been lacking in this respect. Further, SGBs seemed to be side-lined, even in instances where the Department visited their schools. Alternatively, the visits were in fact meant for SMTs and the SGBs were simply not given as much attention. In school C, SMT meeting minutes have records of several meetings between the district director and the SMT and then the district director and the school staff, but not once with the SGB.<sup>945</sup> The emphasis on the meetings was the need for correct exam setting, marking and the correct recording of marks and learner absenteeism as the school was underperforming.<sup>946</sup> This was therefore an intervention on underperforming schools. However, it is clear that even under normal circumstances, SGBs are side-lined, not that their being side-lined in initiatives meant to remedy school underperformance is justified. It is not clear why there would not have been at least a meeting with them as they are as relevant in ensuring good school performance.

Most problematic is that the side-lining of SGBs is contrary to the ideals of participatory democracy and its envisioned benefit for school governance and the education of learners. In circumstances where the SGB is not included in discussions and is unable to benefit from the advice provided by departmental officials, its members are unlikely to gain the necessary skills or knowledge to effectively perform their functions as SGB

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<sup>944</sup> Participants A3 and C1.

<sup>945</sup> School C SMT meeting minutes, 21 August 2019.

<sup>946</sup> *Ibid.*

members. The approach to side-line the SGB is top-down and it undermines the establishment of the school governance system as envisioned in SASA.

In relation to the ECDBE's support to SGBs, seven participants said that the ECDBE generally supported them,<sup>947</sup> eight said the ECDBE did not support them,<sup>948</sup> while four said no support was sought from the ECDBE by the SGB.<sup>949</sup> The support was said to have been special visits upon the SGB's request when faced with certain challenges although this seldom happened.<sup>950</sup>

There were differing views on the ECDBE's responsiveness. Some SGB members found the ECDBE to lack responsiveness as it would take at least three to six months to respond to their issues relating to learner discipline and staff recruitment.<sup>951</sup> Sometimes, in order to get a response, SGB members would have to visit the CMC offices in numbers.<sup>952</sup> Further, when and if the ECDBE finally decided to intervene or respond, it would side-line the SGB and only engage with the principal, SMT or teachers. However, it seems as though in some instances, the ECDBE did not even respond to the principals. Participant C5 said:

“They were not supporting me. They maintained that the school must fail. Even when we had a financial crisis, they were not supportive. Instead, they suggested that I must leave the school because it seems as though I cannot run the school anymore.”

On the other hand, some found the ECDBE to have been highly responsive. Participants B1, C4 and D4 said the ECDBE always responded within a reasonable time (at least two weeks and at most a month) when they sought assistance. The SGBs in school C and D had raised issues with the ECDBE regarding learner-underperformance and conflicts within the SGB, and were assisted.<sup>953</sup>

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<sup>947</sup> Participants A1, A5, B1, D1, D2, D3 and D4.

<sup>948</sup> Participants A2, A3, B3, C1, C2, C4, C5 and D5.

<sup>949</sup> Participants A4, B2, B5 and C3.

<sup>950</sup> Participant A5.

<sup>951</sup> Participants A1, A2 and A3.

<sup>952</sup> Participant C2.

<sup>953</sup> Participants C4 and D1.

Participant D4 raised concerns with the policy limitations in respect of the CMC and district officials who come to the SGB's aid. He said these officials sometimes understood the challenges faced by SGBs and were willing to assist, however, the officials had to act within the scope of rules and policies which were not necessarily drafted with the context of rural schools in mind.<sup>954</sup>

There was evidence of the ECDBE supporting schools by visiting and advising them as well as providing them with the things they sought. However, there were serious inconsistencies in the support provided to schools where the ECDBE attended to some matters and not others of equal importance. Similarly, it seems to have attended to some issues timeously while it took too long to attend to other issues of equal importance. From the evidence, it seems that SGBs were sometimes side-lined, as there were instances where SGBs were left out while ECDBE engaged with SMTs or principals. This is concerning, especially because the ECDBE undertook to support SGBs.

**Table 8:** *Summary of the responses from the interviews*

ECDBE's function	Well done/useful	Not done/not useful	Other <sup>955</sup>
Supporting	8	7	5
Monitoring	7	9	4
Training	14	6	0

### 6.3.3. Roles of SGB

Participants were asked whether they remembered what their SGB training workshops organised by the ECDBE were about, especially in relation to the four functions considered in this study. The responses were that the training covered all the four functions while some participants said it was a summary of how they ought to perform

<sup>954</sup> He gave an example about the NSNP where the school was given a menu that was unfamiliar to the children to the point that they did not want to eat the food provided. Of concern was that the ECDBE officials regarded food not on the recommended menu from the province as not being nutritious and, thus, not to be served to learners. The rigidity of the framework, not only in relation to the NSNP, meant that the context of the community within which the school operates was of no concern to the Department.

<sup>955</sup> This refers to participants who either did not answer the question, were not asked the question, did not remember or those who said they did not seek any help from the ECDBE.

these functions and other functions in SASA.<sup>956</sup> Some participants indicated that they were unable to outline exactly the training they received in relation to each of the functions as they were introduced to many policies relevant to the functions.<sup>957</sup> Participants B2 and B3 said they had forgotten the exact details of what was said about all these four functions as it was a long time ago. On the other hand, others recalled what they were taught in relation to some functions and not others.<sup>958</sup> Those responses and data collected in school documents are captured in the analysis below in relation to each of the functions.

It is worth noting that the following analysis is in relation to all participant SGB members, not only those who attended the ECDBE's training. But first is a discussion on SGBs' understanding of effective school governance as the discussed framework envisions a specific notion of school governance with principles of participation, cooperation and meaningful engagement. This discussion is important as it will provide insights into the underlying perceptions within whose context the SGBs in this study performed their roles.

#### *6.3.3.1. What is effective school governance?*

Most of the participants had some understanding of the meaning of school governance. The participants spoke of cooperation between learners, teachers and parents as well as with SMTs. Further, they expressed that at the heart of school governance is ensuring a learning conducive environment in the interest of improving the academic performance of learners.<sup>959</sup> The need to consider the needs of the broader community in which the school is located was recognised.<sup>960</sup> Participant D4 especially mentioned SASA as the cornerstone of school governance. Some of the SGB roles that were singled out are staff recruitment, financial management, the maintenance of school facilities, supporting teachers and learners, and developing school rules.<sup>961</sup>

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<sup>956</sup> Participants A1 and C3.

<sup>957</sup> Participants A2 and C3.

<sup>958</sup> Participants A1 and A5.

<sup>959</sup> Participants A3, A4, B1, B5, C1, and C5.

<sup>960</sup> Participants C3 and C5.

<sup>961</sup> Participants A4, B5 and C3.

On the other hand, participant D1 said, “everything must start with the SMT, then it must go to the SGB, and then to the parents or community at large”. This view reflects an understanding that the SMT is the main school governing body which provides the SGB, viewed as secondary in the process of school governance, with directions. This view, while only expressed by a single participant, reflects an understanding that school governance happens through a top-down approach. This understanding is in conflict with the democratisation of school governance, i.e. the bottom-up approach provided for in SASA.

### 6.3.3.2. *Financial management*

In light of the fact that all four schools had a section 21 status for the years in question, they managed their own financial affairs. This they did in the context of impoverished communities where substantial fund raising was close to impossible. These schools mainly relied on the budget allocated by the ECDBE.

Most participants who attended workshops recalled that financial management was one of the main functions given more attention with an emphasis on accountability, proper record keeping, and not deviating from the budget.<sup>962</sup> Treasurers were warned to be extra vigilant with school funds.<sup>963</sup>

Schools had a finance policy which provided for the establishment of a financial and procurement committee(s), the composition, and duties thereof.<sup>964</sup> According to the policies, these committees were meant to meet at least once a month. There was provision for the opening and administration of the school bank account and signatories thereto (one teacher and two parents).<sup>965</sup> Budgeting processes such as presenting the budget to parents for deliberations and approval were also outlined. Further, the policies stipulated procurement procedures, claims procedures, recording, auditing and reporting. In respect of budgeting, the policies further stipulated the exact percentage of school funds to be used for LTSM, ablution and

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<sup>962</sup> Participants A1, A5, and D2.

<sup>963</sup> Participant A1.

<sup>964</sup> School D Policy pf7 12.

<sup>965</sup> School B Policy pdf 1–8. School C Policy pdf 4. This excludes School A as its policies were not accessible.

other purposes. For section 21 schools for example, the policy provided that in terms of the ECDBE policy, at least 50% of the funds must be utilised for LTSM.<sup>966</sup> The composition would be different for non-section 21 schools (60 % curriculum, 5% transport, 17 % administration, 8% ablution).<sup>967</sup>

It is not clear why the school policies depicted budgetary requirements for both section 21 and non-section 21 schools. Further, it is worth noting that the policies on the amount to be spent on LTSM was either inaccurate or outdated in so far as it was said to mirror the ECDBE's policy. Since 2018, the ECDBE policy has provided that at least 40% of the norms and standards allocation must be spent on LTSM, rather than at least 50%.<sup>968</sup> Nonetheless, the school would still be in compliance with the ECDBE policy if it spent a minimum of 50% on LTSM provided that this would not make it non-compliant in relation to other expenses.

The finance committees, which would deal with financial matters and make the budget and deliver it to the whole SGB for deliberations, consisted of the SGB treasurer, chairperson, and secretary as well as the principal and another teacher or parent.<sup>969</sup>

The school policies stipulated that the SGB treasurer must be the chairperson of the finance committee. The committee was meant to have a finance officer who would also be its secretary. The procurement committee consisted of the SMT, the principal and the SGB chairperson. Outlined procurement procedures ranged from the identification of needed goods and services, requisition, and issues of authorisation and payment procedures.<sup>970</sup> These policies were in line with SASA and related policies.

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<sup>966</sup> School C Policy pdf 4.

<sup>967</sup> School D Policy pdf 13.

<sup>968</sup> It is the Western Cape policy that made provision for at least 50% of the norms and standards allocation to be spent on LTSM. This might just be another typo or a product of cutting and pasting policies of schools that are in the Western Cape. On the other hand, school C documents specifically mention some reliance on Western Cape legislation, accordingly, it might be that the 50% in relation to that school was intentional and the school policy meant to say that the policy mirrors the Western Cape policy than the ECDBE's.

<sup>969</sup> Participants B5, C1, and D1, and School A Staff Meeting minutes, 21 May 2019; School B Finance Policy pdf 3–4.

<sup>970</sup> School B Finance Policy pdf 10–15. School C Policy pdf 7.

SGB meeting minutes demonstrated instances where SGBs had held meetings for drawing up the annual budget which was presented to parents for consideration and approval.<sup>971</sup> Similarly, SGB members discussed procurement issues, and the requirement that three quotations would be needed before purchasing goods or services.<sup>972</sup> It would seem as though SGBs generally followed the policies and received three quotations.<sup>973</sup> However, compliance with the policy was uneven in School C which sometimes received only two quotations,<sup>974</sup> while three were requested at another instance,<sup>975</sup> while seven quotations were considered for the procurement of face masks.<sup>976</sup>

Finally, the schools also had financial records and audited financial reports, which would be presented to parents during annual meetings.<sup>977</sup> Further, principals supported SGB members, especially with explaining rules and procedures applicable in budgeting and procurement.<sup>978</sup>

In light of the above, it would seem as though schools generally complied with the finance and procurement policies. However, some interviewees revealed starkly contrasting views. There were instances where the SGB members, including the SGB members who were part of the school finance committee, learned about certain procurement decisions only after the fact and the SGB would have to seek clarity from the principal or just “hop on”.<sup>979</sup> This was more so in School B and C.

It appears as though non-deliberation with the other SGB members in School B and C had become a norm to the point where some SGB members were of the impression

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<sup>971</sup> Participants A2, A5, C5, D1 and D5; School A Staff meeting minutes dated 09 March 2018, 09 March 2018, and 29 November 2018; School B SGB meeting minutes dated 11 June 2018 and 28 October 2019; and AGM minutes, 2018 December (no day is indicated).

<sup>972</sup> School D Policy pdf 13.

<sup>973</sup> School A SGB meeting minutes, 23 January 2019; School A SMT meeting minutes, 22 May 2019; and Participants B1, C5, D3 and D5.

<sup>974</sup> School C SGB meeting minutes, 16 February 2020.

<sup>975</sup> School C SGB meeting minutes, 16 December 2019.

<sup>976</sup> School C SGB meeting minutes, 16 February 2020.

<sup>977</sup> Participants A2 and A5; School B Annual General Meeting, 2020 (no day or month is indicated); and School D Budgeting Policy.

<sup>978</sup> Participant A4.

<sup>979</sup> Participants A4, B1, B3, B5, C1, C5 and D3.

that they were not meant to be part of deliberations about school funds.<sup>980</sup> These members thought of financial management as the role of the procurement committee and, or the finance committee.<sup>981</sup> However, in School B, one SGB member said, ultimately, he raised this concern with the principal and there was an improvement, i.e., fewer instances of having goods procured by the teachers and the principal without the SGB's deliberation.<sup>982</sup>

On the other hand, for School C, two SGB members said the main problem was the SGB secretary and the chairperson who bought goods haphazardly.<sup>983</sup> Participant C5 said:

“The main challenge with the 2018–2020 SGB was that the SGB secretary, who was a teacher, and the chairperson, who was a principal in another school, tended to buy stationary and other things without proper requisition or deliberating with the other SGB members.”<sup>984</sup>

Participant C5 said sometimes he would find himself having to sign for the procurement of those goods after the fact and merely because the goods would have been already bought. He said he even asked them why they were not engaging with everyone, especially the SGB treasurer, who was a parent member. He acknowledged that the two used to buy the goods the school needed.<sup>985</sup> Further, they bought high quality goods.<sup>986</sup> The key problem was that they did not follow due processes.<sup>987</sup> Ultimately, he told them that he would not sign unless due processes had been followed,<sup>988</sup> and the situation improved afterwards.

School D seems to have had even bigger problems. Then principal – participant D4 said the 2018–2020 SGB seemed to have come up with an “agenda” of making sure that the school budget was spent without caring to abide by policies governing school

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<sup>980</sup> Participants B2, B3, C1 and C2.

<sup>981</sup> Participants B2 and B3.

<sup>982</sup> Participant B5.

<sup>983</sup> Participants C2 and C5.

<sup>984</sup> Participant C5.

<sup>985</sup> *Ibid.*

<sup>986</sup> *Ibid.*

<sup>987</sup> *Ibid.*

<sup>988</sup> Participant C4.

funds administration. Further, the SGB would want to spend money just because there was money, not because the school needed something.<sup>989</sup> In his view, the SGB, for the most part, did not understand or did not want to understand the budgeting and acquisition procedures. He said he could not do much because as the principal, he was not even a signatory to the school funds bank account.

More worrying was the report from this participant that some SGB members were inclined to misappropriate school funds.<sup>990</sup> Participant D4 said he tried to intervene to prevent the misappropriation of school funds, but that SASA gives the SGB, rather than the principal, an upper hand in relation to the management of school funds. He said he even reported the deviations and the misappropriations to the ECDBE, but no action was taken, and the complaint was not followed up on. Instead, he ended up in “hot water” because the ECDBE felt that he was failing to manage the finances, and yet the SGB sometimes “worked in cohorts with some departmental officials” in mismanaging the school funds.

Participant D2 had a similar experience; he pointed out that they had to deal with corrupt SGB members who wanted to misappropriate school funds.<sup>991</sup> He recalled that the preceding SGB chairperson, who ended up not serving for three years, had hidden a lot of “things”, which led to conflicts as some SGB members believed in transparency.<sup>992</sup>

While SASA permits the establishment of committees like the finance and procurement committee, there seems to be room for usurping of functions by the SMT in this instance. This is especially because the procurement committee consists of one SGB member excluding the principal. Ultimately, the SMT becomes more of the leading body and the SGB follows. On the other hand, it is evident that some individual SGB executive members such as the chairperson can also act contrary to the framework and exclude other SGB members from procurement decisions.

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<sup>989</sup> Participant D4.

<sup>990</sup> *Ibid.*

<sup>991</sup> Participant D2.

<sup>992</sup> *Ibid.*

### 6.3.3.3. Staff recruitment

Participants recalled that workshops on recruitment stipulated the process to be followed once a post in their school had been advertised and the ECDBE would be receiving applications. Participant D2 said the trainers in the workshop sessions had emphasised that there must be no nepotism, people should be employed because they are qualified and found to be the best candidate for the job in question. SGB members must not recommend a candidate just because it is their relative or friend.<sup>993</sup>

Most of the participants said their schools have had to fill a vacant post, except for school C. Accordingly, they knew the necessary processes from that experience with the help of the principals who also explained the procedures to them.<sup>994</sup> Participants, including SGB members from school C, clearly detailed the process from the establishment of a selection committee up to the submission of the SGB recommendation to the HOD. Schools also had policies on the recruitment of educator and non-educator staff although not as detailed as their finance policy.<sup>995</sup>

The policies also made provision for the induction of new educators by SMT, and all staff members were to have high determination and commitment. Normally, for posts paid for by the ECDBE, applicants would apply through the centralised system run by the district.<sup>996</sup> A list of all applicants that qualify would be sent to the school by the district office.<sup>997</sup> The SGB would meet to select a selection panel, which would convene to discuss the selection criteria and interview questions so that everyone knew what to look for in the applicant and what questions to ask during the interview.<sup>998</sup>

The majority said the interview panel consisted of five people in total, the difference was in the composition of the panel. School C and D SGB members said there would

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<sup>993</sup> *Ibid.*

<sup>994</sup> Participants A2, A4, B1, B2, and B5.

<sup>995</sup> School A Policy pdf 1 and 2.

<sup>996</sup> Participants C1.

<sup>997</sup> Participants C1, A2 and A4.

<sup>998</sup> Participants A2, A3, B2, C1, C2, and C3; School A SGB meeting minutes, 15 March 2018; School B SGB meeting minutes undated but follows the one dated 05 March 2020; and School C Interview panel meeting minutes, 23 July 2020.

be two teachers and three parents.<sup>999</sup> In schools A and B, there were four parents, the secretary (often a teacher) as well as the chairperson of the interview committee.<sup>1000</sup> At least three of the members of the panel would be scorers and the principal would be part of the panel as the ECDBE observer.<sup>1001</sup>

In preparation, the panel would engage teachers to discuss what was in the interests of the school.<sup>1002</sup> The minutes indicate an emphasis on ensuring that the candidates applying for the post were qualified and met the requirements set.<sup>1003</sup> The panel would have to ensure that, beyond the job description requirements, it looked for the desired person who has passion for the work.<sup>1004</sup> This is said to have served school A well as it managed to get good teachers who helped improve the learners' academic performance.<sup>1005</sup>

The interview panel set a date for shortlisting,<sup>1006</sup> and once the candidates were shortlisted, they were sent an invitation letter to attend interviews.<sup>1007</sup> There were records of the SGB conducting the interviews where the score given to each candidate by each scorer was recorded.<sup>1008</sup> The scorers would award scores, the top candidate would be determined and the results would be deliberated with the SGB which would make the recommendation after ratification (agreement that the top scorer be appointed in the position).<sup>1009</sup>

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<sup>999</sup> Participant C3, D1 and D2. School C SGB meeting minutes, 18 March 2020 and School A Parent meeting minutes, 15 March 2018.

<sup>1000</sup> School B SGB meeting minutes undated but follows the one dated 05 March 2020 and School A Parent meeting minutes, 15 March 2018.

<sup>1001</sup> School A Parent meeting minutes, 15 March 2018 and School B SGB meeting minutes undated but follows the one dated 05 March 2020.

<sup>1002</sup> Participants A2 and A3.

<sup>1003</sup> Participants D1 and D2; School C shortlisting meeting minutes, 14 August 2019.

<sup>1004</sup> Participants A2 and B5.

<sup>1005</sup> Participant A2.

<sup>1006</sup> School A SGB meeting minutes, 15 March 2018 and School B SGB meeting minutes undated but precedes the one dated follows the one dated 25 May 2020.

<sup>1007</sup> School A Interview panel meeting minutes, 22 March 2018; School B SGB meeting minutes undated but precedes the one dated follows the one dated 25 May 2020; and School C Interview panel meeting minutes, 18 March 2020.

<sup>1008</sup> School A Interview meeting minutes, 27 March 2019

<sup>1009</sup> School C Interview panel meeting minutes, 23 July 2020.

When there were still teacher shortages despite the filing of educator posts by the Department, SGBs would hold meetings with teachers to discuss the shortage and whether the school had the financial muscle to fund the post.<sup>1010</sup> Overall, schools seemed well versed with recruitment processes and confidently said their schools complied with the policies except for participant D4 who differed.

Participant D4 said the SGB members were sometimes influenced by external factors other than the needs of the school. The SGB members did not always understand what teaching entails, so they sometimes appointed the most eloquent person in the interviews or their relatives. He said, as the principal, he tried to advise properly qualified people to apply, and when they did, the SGB members would still only appoint their relatives or people who had already paid bribes. Those appointees would then give him problems when he was trying to perform his oversight role as the professional manager of the school.<sup>1011</sup> D4 said he could not do much as he had a minimal role in deciding who is going to be appointed. The principal and the SMT could only have an impact when profiling the post; they could not influence the appointments by the SGB.<sup>1012</sup>

This information accords with academic findings. Buka reported that in the Eastern Cape, staff recruitment is filled with nepotism from SGB members as they favour their relatives.<sup>1013</sup> Nepotism can lead to social tension and destabilise the governance of a school which may lead to poor management and school dysfunctionality.<sup>1014</sup> This seems to have been school D's truth to some degree, at least from participant D4's point of view.

#### 6.3.3.4. *School property management/maintenance*

School facilities in all schools except for school D were in a good shape and seemed well maintained when visited by the researcher. Schools had maintenance policies which provided for the establishment of a committee for the management of school

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<sup>1010</sup> Participant C4.

<sup>1011</sup> Participant D4.

<sup>1012</sup> *Ibid.*

<sup>1013</sup> Buka *et al* "Sustaining Good Management Practices" 107–108.

<sup>1014</sup> *Ibid.*

facilities and outlined the procedure to be followed when contracting persons for maintenance services (others relied on their procurement policy in this regard).<sup>1015</sup>

The purpose of the maintenance committee, as stipulated in the policy, was to ensure that the property was kept safe. Further, the committee, as was reportedly emphasised during training by the ECDBE, had to ensure that the property would not be used or taken out of school premises other purposes than intended.<sup>1016</sup> The policies outlined reporting mechanisms by the school to the ECDBE one of which was that the committee (or selected SGB members where no committee existed) had to keep a registry/ inventory of the assets and their condition.<sup>1017</sup> The committee was to ensure that government subsidised property like textbooks and nutrition utensils and all property was used sustainably and stored safely,<sup>1018</sup> preferably in a school storeroom as was advised during training.<sup>1019</sup> The storeroom would be locked, and the keys would be kept by the principal and one SGB member (often a member of the maintenance committee).<sup>1020</sup> This way, the principal and that member could be held accountable for property stored in the storeroom.<sup>1021</sup>

Further, the committee still had to report on maintenance issues to the SGB which would have the necessary deliberations about facilities that needed to be fixed and the next steps to be taken for that purpose.<sup>1022</sup> Further, the teachers would also report to the committee or SGB when there were issues of missing stationery or assets.<sup>1023</sup> The policies also made clear what the ECDBE was responsible for and up to what amount. The maintenance that was the ECDBE's responsibility included major refurbishments or emergency repairs due to natural disasters.<sup>1024</sup>

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<sup>1015</sup> School B Policy pdf 9–13.

<sup>1016</sup> Participants A2, B1 and D1.

<sup>1017</sup> School B Policy pdf 3 and School C Policy pdf 3.

<sup>1018</sup> School D Policy pdf 9.

<sup>1019</sup> Participants C1, C2, and D1.

<sup>1020</sup> Participants C2 and D4.

<sup>1021</sup> Participant C2.

<sup>1022</sup> Participants B1, B2, B5, C1 and D4.

<sup>1023</sup> Participant C1.

<sup>1024</sup> School C Policy pdf 5. School B Policy pdf 9.

Policies provided for cleanliness or no littering and no damage to property, with clearly outlined procedures to be taken in cases of vandalism.<sup>1025</sup> A safe environment was provided for with policies prohibiting the use of hazardous substances, illegal drugs, and alcohol at the school or events organised by the school. Where there was reasonable suspicion that a learner was in breach of the policy on drugs or hazardous substances, the policy provided that a Police Officer or the principal or their nominee would be called to conduct searches.<sup>1026</sup> Further, in terms of the policy, a test could be sought for learners suspected of using illegal drugs so that they may be rehabilitated.

For access control and safety, schools had security guards mainly at the gate to register visitors. Some did not, but had a logbook, especially to record visitors who needed to engage with the principal. For learners' safety, teachers were to be visible at all times around where learners play and reprimand irresponsible behaviour.<sup>1027</sup>

While participants and the policies were clear that the SGB would decide on maintenance issues, in school D, records of such decisions were in SMT minutes book. There were also SGB members who said they knew nothing about school facilities' maintenance as it was solely the responsibility of the maintenance committee.<sup>1028</sup> Further, only school B and C had a maintenance committee. This seems to have been one of those instances where the policy is well established in paper but not fully given effect to in practice.

The dire state of the facility/infrastructure challenges at school D cannot be overstated. Although the SMT minutes book reflected there having been some painting of classroom walls and the ceiling being refurbished, there were still serious issues observed by the researcher. The windows, doors, ceiling, and walls were broken and some classrooms had no doors at all. However, this seemed to be more than a maintenance issue; the ECDBE also failed to implement the infrastructure norms and standards regulations. More than 50% of the classrooms were in temporary structures

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<sup>1025</sup> School C Policy pdf 26 and School D Policy pdf 8 para 7.

<sup>1026</sup> School D Policy pdf 17.

<sup>1027</sup> School C Policy pdf 9

<sup>1028</sup> Participants B2 and B3.

made of corrugated iron, which is unacceptable in terms of the infrastructure norms and standards. Participants said they had made requests to the ECDBE for the construction of classrooms and toilets, but nothing was ever done.<sup>1029</sup>

Participant D4 explained that the school was not necessarily built by the government, most of the buildings were erected by the SGB using maintenance funds, as the ECDBE was not helpful when they sought to get new buildings.<sup>1030</sup> Even when more classrooms were needed, the SGB managed to get temporary classrooms for the learners.<sup>1031</sup> D4 pointed out that he thinks he worked well with the SGB in relation to maintenance because they could all see that the buildings were falling and windows were broken. Therefore, they had to work with the little resources they had just to keep the classrooms operational for learners to be taught.<sup>1032</sup>

#### 6.3.3.5. NSNP-related issues

As stated in chapter 3, the NSNP was not one of the focal points in this research, however, the programme was raised in interviews with school A SGB members. In addition to appointing educators, SGBs facilitate the appointment of food handlers who are contracted in terms of the NSNP.<sup>1033</sup> The participants clearly explained the process they adopted in the appointment of meal handlers. The SGB convenes a parents' meeting where parents elect food handlers amongst themselves and from the community at large.<sup>1034</sup> They recalled that the ECDBE's rule is that food handlers must serve a non-renewable fixed term of 3 years.<sup>1035</sup> In line with this, the SGB had agreed to change food handlers upon the end of their tenure and conduct elections for the appointment of a new cohort.<sup>1036</sup> The SGB minutes recorded that the SGB facilitated the elections of food handlers.<sup>1037</sup>

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<sup>1029</sup> Participants D2 and D3.

<sup>1030</sup> Participant D4.

<sup>1031</sup> *Ibid.*

<sup>1032</sup> *Ibid.*

<sup>1033</sup> Participant A5.

<sup>1034</sup> Participants A5 and A2.

<sup>1035</sup> Participant A5.

<sup>1036</sup> *Ibid.*

<sup>1037</sup> School A Parent meeting minutes, 09 March 2018.

The procedure outlined by the SGB is fundamentally different from the one the ECDBE provides for as outlined in chapter 4. Further, the procedure adopted by the SGB was also not applied uniformly. One participant explained that at some point, some teachers went ahead and re-appointed food handlers without the community or the SGB's participation.<sup>1038</sup> This caused tension between the SGB and the community because the community was not aware that the SGB had not been part of these appointments.<sup>1039</sup> This action on the part of the teachers damaged the reputation of the SGB as it was deemed to have told the community one thing but went on to do the opposite.<sup>1040</sup> On the same issue, participant A2 said they followed the correct procedure for the most part, however, the community would still dispute the appointments and sometimes demand a re-do of the process.

The SGB explained that some deviations from the school's policy were necessitated by practical considerations. For example, the principal ended up being responsible for purchasing food and transporting it to the school. This was convenient as he stayed in town and owned a vehicle while SGB members lived in the villages and it would have costed the school more had the SGB members travelled to town specifically to purchase food and pay someone for delivery.<sup>1041</sup>

#### 6.3.3.6. SRP-related issues

The ECDBE's lack of responsiveness also surfaced in relation to overcrowding challenges that were a product of the SRP.<sup>1042</sup> The Project led to the addition of grades 8 and 9, without classrooms having been built for those incoming grades. The SGB meeting minutes demonstrate that the school had waited for funding from the ECDBE to build structures necessary to accommodate grade 8 and 9 learners.<sup>1043</sup> However, in desperation as the Department was taking too long, the principal used his own funds and claimed the money from the ECBDE later.

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<sup>1038</sup> Participant A5.

<sup>1039</sup> *Ibid.*

<sup>1040</sup> *Ibid.*

<sup>1041</sup> *Ibid.*

<sup>1042</sup> Participant A2.

<sup>1043</sup> School A SGB meeting minutes, 12 March 2019.

Another consequence of the SRP which was raised as an issue was the vast transfer of teachers. This meant that SGBs would not be recruiting and conducting interviews to get the desired teachers for the incoming grades.<sup>1044</sup> Participant B1 was not impressed with some of the teachers, stating that they lacked the level of determination and passion the school had cultivated in its staff.<sup>1045</sup>

Participant B1 stated that even before the implementation of the SRP, the ECDBE already had the tendency to transfer teachers without the SGB's input. The main issue was that, while teachers have rights and freedoms as workers, those seemed not to be balanced with the interests of learners. He stated that teachers would be allowed to transfer at any time, in search of better conditions such as access to electricity and network coverage, while the impact of such transfers on the stability of teaching and learning at both the departing and receiving schools appeared to be overlooked.<sup>1046</sup> The AGM minutes in school B bears evidence of this as there is an instance where the principal announced that the school would receive three teachers from ECDBE.<sup>1047</sup>

It can be said that, while the concerns from the SGB members cannot be ignored, different interests might have to be balanced. Depending on the process adopted, the SRP can necessitate a transfer of teachers. For example, where a school is closed, or has been reduced so that some grades are no longer being provided for, affected teachers must be in employment too. Perhaps the issue might have been insufficient engagement with SGBs about the SRP and its implications. SGBs would have been represented during the deliberation stages of the project, and have the opportunity to raise concerns which would have been factored in the final SRP. Nonetheless, in light of the fact that the SRP was not investigated in this study, no conclusive comments can be made on the issue.

#### 6.3.3.7. School policy and rule-making

SGBs are tasked with making policies and rules in relation to several matters as provided for in SASA. Accordingly, schools are supposed to have a litany of policies

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<sup>1044</sup> Participants B1, C1 and C5.

<sup>1045</sup> Participant B1.

<sup>1046</sup> *Ibid.*

<sup>1047</sup> School B AGM minutes, 28 October 2019.

and indeed the three schools (schools B, C and D)<sup>1048</sup> for which policies were accessed had a mouthful of policies including those discussed above (finance, procurement, recruitment, maintenance, NSNP, and safety and security) as well as other policies on language, curriculum, schooling hours, scholar transport, learner discipline, and the code of conduct for school staff and learners. These schools also had other documents as provided for in SASA and related policies such as the school mission statement, school readiness plan, and school development plan.

In this research, the focus was on policies relating to the three functions as discussed above. The remainder of this discussion is therefore on issues that stood out, mainly guided by the literature discussed on prominent issues with policy making. It is beyond the scope of this research to assess every policy adopted by the three schools.

SGB members reported that the principals offered guidance and clarified which rules and policies needed to be established.<sup>1049</sup> Some participants explained that SGBs and teachers would deliberate on the content of those policies or rules and adopt them.<sup>1050</sup> On the other hand, participant B2 thought it never was their responsibility to partake in the making of school policies and rules as that was the role of the principal.<sup>1051</sup> This seems to have happened in school D as well, albeit for different reasons.

Participant D4 recalled that he usually drafted school policies and rules with the SMT. Afterwards, he would present and explain them to the SGB who would merely agree with him and adopt them. He said this was mainly because the SGB members did not understand the policies or school rules. He gave an example of an instance where a learner misbehaved and the SGB would insist that the learner be expelled without more.<sup>1052</sup> He added that he would explain to the SGB that they cannot just expel a learner and that due processes must be followed.<sup>1053</sup> Nonetheless, he concluded that

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<sup>1048</sup> School A policies could not be accessed; the principal said they had gone under review and had not been printed yet. He also did not furnish the softcopy as he had undertaken to. This is despite several reminders by the researcher to kindly do so. Nonetheless, it is understood that the principals are generally very busy as professional managers of respective schools.

<sup>1049</sup> Participants A4, C5 and D1.

<sup>1050</sup> Participants A2 and D1.

<sup>1051</sup> Participant B2.

<sup>1052</sup> Participant D4.

<sup>1053</sup> *Ibid.*

there were SGB members who understood some processes or who were open to his guidance and worked well with him.<sup>1054</sup>

It was unclear whether the policies were reviewed to keep up with changes in the legal framework or changes in the needs of the school. The finance policy in school B stipulated that it would be in force as of July 2016. It seems as though the policies had not been reviewed since 2016 except for policies on learner discipline which had to be reviewed as a result of increased incidents of learners bringing weapons and illegal drugs to school.<sup>1055</sup> School C's policy documents were dated 2011. According to the then SGB chairperson in school C, it was only the code of conduct for learners that was amended within the 2018–2020 period.<sup>1056</sup> The policies of school D were also not dated and it was not clear when they were adopted or last reviewed.<sup>1057</sup>

The SGBs in the three schools had also adopted an SGB constitution as stipulated by SASA. The constitutions stipulated the objectives of the school and how the SGB must operate, ranging from its composition, the election process of SGB members, their term of office, the quorum for SGM meetings, and the frequency of the SGB meetings. SGBs were meant to meet at least once every term, they (including school A's SGB) met more than once in most terms.<sup>1058</sup> The constitution for school C further stated that a member who missed three consecutive meetings would be deemed to have resigned. It does not seem as though this was enforced as the inactive member remained listed as an SGB member.<sup>1059</sup>

The meeting minutes demonstrated some instances where some of the policies were invoked and instances where some guidance was sought from SASA including when

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<sup>1054</sup> *Ibid.*

<sup>1055</sup> Participants B1, B4 and B5.

<sup>1056</sup> Participant C1.

<sup>1057</sup> There was a new principal appointed in 2022, and it is not clear when the policies were reviewed before the review that was done in 2022 by the newly appointed principal.

<sup>1058</sup> For example, in term 4 of 2019, the SGB for school C met on 14 August, 20 August, 14 October, 16 December as seen on the SGB meeting minutes. Similarly, during the first term of 2020, the SGB met on 14 February, 16 February and 12 March. On the other hand, the minutes demonstrate that school A SGB met quarterly in 2019: on 23 January, 05 June, and 18 September. It should be noted that the SGBs probably met more than is reflected here because the researcher did not copy every page of the SGB meeting minutes. However, some of these were special meetings to address specific issues.

<sup>1059</sup> School A SGB meeting minutes, 23 January, 05 June, and 18 September 2019.

dealing with learner discipline, school hours,<sup>1060</sup> learner absenteeism,<sup>1061</sup> teacher misconduct and learner pregnancy issues.<sup>1062</sup> The policies permitted pregnant learners to attend school, provided that there would be parental or guardian supervision especially closer to labour to avoid complications as the school did not have maternity health professionals to attend to such issues.<sup>1063</sup> While the policy is arguably discriminatory, the need to ensure safety for the very pregnant learner cannot be ignored. No strong views are expressed on this as it is not clear how the school could balance the related rights and interests and still ensure that the learner's health and wellbeing is ensured especially closer to the date of giving birth.

There was an ambiguous policy in school D in relation to the discipline of learners who were found using illegal drugs. The policy merely stated that the learners would be punished accordingly.<sup>1064</sup> A comforting clause followed which spoke of rehabilitation of addicted learners,<sup>1065</sup> but it did not clear the part about being punished accordingly especially in light of the abolishment of corporal punishment.

Another policy in school D seemed to be over-reaching. It stated that usage of liquor was prohibited in or outside school premises for as long as one is registered as a school D learner.<sup>1066</sup> The prohibition might have been less overreaching if it had applied only to cases where a learner, while outside school premises and not attending a school-organized event, was still wearing the school uniform.

#### 6.3.3.8. *Other challenges in schools*

One of the other objectives of this study was to determine whether any other factors, in the knowledge of the SBGs, existed which could negatively impact on the provision of the right to basic education. Accordingly, participants were asked about any other challenges the school had experienced in 2018/2019 to 2020/2021. Teacher

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<sup>1060</sup> School B SGB meeting minutes, 10 December 2020.

<sup>1061</sup> School B SGB meeting minutes, 05 March 2020.

<sup>1062</sup> School A SGB meeting minutes, 05 June 2019 and 01 October 2020.

<sup>1063</sup> School A SGB meeting minutes, 18 September 2019.

<sup>1064</sup> School D Policy pdf 8.

<sup>1065</sup> School D Policy pdf 10.

<sup>1066</sup> School D Policy pdf 10 para 16.

misconduct or inappropriate sexual relations between teachers and learners and the ECDBE's failure to effectively deal with it was identified.<sup>1067</sup>

School A was faced with two such matters, which it reported to the ECDBE for further investigation.<sup>1068</sup> One of these matters resulted in the teacher's dismissal as evidence gathered by the SGB supported the allegations of misconduct.<sup>1069</sup> The SGB stated that it could not internally resolve the second matter due to a lack of cooperation from the learner in question.<sup>1070</sup> The matter was left to the ECDBE, but the outcome remained unclear.<sup>1071</sup> Nonetheless, SGB members expressed dissatisfaction with the ECDBE's responses when called to attend to what could possibly be a teacher misconduct issue.<sup>1072</sup>

School A also had learner-discipline issues with instances of learners found to have brought weapons (knives) to school.<sup>1073</sup> There was fighting between learners and even stabbings.<sup>1074</sup> As a result, the school's night classes initiative was discontinued, and this negatively affected learners who needed extra lessons.<sup>1075</sup> The SGB had suggested unannounced random searches by SAPS.<sup>1076</sup> Although the unannounced searching initiative never came to fruition, it is not possible to ascertain whether the SGB followed the school's policy on learner discipline, as the policies could not be accessed.

School B had its own unique challenges due to the remoteness of the school. The SGB generally had organisational and communication challenges. This was due to the fact that the school is in a remote area and SGB members are scattered and live far

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<sup>1067</sup> Participant A2.

<sup>1068</sup> *Ibid.*

<sup>1069</sup> Participant A3.

<sup>1070</sup> On the second matter, the SGB stated that it engaged with the learner and the parents in an attempt to gather evidence for possible disciplinary action against the teacher who allegedly had a sexual relationship with a learner. However, the learner refused to participate in the investigation and the SGB was unable to gather the necessary evidence. Participant A1 reported the frustration of SGB members as the learner and her parent tended to turn to social media and news outlets. For this reason, participant A1 ultimately thought of this issue as a matter of learner misbehaviour.

<sup>1071</sup> School A SGB meeting minutes, 1 September 2020.

<sup>1072</sup> Participant A2.

<sup>1073</sup> Participant A5.

<sup>1074</sup> *Ibid.*

<sup>1075</sup> *Ibid.*

<sup>1076</sup> *Ibid.*

from the school. Participant B2 said the SGB members were hardly all available for meetings. She explained that the villages also have network issues which made it even harder to contact everyone. Further, some members did not have transportation to get to the school for meetings. However, sometimes, the principal would fetch members using his car.<sup>1077</sup>

These challenges were exacerbated by a lack of commitment from some SGB members.<sup>1078</sup> Participant B2 suggested that people should volunteer rather than being elected, speculating that they would commit more if they were not nominated.<sup>1079</sup> On the other hand, participant B3 was of the opinion that the views of the parent members of the SGB were generally not taken into consideration, and this was a demotivation and contributed towards a lack of cooperation between teachers and the SGB.

Although not for reasons similar to those in school B, school C also saw a lack of commitment on some SGB members which resulted in an increased workload for others. Participant C1 expressed the view that educators generally have many responsibilities, which makes being a member of the SGB overbearing. Further, there was also a lack of support from school staff in general and some of the established committees for certain functions were dysfunctional.

Participant C5 corroborated the issue of inactive SGB members saying that the chairperson was particularly inactive and only attended meetings attended by ECDBE officials. These complaints were made despite the fact that the SGB constitution, as stated in chapter 6.3.3.7, stipulates that a member who misses three consecutive meetings is deemed to have resigned.<sup>1080</sup> Had this been implemented, another member could have been elected to share the workload to fill that gap rather than counting on an inactive member.<sup>1081</sup> On the other hand, in chapter 6.3.3.2, the same chairperson, together with the SGB secretary, was said to have had a tendency of excluding other SGB members insofar as procurement decisions were concerned. It

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<sup>1077</sup> Participant B2.

<sup>1078</sup> *Ibid.*

<sup>1079</sup> *Ibid.*

<sup>1080</sup> Constitution of the SGB of School C.

<sup>1081</sup> Participant C1.

therefore seems as though the chairperson was active but mainly engaged the secretary and the principal than the SGB in general.

As for school D, participant D1 reported that there was a division among teachers to a point where teaching and learning were negatively affected.<sup>1082</sup> There was also tension between teachers and the SGB, as well as the principal and the SGB.<sup>1083</sup> Participant D4, as the then principal, mentioned nepotism in staff recruitment and lack of compliance with the financial management policy on the part of the SGB as the source of the division between him and the SGB. As already said, he stated the ECDBE was of no assistance when he sought its intervention.

#### 6.3.4. SGBs' proposed solutions

The researcher found it necessary to ask SGB members what they thought would be the solution to SGB challenges. This was done because these SGB members are the people who have worked in school governance and experienced several challenges first hand, therefore their proposals could benefit the public school governance system.

Most participants advocated for proper and adequate training that is conducted more frequently or continuously.<sup>1084</sup> Some suggested that training be conducted at least twice a year.<sup>1085</sup> They emphasised the need to accommodate SGB members who, for whatever reason, are elected after the SGB induction that is normally conducted early in the year has already been done. Participant C5's advice concerned the skills of trainers. He stated that while he had only attended one workshop where the ECDBE had outsourced trainers, the ECDBE was known for providing trainers who seemed to have an insufficient understanding of the framework or best practices on certain functions. Participant C5 reiterated his suggestion of outsourcing trainers who are specialists in fields that relate to certain SGB functions.

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<sup>1082</sup> Participant D1.

<sup>1083</sup> Participant D3.

<sup>1084</sup> Participants A2, A3, A5, B4, C2, C3, C5 and D3.

<sup>1085</sup> Participants A3 and C3.

Pro-active support by the ECDBE and regular visits for monitoring, not just the SMT, but also for the SGBs was suggested.<sup>1086</sup> In relation to supporting SGBs, greater responsiveness by the Department to deal with problems timeously, before they become unmanageable with dire consequences, was suggested.<sup>1087</sup>

Participant C5 suggested that a school's SGB must be composed mainly of parents whose children attend the school, as those parents tend to care more. Participant D1 expressed a view similar to that of C5. He was of the view that the schools should find people who are genuinely interested in education to lead and develop them.

Advice from participant B1 was that the ECDBE should not allow teachers to transfer from one school to another as they please. He went on to say:

“They must especially stop transferring teachers to cover up for the teacher's misconduct in the previous school. They come and be problematic in the next school. Rather, discipline them properly instead of moving them from one school to another every time they do wrong.”

This is concerning especially given that the ECDBE undertook to manage and monitor recruitment processes to ensure adherence to finance policies and employment equity policies.

Participant D4 had an issue with the policy, finding it rather rigid and failing to accommodate different socio-economic and cultural contexts as he called it a “one-size fits all”, he said:

“I think the Department must have a feel of what is happening in all areas of the country when drafting these policies. It must properly consult with the parents, learners and schools who will be affected by these policies. Some rules will work in some contexts and not in others.”

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<sup>1086</sup> Participant A2.

<sup>1087</sup> Participants A3, B5 and C1.

This issue has been raised by academics who found SASA to be rigid.<sup>1088</sup> Further, participant D4 criticised the legal framework stating that SGB members were overburdened with roles they were neither qualified nor trained to perform. He suggested that either the training of SGBs must be taken seriously or the prerequisites for SGB membership include some of the skills the SGB functions demand. Alternatively, when drafting SGB policies and rules, the DBE and the ECDBE should consider the fact that the eligibility criteria for SGB members have no further requirements in relation to qualifications and skills.<sup>1089</sup> The policies should therefore be of the kind that can easily be understood by SGB members from different backgrounds and educational levels.<sup>1090</sup> In the absence of such adaptation, participant D4 was of the view that schools would continue to experience challenges, particularly in relation to the recruitment of teachers.<sup>1091</sup>

As for other proposed solutions in general, better collaboration between the SMT and SGB was emphasised.<sup>1092</sup> Collaboration between SGBs in different schools was also proposed.<sup>1093</sup> Insofar as SGB elections were concerned, it was proposed that it could be beneficial to elect people who already hold leadership and managerial roles in the community as they might bring leadership and managerial experience.<sup>1094</sup>

Accurate note taking and record keeping was said to need more attention.<sup>1095</sup> This is said to apply to all members and not only secretaries because there is sometimes a lack of truthfulness in members. Participant A1 said:

“Just because you are not a secretary, it does not mean that you should not take notes and record decisions. Some people are not truthful, and they will turn around and deny everything that was decided, so you can cover your back if you take notes.”

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<sup>1088</sup> Buthelezi and Gamede “Challenges Facing Secondary School Principals” 14548.

<sup>1089</sup> Participant D4.

<sup>1090</sup> *Ibid.*

<sup>1091</sup> *Ibid.*

<sup>1092</sup> Participants A2 and D1.

<sup>1093</sup> Participant D1.

<sup>1094</sup> Participant D2.

<sup>1095</sup> Participant A5.

It was proposed that all stakeholders must maintain good interpersonal relations in order to ensure that the checks and balances between SGBs, teachers and the principal remain fully functional. Participant B3 said SGB members should avoid being overly familiar with principals and teachers who do not follow the rules, lest they end up doing the same and be unable to hold the principal or teachers accountable.

#### 6.3.5. Concluding remarks

From the above analysis of the information from SGB interviews and school documents, it can be established that SGB members performed some of their functions as provided for in SASA, but fell short in others where compliance is lacking. It is highly commendable that the three schools had at least adopted most of the policies and rules they were meant to adopt. However, it cannot be ignored that they had not reviewed and updated most of those policies, and that there are concerns about principals and the SMT making the policies and SGBs merely signing them into force.

The SGBs also established most of the mandatory committees in relation to functions such as financial management. However, it became apparent that the establishment of such committees led to unintended consequences: they were either ineffective or overwhelmed, as other SGB members often assumed they were relieved of functions for which there were established committees. However, it was evident that such establishment of committees has unintended consequences on either ends, committees can be dysfunctional or end up being overworked as SGB members tend to think they are absolved from functions for which there were established committees.

The overall and most concerning trend is the top-down approach which manifested in all functions to some degree. Although for various reasons, principals and SMTs had somehow functioned as though they were the SGBs. Instances of a lack of cooperation between SGBs and the principal, and then within SGBs themselves were evident. This hits at the heart of the very establishment of the democratic school governance system and is therefore problematic.

## 6.4. Conclusion

This chapter demonstrated that there is evidence of the execution of plans by the ECDBE in the sense of organising training for SGBs, supporting and monitoring SGBs and schools broadly. Seventy percent of the participants found the ECDBE's training sessions useful. There are, however, deficiencies that cannot be ignored. These can be summarised as follows:

- There are serious inconsistencies in the support of schools or SGBs by the Department. The ECDBE attends to some matters and not others of equal importance. Fewer than 50% of the participants said the ECDBE did not support them.
- There seems to be little monitoring conducted by the ECDBE. Self-monitoring by SGBs seems to be the norm. Less than 50% of the participants said the ECDBE did not monitor them.
- There is still a top-down approach of side-lining parent components of SGBs, and more focus on SMT, contrary to the participatory ideals entrenched in the school governance system.

This chapter also demonstrated that some SGB members generally have a good understanding of school governance, their functions and how they ought to perform those functions while others do not. The procedures relating to staff recruitment were especially well known and followed except for the deviations complained about in school D. Overall, the identified issues can be summarised as follows:

- While SGBs seem clear on their roles, there were still serious misconceptions, particularly the role of other members of the SGB where SGB committees were established.
- There were also serious deviations from policies, especially in relation to financial management and procurement.
- The top-down approach, with the principal and SMT dictating to the SBG, seems to be the norm rather than the exception as it seems to permeate all functions of the SGB despite the contrary provided for in SASA.

The next chapter will assess the adequacy of the measures adopted to ensure effective school governance. That will be to determine whether these plans, despite the identified deficiencies in their implementation, are adequate to effectively ensure proper school governance, thus helping with the provision of quality education and the realisation of the right to basic education in general.

## **7. ADEQUACY OF MEASURES RELATING TO PUBLIC SCHOOL GOVERNANCE**

### **7.1. Introduction**

This chapter assesses the adequacy and effectiveness of the measures relating to school governance. The assessment is in relation to both the conceptualisation of the measures and the implementation thereof discussed in chapters 5 and 6, respectively. Chapter 5 highlighted the ECDBE's statutory and policy obligations relating to school governance. These are mainly about training, supporting and monitoring SGBs in the performance of their functions. In this regard, it was outlined in chapter 5 that the ECDBE undertook to support schools through multi-disciplinary teams established in district offices.

The Joe Gqabi district undertook to manage and monitor the budget and expenditure of schools and the recruitment processes to ensure adherence to finance and employment equity policies, respectively. The district further undertook to record and verify asset registries and report on lost assets to ensure adherence to policies relating to school property management. The understanding being that, once properly trained, monitored and supported, SGBs would be able to manage school finances, maintain school property, recruit school staff, and make school policies and rules in accordance with SASA and related policies. Thus, the SGBs would have properly governed the schools, which would have enabled quality teaching and learning, thus contributing towards the realisation of the right to basic education.

It could be contended that by adopting and implementing the measures discussed, the ECDBE has ensured effective school governance, thus contributing to the realisation of the right to basic education as it is constitutionally obliged to. In order to evaluate such a claim, the adequacy standard or test outlined in chapter 4 will serve as the basis for assessing the adequacy of the ECDBE's measures in respect of school governance. In chapter 4, it was established that there is no legal standard set for the

adequacy of measures meant to realise the right to basic education or any other unqualified socio-economic right. However, it has been argued that, until there is one deemed appropriate, and given that the measures must be assessable somehow; the adequacy standard traced from litigation meant to provide an equal, equitable and efficient education system in the USA will be adopted.

This standard demands more than assessing the input from the ECDBE, one must necessarily assess the input in conjunction with corresponding outcomes (objectives) if one is to say a school is effectively governed. The question is whether the ECDBE adequately and effectively supported, monitored and trained SGB members to capacitate and enable them to effectively perform their functions in relation to school governance, with the focus being on financial management, staff recruitment, property maintenance, and policy making.

The assessment also concerns the question whether the ECDBE: managed and monitored the budget and expenditure of schools to ensure adherence to finance policies; monitored the recruitment processes and employment to ensure adherence to equity policies; and recorded and verified assets registries and reported on lost assets in order to ensure adherence with policies relating to the administration and management of school property.

The following factors as outlined in chapter 4 will be considered in assessing the adequacy of the ECDBE measures meant to ensure effective school governance:

- Whether there is provision for human and financial resources;
- Whether the measures are flexible to accommodate different circumstances and changing times;<sup>1096</sup>
- Whether clear timelines for the implementation of the plans are set;
- Whether provision is made for some monitoring mechanisms to monitor the implementation of the plans; and

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<sup>1096</sup> This would counter the challenge that what is adequate today in a certain community may not be tomorrow or and may not be for another community.

- Whether the measures are comprehensive and encompass all dimensions of the issue they are intended to address.

## **7.2. Assessment of adequacy and effectiveness of measures**

There is no established programme particularly focused on ensuring effective school governance as there are focused programmes to provide for nutrition (NSNP) and infrastructure (ASIDI) in schools, for example. Measures relating to school governance are part of the operational plans of the DBE. These plans are housed in programmes (programmes 1 and 2) that do not assign specific independent functions to the different stakeholders involved in school governance.

More precisely, programmes 1 and 2 do not establish the roles of SGBs, SASA does. For example, SASA provides that the department must monitor SGBs.<sup>1097</sup> The two programmes provide, to some degree, a plan to guide the Department in monitoring SGBs. In terms of the ECDBE's annual plans and reports, the ECDBE utilises the SGB Functionality Tool, which was developed by the DBE to monitor SGB's functionality. Ultimately, the functions of the stakeholders involved in school governance remain as detailed in SASA and the National Policy on the Organisation, Roles and Responsibilities of Education Districts.

Given that the two programmes housing the ECDBE's plans on school governance are part of institutional plans, it can be accepted that the strengths and weaknesses inherent in the institutional plan *per se*, have a direct impact on how the ECDBE fulfils its duty to ensure effective school governance. One of the strengths of the ECDBE's operational plans, like other provinces' plans, is that it is reviewed annually. Further, the plan is subject to an annual evaluation of whether the DBE and the ECDBE are fulfilling their objectives. Thus, both programmes relating to school governance are also reviewed annually. These programmes also take cognisance of short, medium, and long-term goals as seen from the 2030 goals, the four-year goals, the annual goals, and the quarterly goals.<sup>1098</sup> These plans are accordingly capable of changing

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<sup>1097</sup> Section 19 of SASA.

<sup>1098</sup> See discussion in Chapter 5.2.1.

with changing needs. As to whether they, in fact, have been changed with changing needs, is another question.<sup>1099</sup>

From the legislative and policy provisions underpinning the institutional programmes, one can identify the functionaries or stakeholders responsible for implementing the programmes, particularly with respect to supporting, training, and monitoring SGBs. It is evident that the provincial HOD, district offices, and circuit managers are generally responsible for training, monitoring and supporting SGBs. The programmes make provision for human resources needed for their implementation in this sense. However, the programmes fall short when it comes to detailing the particulars regarding the supporting and monitoring of SGBs in relation to specific SGB functions.

For example, it is stated that for the monitoring of SGBs on property maintenance, the district office relies on asset registers submitted by the SGBs.<sup>1100</sup> For the monitoring of SGBs regarding financial management, the ECDBE relies on the evaluation of school budgets and audited financial statements submitted to the district offices by the SGBs.<sup>1101</sup> However, it is not stated what the ECDBE or the multi-disciplinary team from the district office does to support SGBs to properly perform SGB functions, especially the four functions central to this thesis. The ECDBE's performance measures also provide no clarity in this regard. The relevant performance measure assesses whether principals rate the support of the district as satisfactory without providing any basis/criteria for such rating.<sup>1102</sup>

It seems as though, in some respects, the two programmes are phrased in the broadest of terms. They elaborate little if anything, beyond that which is set out in SASA and related policies. While some repetition is to be expected, the programmes seem to be nothing more than mere re-statement of legislation and policy provisions integrated into yet another document. The two programmes fall short of being a plan

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<sup>1099</sup> It is noted that at the end of 2019/2020, there was a revision of the operational plan structure which was effected in the 2020/2021 Annual Performance Plan. However, in relation to ensuring effective school governance, the two programmes remained substantially unchanged in 2020/2021.

<sup>1100</sup> See Table 5 in Chapter 5.2.3.

<sup>1101</sup> *Ibid.*

<sup>1102</sup> See Table 4 in Chapter 5.2.3.

of action that gives effect to those legislative and policy provisions.<sup>1103</sup> It is in the programme performance measures that the ECDBE outlines what it does to monitor and support SGBs. As stated in chapter 5, the district operational plan is a replica of the provincial plans and has the same deficiencies in relation to supporting SGBs with the four selected functions.

The ECDBE's plans clearly stipulate the budget allocation for specific tasks as detailed in chapter 5, albeit only for the 2018/2019 financial year. The reports even detailed the amount spent on certain tasks per quarter and clarified whether the budget for certain tasks was decentralised or not.<sup>1104</sup> It is not clear why the Department changed its approach for the subsequent years. Accordingly, for 2019/2020 and 2020/2021, there was a lack of clarity regarding the financial resource allocation to fulfil the plans relating to school governance.

While it is clear that the provincial HOD allocated funds to districts to perform their functions, the allocation for the other two years is not clearly expressed in relation to some of the functions. It can be accepted that for the monitoring and supporting of SGBs in general, the budget allocation was included in the district plan as outlined in the tables in chapter 5. Similarly, it must be noted that for the monitoring of SGBs in relation to school property maintenance, school staff employment and financial management, the district did not spend money as reflected in the tables in chapter 5.

However, the ECDBE 2019/2020 and 2020/2021 annual plans and reports made no mention of the budget allocation meant for the training of SGBs. The budgetary allocations were mainly reflected per sub-programme and economic classification. Neither the sub-programmes nor the economic classifications expressly addressed the training of SGBs. As shown in the diagram in chapter 5, economic classifications were set out in broad terms without details on the money spent on the training of SGBs. It is unlikely that SGBs were seen as part of the economic class of Non-Profit Organisation institutions the ECDBE transfers money to and subsidises. It is also not

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<sup>1103</sup> See for example how Chapter 5 is mainly about the ECDBE's goals rather than the plans to achieve those goals.

<sup>1104</sup> See Chapter 5.2.3. Programme performance measures/indicators and resource allocation above.

clear whether the monitoring, supporting and training of SGBs was deemed to be in the economic class of intangible assets for which the ECDBE made payments. Further, it is not clear if the training of SGBs formed part of the services classified under current payments.

The provincial treasury also provided no more details than the ECDBE on resource allocations regarding school governance related measures. While the provincial treasury provided a relatively detailed account of budgetary allocations as well as the trends in the ECDBE financial issues, the information provided breaks down the budget only per programme/ sub-programme,<sup>1105</sup> economic classification,<sup>1106</sup> specific infrastructure projects/general departmental infrastructure,<sup>1107</sup> and expenditure per municipal boundary.<sup>1108</sup> For the two relevant programmes in particular, treasury reports provided the budget per sub-programme, economic classification under each programme, and selected service delivery measures.<sup>1109</sup>

Similarly, while treasury reports further broke down economic classifications, nothing turns to the budget provided in relation to the capacitation of SGBs. The closest these documents get was to provide information on training and development, transport for departmental activity, and travel and subsistence under goods and services.<sup>1110</sup> The difficulty, as was with ECDBE documents, was the lack of specific detail regarding the training or traveling funded. The budget documents outlining the ECDBE's finances set out a litany of specified infrastructure and non-infrastructure projects with details on, *inter alia*, the completion stages of the projects.<sup>1111</sup> Accordingly, without access to district documents, the study cannot ascertain the financial provisioning for 2019/2020 and 2020/2021.

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<sup>1105</sup> Estimated Provincial Revenue Expenditure 2018/2019 at 287 and 292–293, 2019/2020 at 307 and 312–314, 2020/2021 at 277 and 281–283 <https://www.ectreasury.gov.za/MainBudget> (accessed 18 September 2025). Adjusted estimates have the same detail just with changes in the actual monetary allocations.

<sup>1106</sup> Estimated Provincial Revenue Expenditure 2018/2019 at 291, 2019/2020 at 308, 2020/2021 at 278.

<sup>1107</sup> Estimated Provincial Revenue Expenditure 2018/2019 at 290, 2019/2020 at 309, 2020/2021 at 279.

<sup>1108</sup> Estimated Provincial Revenue Expenditure 2018/2019 at 289, 2019/2020 at 309, 2020/2021 at 279.

<sup>1109</sup> Estimated Provincial Revenue Expenditure 2018/2019 at 292–294, 2019/2020 at 312–314, 2020/2021 281–284.

<sup>1110</sup> Estimated Provincial Revenue Expenditure 2018/2019 at 308–309, 2019/2020 at 328–329, 2020/2021 at 299–300.

<sup>1111</sup> Estimated Provincial Revenue Expenditure 2018/2019 326–370, 2019/2020 344–441, 2020/2021 314–395.

The lack of clear financial provisioning could possibly be attributed to the design of programmes in institutional plans. This does not mean that no money was allocated to improve school governance. It only means that one cannot determine the amount by merely looking into the annual performance plans and reports that house these programmes in those two financial years. Nonetheless, the fact remains that without clearly stated tasks as to what the functionaries really did in support and monitoring of SGB, the plans fell short of a comprehensive plan meant to realise the right to basic education.

Further, while it is recognised that the lack of financial provisioning information on the two years makes it almost impossible to assess the ECDBE's measures on this aspect, it cannot be denied that without defined budgetary allocations for the execution of all aspects of the plans, the programmes cannot be said to have been comprehensive and adequate. Neither can they be said to be capable of realising the right or the component of the right they are meant to realise. Two out of three financial years with no clear financial provisioning means that the plan was inadequate. This criticism should not be seen to detract from the year with clear allocations, which was commendable.

Programmes 1 and 2, as provided for in the institutional plans, lacked detail about school governance. At a provincial level, the overview of the two programmes and the key policy priorities in these programmes stated that SGBs would be trained. Next in the annual plans and reports were an outline of the sub-programmes within each of the programmes. The ECDBE plans and reports addressed the training of SGBs at the end of each of the two programmes where performance measures were outlined. This made it difficult to locate the training of SGBs in any of the sub-programmes. For example, in programme 1, the sub-programme called Human Resource Development was said to be for the provision of human resource development "for office-based staff". It is unlikely that SGBs were deemed to be "office-based staff".<sup>1112</sup> Another sub-programme named Corporate Services was meant to provide the education system with management services that are not education-specific. It is not clear whether the

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<sup>1112</sup> ECDBE Annual Performance Plan 2019/2020 at 35.

provision of those management services included SGBs. The other sub-programmes were even more remote from the functions of the SGBs. For example, one was specific to the provision of the functioning of the office of the MEC.

Programme 2 was no different. The sub-programme called Public Secondary School was said to be for the provision of resources required for quality education in grades 8 to 12 in public secondary ordinary schools, without further details. As argued in chapter 4, effective school governance is required for quality education. Yet, it was not clear whether the input (training SGBs) that would help ensure effective school governance was included in this sub-programme. Similarly, another sub-programme named Human Resource Development, was intended to provide for the services required for the professional development of educators and non-educators in ordinary public schools. Whether this extended to the training of SGB members is unclear. Further, it is also unclear whether SGB training fell under the programme titled Conditional Grants, aimed at skills development training and creating jobs in educational institutions through Expanded Public Works Programme to develop sustainable communities. It is submitted that that is unlikely the case.

The ECDBE's plans did not show signs of flexibility or adaptability to keep up with changing needs and demands in school governance. Despite being reviewed annually and being capable of change to fit needs and demands, these programmes have been the same since their conceptualisation insofar as it relates to school governance. It appears that the changes in the needs of SGBs have been in relation to aspects of school governance that are highly influenced by decisions made by the national department rather than the ECDBE. For example, SGBs raised issues with the policies on learner discipline, as they found the policies inadequate since the banishment of corporal punishment.<sup>1113</sup> The abolition of corporal punishment cannot be attributed to the ECDBE. But the lack of guidance to deal effectively with discipline in schools in accordance with the law, can be attributed to the Department.

Several issues with the ECDBE's programme performance indicators can be identified. The ECDBE assessed only the SGB performance of sampled schools, not

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<sup>1113</sup> See Participants B4 and B5's concerns in relation to learner discipline.

all schools. The sampled schools are not identified in the annual report. Thus, it is not possible to determine which SGBs need more support. Further, the principals' rating of the ECDBE's support can be viewed as overly subjective, as no criteria were provided to principals to rate the support of the ECDBE. Similarly, no information was provided as to support needed and or provided (if any), to visited schools. Also, the reports provided no information as to the scoring of SGBs as functional or not by departmental officials. Thus, the ECDBE's plans to support and monitor SGBs seem superfluous, and a mere tick-box exercise.

It is unclear how the ECDBE can improve their adopted plans in the absence of proper evaluation thereof. While the plans are subject to annual evaluation and thus capable of being developed to suit any change in the needs of SGBs, this seems to be ineffective insofar as it relates to the training, supporting and monitoring of SGBs. Alternatively, the plans do not reflect changes which is also problematic.

While there is some evidence of proper conceptualisation in some parts of these training, support and monitoring measures, considerable problems remain. Some of the challenges may be inherent in institutional/operational programmes, but the observed challenges seem to go beyond that. The plans to ensure effective school governance fall short of being adequate.

The implementation of the ECDBE's plans relating to school governance was discussed in chapter 6. It was established that the ECDBE implemented the plans in that it trained 65% of the participant SGB members in 2018/2019 to 2020/2021. Further, 70% of the SGB members (inclusive of those who had been trained by the ECDBE prior to 2018) found the workshop sessions informative. This is commendable. The training provided SGBs with some understanding of school governance, their functions and how they ought to perform those functions. However, there were some deficiencies:

- There were serious inconsistencies in the support of schools or SGBs where the ECDBE attended to some matters and not others of equal importance. Only 40% of the participants said the ECDBE supported them.

- There seemed to be little monitoring to the point where SGBs are self-monitoring. Only 30% of the participants said the ECDBE monitored them.
- There was still a top-down approach, contrary to the participatory ideals underpinning the school governance system post-apartheid.

The deficiencies listed above contributed towards the under-capacitation of SGB members. Some SGB members had serious misconceptions, particularly about the role of other members of the SGB where sub-committees were established. There were also serious deviations from policies, especially in NSNP staff recruitment. Further, there were procedural deviations in relation to the appointment of meal handlers.

Moreover, the ECDBE fell short of capacitating SGBs, even on its own performance measures, as seen in table 6 in chapter 6. In 2017/2018, only 12% of sampled schools had SGBs that met the minimum criteria for effectiveness.<sup>1114</sup> In 2018, only 14% of the schools produced the minimum set of management documents of the required standard.<sup>1115</sup> In 2018/2019, the ECDBE only visited 38% of schools twice a year when it had planned to visit 89% for monitoring and support. In 2019/2020, the ECDBE still fell short of its school visits target despite improving. It visited 65% of the schools, while the target was 90%. It is not clear whether the schools that were not visited twice were visited once or not visited at all. The ECDBE fell short of its standard in relation to the schools not visited twice a year as it regards district visits to schools adequate if they are done at least twice a year, not once.<sup>1116</sup> Further, school visits in themselves would not necessarily guarantee an effective response to the challenges confronting SGBs.

In relation to the notion of democratic school governance, Mncube and others summarise it as consisting of five basic principles:

“[R]epresentation, in terms of which individuals are represented on issues affecting their lives or that of their children; participation, in terms of the

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<sup>1114</sup> ECDBE Annual Performance Plan 2019/20 at 37.

<sup>1115</sup> ECDBE Annual Performance Plan 2020/21 at 54.

<sup>1116</sup> See Table 6 in Chapter 6.2. above and the discuss thereof.

involvement of individuals in the decision-making process; rights, comprising a set of entitlements which are protected and common to all individuals; equity, pertaining to the fair and equal treatment of individuals and groups; and informed choice, with tools being provided for decision-making based on the provision of relevant information and the application of sound reasoning.”<sup>1117</sup>

The top-down approach evident from this study is supported by academic commentary. Arendse is of the view that the mere fact of decentralisation of decision-making power to parents does not mean that substantive democracy automatically follows at schools.<sup>1118</sup> Similarly, Dieltiens posits that:

“But while the intention of SASA is clearly to open up channels for wider participation at school level, it must be remembered that SGBs fit within a legislative framework that limits and controls what they are able to do.”<sup>1119</sup>

The argument is that the democratic imperatives envisioned in school governance are therefore inherently prone to a top-down approach as SGBs are at the axis of the tension between the imperatives to decentralise and to centralise.<sup>1120</sup> However, this does not make the top-down approach as seen in schools any less contradictory to the legal framework in relation school governance. This approach must not be condoned, not even through complacency.

The principals were meant to support and assist SGBs not to take decisions for them.<sup>1121</sup> This top-down approach leads to the “othering” of SGB members as they feel left out and eventually stop participating.<sup>1122</sup> Buthelezi, although in the context of school management, argues that there is a need to train principals on management philosophies that condone participatory management.<sup>1123</sup> It has also been recognised that sometimes the issue is not just with principals usurping functions. Xaba contends

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<sup>1117</sup> Mncube *et al* “Effective School Governing Bodies” 211.

<sup>1118</sup> Arendse “The South African Constitution’s Empty Promise” 136.

<sup>1119</sup> Dieltiens “The Fault-Lines in South African School Governance” 33.

<sup>1120</sup> Dieltiens “The Fault-Lines in South African School Governance” 33–34. See also Heystek and Nyambi “Section Twenty-one Status” 230.

<sup>1121</sup> Arendse “The South African Constitution’s Empty Promise” 137.

<sup>1122</sup> Arendse “The South African Constitution’s Empty Promise” 138.

<sup>1123</sup> Buthelezi and Gamede “Challenges Facing Secondary School Principals” 14558–14559.

that despite workshops being held, parent SGB members, for various reasons, end up feeling side-lined, and that principals and educators take charge on many issues, including policy making, resulting in parents merely rubber stamping the process.<sup>1124</sup>

Research conducted by Mohapi and Netshitangani also found that principals of schools in rural areas become the master of the ship, whether through usurpation of functions or unwillingness on the part of SGB members to perform their functions.<sup>1125</sup> This practice is contradictory to SASA and its decentralisation franchise, as well as the notion of democratic school governance. There is a debate on whether the problems in school governance are as a result of the legal framework or practice. Two schools of thought exist which differentiate between participatory democracy and representative democracy.

The proponents of participatory democracy argue that the reason SGBs fall short in performing their functions is because the legal framework fails to create conditions for effective participation.<sup>1126</sup> The first issue is that the legal framework included fund-raising in the tasks SGBs; the second is the complexity of the functions of SGBs as provided for in the legal documents.<sup>1127</sup> One of the criticisms is that the technical language of the law is exclusionary for members of SGBs, especially for those who are illiterate and unskilled.<sup>1128</sup> For the proponents of representative democracy on the other hand:

“SGBs work in partnership with the government, as an accountability mechanism to ensure that policies have their intended impact. The reason, then, that the SASA model of school governance fails is that it romanticises participation (at the expense of transformation) and neglects to take into account some of the dangers inherent in opening-up schools to democratic consultation.”<sup>1129</sup>

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<sup>1124</sup> Xaba “The Possible Cause of School Governance Challenges” 205–206.

<sup>1125</sup> Mohapi and Netshitangani “Views of Parent Governors’ Roles” 9–10.

<sup>1126</sup> Dieltiens “The Fault-Lines in South African School Governance” 34.

<sup>1127</sup> Dieltiens “The Fault-Lines in South African School Governance” 35.

<sup>1128</sup> Dieltiens “The Fault-Lines in South African School Governance” 37–38.

<sup>1129</sup> Dieltiens “The Fault-Lines in South African School Governance” 38.

The argument is that the dispensation of democratic school governance must have been embarked on with caution. The legal framework would have guarded against the lurking danger of romanticising participation within a state function.<sup>1130</sup> Too much would not have been expected of the SGBs because “[p]articipatory democracy fails when too much is expected of participants, without sufficient guidance, support and even control”.<sup>1131</sup> This school of thought seems to propose a reversion of centralisation, as it seems to accept that it is unlikely that the DBE will be able to fully capacitate SGB.

There seems to be some truth in, and evidence for, both perspectives. For example, as early as 2007, research in rural areas demonstrated that the allocation of section 21 functions actually places a financial burden on the SGB rather than empowering it.<sup>1132</sup> Similarly, as early as 2004, the need for effective training was identified, especially in financial management.<sup>1133</sup> Two decades later, the same need exists as is evident from this study. It has also been said that the framework assumes that parents have ample time to participate in school governance whereas in fact they might not.<sup>1134</sup> However, re-centralising of school governance may seem inappropriate in light of the broader constitutional democracy that public school governance is meant to be part of.

Ultimately, given the inadequate training, supporting and monitoring, SGBs in this study faced several problems. What is particularly disquieting is that most of these problems are neither recent nor unforeseen, yet the ECDBE has remained unable to address them effectively. For example, it has long been established that SGBs fail to enact policies as required and keep minutes of their meetings, as was the case with school D.<sup>1135</sup> Yet, the ECBDE failed to address this lack of compliance. It is

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<sup>1130</sup> Dieltiens “The Fault-Lines in South African School Governance” 38–41.

<sup>1131</sup> Dieltiens “The Fault-Lines in South African School Governance” 41.

<sup>1132</sup> Heystek and Nyambi “Section Twenty-one Status” 228 and 232.

<sup>1133</sup> Marishane and Botha “Empowering School-Based Management” 106.

<sup>1134</sup> B Brown and N Duku “Negotiated Identities: Dynamics in Parents’ Participation in School Governance in Rural Eastern Cape Schools and Implication for School Leadership” (2008) 28 *South African Journal of Education* 431 at 432.

<sup>1135</sup> See for example H Moyo *et al* “Maintaining Accurate Records in A School Environment: Less of Technical Concern and Much of a Management Imperative and Mandate” (2021) 19 *Gender and Behaviour* 17426.

acknowledged that some problems seem personal in nature and some latitude may reasonably be afforded to the ECDBE. For example, some aspects of the tension between the principal and the SGB chairperson in school C. Brown and Duku's research had demonstrated that in some instances, conflicts exist in relation to old and new value systems.<sup>1136</sup>

Finally, the ECDBE did not fully implement its own plans as it fell short of supporting and monitoring SGBs. Further, despite the execution of the plans to the degree detailed in chapter 6, that did not necessarily yield the outcomes the plans were meant to produce as shown by the problems with how SGBs performed some of their functions. In light of this, the plans were not adequately implemented, thus making them less effective as the SGBs were still not as capacitated to perform their functions properly.

### **7.3. Conclusion**

This chapter detailed the inadequacy and ineffectiveness of the ECDBE's plans meant to ensure proper school governance. The inadequacy and ineffectiveness of the plans relating to school governance is a violation of the learners' right to basic education. Since rights are interconnected, a violation of one is a violation of others.<sup>1137</sup> The right to basic education is especially linked to the right to human dignity and equality.

Further, given the explained history of inequality in South Africa, the failure by the ECDBE to ensure effective school governance exacerbates the inequality the Constitution aims to eradicate through the right to basic education. Accordingly, it is imperative to establish remedial measures to improve school governance in rural areas. In this regard, the next chapter will outline some recommendations on how the identified inadequacy and ineffectiveness in the ECDBE's plans may be addressed.

## **8. RECOMMENDATIONS**

### **8.1. Introduction**

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<sup>1136</sup> Brown and Duku "Negotiated Identities" 446–447.

<sup>1137</sup> L Arendse *Inequality in the Public Basic Education System: The Role of The South African Courts in Effecting Radical Transformation* (Doctor of Laws thesis, University of Pretoria, 2020) 150.

The value of plans/measures meant to realise a certain right is in their adequacy and effectiveness in fulfilling the right. Chapters 6 and 7 demonstrated that the plans relating to school governance have commendable aspects that have provided SGBs with a basic understanding of their roles and how to perform them. However, as evidenced by the assessment of the two programmes and the SGB members' understanding of school governance, there are serious issues with the plans.

The ECDBE's plans in relation to school governance are fragmentary, undetailed and incomprehensive. There are no specific programmes for SGB capacitation. Further, the SGBs demonstrated that the ECDBE does not offer adequate support and monitoring to SGBs. These issues render the plans inadequate and ineffective, especially given the importance of effective school governance, which was well canvassed in chapter 4 of this thesis.

## **8.2. Recommendations**

### **8.2.1. Training, monitoring and supporting of SGBs**

All SGB members advocated for adequate training of SGBs by the ECDBE. The ECDBE should invest in continuous training of SGBs, preferably quarterly rather than once every three years.<sup>1138</sup> The once-off introductory training leaves the principal with the mammoth task of not just supporting and guiding SGB members but training them as well.<sup>1139</sup> Sometimes, principals and SMTs even go further and perform the functions of SGBs because training SGB members can be harder given that principals have their own workload as teachers and as professional managers of schools.<sup>1140</sup>

Continuous workshops would also make it possible for the ECDBE to constantly evaluate the training itself. As seen in chapters 5 and 6, the evaluation of the ECDBE is overwhelmingly quantitative and not significantly qualitative.<sup>1141</sup> Continuous training of SGBs and the constant evaluation of such training could assist in ensuring that necessary changes in the training programme are timeously made. Consequently, SGBs would get the assistance they need before it is too late.

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<sup>1138</sup> Participants A5 and C5.

<sup>1139</sup> Participants A4 and C5.

<sup>1140</sup> Participant D4.

<sup>1141</sup> Participants A2, C1, C2 and C5.

Further, the SGB training should factor in the different socio-economic contexts within which SGBs operate.<sup>1142</sup> There must be situational analysis so that the training is cognisant of the trainees' different levels of literacy and experience in school governance. This way, the training will meet the SGBs' needs, both individually and as a team.<sup>1143</sup>

Some SGB members advised that perhaps it may be advisable for the ECDBE to outsource trainers from the corporate world rather than having departmental officials conduct the training sessions, especially on financial management.<sup>1144</sup> While outsourced trainers might not be familiar with the nuances of the department-specific procedures relating to financial management, they could bring valuable principles that can improve SGBs' financial management.

Additionally, outsourced trainers might help evaluate not only the plans but also the policies underpinning school governance. As participant D4 noted, sometimes the departmental officials, like SGB members, have reservations about the appropriateness and adequacy of certain policies in certain contexts. However, as employees of the ECDBE, they find themselves doing more policy enforcement than meaningfully engaging with SGBs, especially when SGBs raise issues of rigidity and impracticality in relation to some policies. Outsourced trainers might be well positioned to offer independent positive criticism and advise accordingly.

The need for the DBE to invest in capacity building and empowerment of SGBs is nothing new. It has been strongly advocated for by various academics who conducted similar research in similar contexts (SGBs in public schools situated in rural areas).<sup>1145</sup> Mbengashe argued that "whilst the participation of parents in governance is noble and can never be disputed, it must not be just participation without meaningful

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<sup>1142</sup> Participant D4.

<sup>1143</sup> Mbengashe *Improving School Performance* 78.

<sup>1144</sup> Participant C5.

<sup>1145</sup> See Mbengashe *Improving School Performance* 88. See also Makhuvele "Capacity of School Governing Bodies" 205.

contribution".<sup>1146</sup> In order to contribute meaningfully and be able to perform their duties as prescribed in SASA, SGBs need capacitation and empowerment.

Research conducted by Makhuvele and others also demonstrated that there should be appropriate quality and continuous training for SGBs.<sup>1147</sup> The training of SGBs should not be done as though it were a tick-box exercise. To develop appropriate quality training programmes for SGBs, the ECDBE could meaningfully engage with school governance organisations and adult learning institutions or specialists.<sup>1148</sup> School governance organisations could provide the ECDBE with substantive input on what SGB members need in different contexts. The adult learning institutions would provide expertise on how best to train adults on school governance as training SGBs is not just about the substance of the training, it is also about the adopted teaching or training methods. This is not to suggest that the ECDBE does not consult with stakeholders at all. As indicated in chapter 6 above, the Department already has valuable partnerships with institutions such as the South African Institute of Chartered Accountants. Therefore, more of similar partnerships and a collaborative than a consultative approach where possible, could benefit school governance initiatives.

The support of SGBs need not be focused only on the services of ECDBE officials. One of the participants suggested that SGBs from different schools could engage, share ideas and learn from each other and each SGB would take what is applicable to its school.<sup>1149</sup> Makhuvele had also suggested that, for more localised support and sharing of experiences and skills, there could be cluster/circuit governance committees.<sup>1150</sup> Through these committees, SGBs of schools from the same areas could collectively bring the challenges they experience,<sup>1151</sup> thus fostering information and skills sharing among SGBs of schools that are within the same vicinity.<sup>1152</sup> The ECDBE could help establish, support and monitor the formation and operation of such committees. In this regard, the ECDBE would need to operate with the necessary

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<sup>1146</sup> Mbengashe *Improving School Performance* 77.

<sup>1147</sup> Makhuvele "Capacity of School Governing Bodies" 205.

<sup>1148</sup> Kruger *et al* "The Management and Governance Conundrum" 321.

<sup>1149</sup> Participant D1. Also see discussion on Chapter 6.3.4. SGBs' proposed solutions above.

<sup>1150</sup> Makhuvele "Capacity of School Governing Bodies" 208.

<sup>1151</sup> *Ibid.*

<sup>1152</sup> Mbengashe *Improving School Performance* 81.

flexibility given that some SGB members hardly make the time for their own SGB meetings. It is unlikely that they would be readily available for these initiatives, nonetheless, it might be worth it for those who would make the time.

SGB members in this study have also called for the support and monitoring of SGBs rather than that of SMTs only.<sup>1153</sup> The ECDBE needs to adopt more qualitative measures of evaluating its support and monitoring of SGBs to complement the quantitative performance measures adopted. For example, the evaluation of the ECDBE's support of SGBs would not end with the number of principals rating district offices' support as satisfactory. It would expand onto the sort of support that was needed and whether the ECDBE was able to effectively provide such. Further, there could be a criterion for principals to rate district offices' support so that the exercise is less subjective and more objective.

#### 8.2.2. Effective school governance as one of the components of the right to basic education

It is important for school governance to be understood in light of the appropriate jurisprudential precepts for it to be afforded the necessary input by the ECDBE. The necessary legal precepts underpinning school governance have been outlined in chapter 2. It was argued that it is necessary to understand school governance as one of the components of the right to basic education and not only as one of the mechanisms through which teaching and learning are managed or through which the other (tangible) components of the right to basic education are fulfilled. This requires an open-minded approach in the sense that one need not limit the components of the right to basic education only to those that are materialistic or tangible like the provision of textbooks, scholar transport or infrastructure.

Ultimately, this proposition requires a shift from a purely input-based approach to one that integrates both the input-based and the outcome-based approaches in the provision of basic education. This way, effective school governance will get the attention it needs. Accordingly, necessary measures could be adopted rather than merely paying the importance of effective school governance lip service.

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<sup>1153</sup> Participant C1. Also see Participant C5 in Chapter 6.3.2. above.

### 8.2.3. Independent Programme for school governance

Given the extensive nature of the operational plans within which the provisions on school governance are housed, there seems to be a need for an independent programme to ensure effective school governance. The programme could focus on the training and monitoring of SGBs. The training of SGBs would then be afforded the specialised attention it needs. The programme would have to be adequately conceptualised and implemented. Further, the ECDBE would have to properly evaluate it.

The establishment of an independent programme need not necessarily increase the costs for the ECDBE. The resources already allocated for improving school governance through the discussed operational programmes could be utilised for the establishment of the independent programme. More research would be needed to equip the ECDBE with the necessary knowledge for it to collaborate with necessary stakeholders to properly establish the programme.

Further, in light of the one-size-fits-all nature of the legal framework for school governance, which participant D4 raised as an issue, a review of the whole school governance model could be useful. This is because, despite coming from legitimate and well-reasoned intentions, the school governance model has always been subject to crucial academic criticism supported by research demonstrating implementation deficiencies that are linked to the model itself.<sup>1154</sup> There have been arguments to the effect that school governance as provided for in SASA is formalistic and it “gives little consideration to the practice of the policy across diverse, historically-situated contexts that characterise post-apartheid South Africa”.<sup>1155</sup> Kruger and others suggested that SASA be amended in such a way that it takes cognisance of the contextual differences in communities, differences emanating from the fact that South Africa is one of the most diverse and unequal countries in the world.<sup>1156</sup>

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<sup>1154</sup> Lewis and Naidoo “Whose Theory of Participation?” 103.

<sup>1155</sup> *Ibid.*

<sup>1156</sup> Kruger *et al* “The Management and Governance Conundrum” 321.

More research will be needed to determine how best to amend the legal framework on school governance considering the ever-changing realities of the people of South Africa. Any reform of the governance framework must be carried out with due consideration of the need for stability in the school system.

#### 8.2.4. Incentivising SGBs

As explained by one participant in chapter 6, parents who are SGB members in remote areas find themselves in situations where they must travel to the school for meetings, to perform oversight duties at the school or even just to show presence. These parents become discouraged when they must pay travelling costs to execute their roles in school governance. This is especially true given the high unemployment rates and poverty in these rural areas.<sup>1157</sup> While parents may want to be involved, the cost involved may be prohibitive. Incentivising such SGB members with money to cover travel costs would help remove this financial burden.<sup>1158</sup>

Further, the high poverty level among most SGB members in rural areas makes an argument for them to be provided with a stipend compelling. The stipend is not intended as remuneration for being involved in their children's education. It is to acknowledge their socio-economic status, especially when compared to former model C schools where the SGB members are often well off and can afford to serve as SGBs without the need for any monetary assistance. Incentivising SGB members with a stipend might encourage broader participation in school governance. To give effect to this, section 27(2) of SASA ought to be amended to allow for the provision of a stipend to SGB members as an incentive.<sup>1159</sup> It should be accepted that providing a stipend for SGBs runs the risk of commodifying school governance. It would require strict policy provisions, monitoring and enforcement mechanisms.

Additionally, incentivising SGBs could be through the lens of empowerment through education. For example, training for SGB members could include some accredited

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<sup>1157</sup> N Pakade and T Chilenga-Butao "The Role of School Governing Bodies in School Academic Performance: An Exploratory Study in Two Districts in KwaZulu Natal" (2021) *Education Governance Programme, Public Affairs Research Institute* 1 at 18.

<sup>1158</sup> Mbengashe *Improving School Performance* 83.

<sup>1159</sup> Mbengashe *Improving School Performance* 85.

courses with certificates, such as Adult Basic Education and Training for those without schooling.<sup>1160</sup> Through the proposed collaboration with other role-players such as governing body federations, teacher unions and universities to assist in the development of training programmes, the courses would be structured such that they have weight even beyond school governance. Such training and certification may open other doors for SGB members.

It is accepted that there will be cost implications for the proposed collaborations necessary in establishing a programme for the training and monitoring of SGBs. It is suggested that applicable/relevant components of existing programmes such as the Adult Basic Education and Training Programme, should be incorporated, rather than devising completely new programmes. Coordination of the different components of the training would be important.

### **8.3. Conclusion**

This research has demonstrated that there were issues with the policy provisions and the conception of the programmes/plans relating to school governance. Similarly, the implementation of these measures was not adequate or effective. The conceptualisation and implementation of the established programmes in relation to school governance did not reflect the ECDBE's own ideology of the pivotal nature of effective school governance. There is a need for a review of the entire model so that decisions can be made on the best way forward, be it investing in training SGB members within the present programmes, establishing an independent programme to ensure effective school governance, or dismantling the model and making necessary legislative and policy reforms, or a hybrid of the above to the extent that they are not mutually exclusive.

## **9. CONCLUSION**

This study has drawn the pivotal link between effective school governance and quality teaching and learning in the realisation of the right to basic education. The study traced public school governance before the constitutional dispensation and concluded that

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<sup>1160</sup> Mbengashe *Improving School Performance* 84. See also Makhuvele "Capacity of School Governing Bodies" 207.

public schools in Transkei were not necessarily governed through a uniform system despite the existence of a legislative framework meant to do so. Parent participation through school boards and committees existed in some regions and not in others. Power dynamics between traditional leaders and the Transkei government exacerbated the disparities in school governance for areas under traditional authorities.

The constitutional dispensation brought a systemic change in public school governance as several measures relating to school governance were established both nationally and provincially. SASA established a uniform public school governance system meant to enable parents to participate in their children's education through school governance. Provincial and district plans to capacitate SGBs have been made. However, as established in this study, such plans are not necessarily adequate to capacitate parent SGB members in rural areas.

Tlokoeng, the case study area, is a town in the former Transkei. Typical of former homeland towns, it is surrounded by rural areas. There are generally high illiteracy levels, underdeveloped road infrastructure and high unemployment, among others. Such unfavourable socio-economic conditions place parent SGB members in a disadvantaged position when grappling with school governance issues.

While the ECDBE set out to train, monitor, and support SGBs, its efforts fell short as SGBs were not effectively monitored or adequately supported. Without adequate capacitation, SGB members were unable to properly execute their functions. More troubling are the issues relating to serious policy deviations in financial management. Ultimately, the top-down approach prevails, with parents being side-lined while the teachers and the principal govern schools. This study demonstrated that the impact of the intervention from teachers or the usurping of SGB powers by SMTs varies from school to school. For some schools, such intervention or usurping of SGB functions has no negative impact, however, in other schools, it breeds tensions that negatively impact teaching and learning processes.

It was argued that while the right to basic education is not subject to the reasonableness standard, and that while there is presently no established legal

standard to assess measures meant to realise this right, the adequacy standard could be utilised. For this standard, the study drew from both the USA and South African jurisprudence on education rights. It was concluded that the ECDBE's measures relating to school governance are inadequate for their lack of specificity that renders them incomprehensible and unlikely to ensure effective school governance, especially in rural areas.

Finally, recommendations were made to address the identified deficiencies. It was emphasised that it is crucial to understand effective school governance as an essential ingredient in the realisation of the right to basic education. Accordingly, school governance ought to be given, at least, the same attention that is given to other components of this right, such as the provision of teachers, textbooks and furniture.

It was also recommended that perhaps an independent programme focusing on school governance could create an environment where school governance would be given the necessary specialised attention. Further, given the poverty-stricken context within which SGBs in rural areas operate, different incentivising initiatives were suggested. In all this, the main objective has to be the proper and adequate training, monitoring and supporting of SGBs.

Given the specific disadvantaged socio-economic context of rural areas, it was recommended that an evaluation of the current legislative and policy framework could be beneficial. The purpose of such an evaluation would be to ensure that, while there is a need to standardise the system, the framework is cognisant of the different contexts within which it operates. This would assist in identifying areas that enable unnecessary rigidity to the disadvantage of SGBs and, consequently, learners in rural areas. Ultimately, some necessary flexibility may be enabled.

This study also sought to identify any other factors that negatively impact teaching and learning processes at school, thus contributing towards poor learner performance. The ECDBE's failure to effectively manage teacher misconduct and placement has been highlighted. This study also revealed that, while some SGB members lack knowledge and understanding of what procedures to follow, others simply have ulterior motives such as corruption and nepotism. Ineffective school governance remains a product of

a variety of factors that require several stakeholders to cooperate. Nonetheless, it is the ECDBE (like any other provincial education department) that is vested with the statutory obligation for the capacitation of SGBs to ensure effective school governance. Therefore, the ECDBE remains in violation of learners' right to basic education and related rights such as equality and dignity in so far as it fails to adequately capacitate SGBs.

Accordingly, the ECDBE must adopt and implement necessary adequate measures to ensure effective school governance, which in turn creates an environment for quality teaching and learning. Ultimately, this will contribute positively towards good academic performance in schools and the realisation of the constitutional right to basic education.

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## ANNEXURES



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### ACCESS LETTER REQUESTING PERMISSION TO CONDUCT RESEARCH

Rhodes University  
Drotsky Road,  
MAKHANDA,  
6139

The Director  
Strategic Planning Policy and Research  
Eastern Cape Department of Education  
Private Bag X0032  
BHISHO  
5605

16 March 2021

Dear Ms/Mr

#### REQUEST FOR PERMISSION TO CONDUCT RESEARCH

I am a registered Master's student in the Department of Law at Rhodes University. My supervisor is Professor Rosaan Kruger.

The proposed topic of my research is: The reasonableness or not of the conceptualization and implementation of the measures adopted to realize the right to further education (in grades 10-12): A case study of governance and management of rural Eastern Cape schools.

The objectives of the study are to:

- investigate the conceptualization and the implementation of the programmes adopted by the Eastern Cape Department of Education to ensure effective school governance and management, and
- accordingly make recommendations on how to improve school governance and management in order to ensure reasonable implementation of measures adopted to realize the right to further education.

I am hereby seeking your consent to Conduct empirical research on the following districts and schools:

- JOE GQABI DISTRICT (\_\_\_\_\_)

To assist you in reaching a decision, I have attached to this letter:

1. A copy of an ethical clearance certificate issued by the University.
2. A copy of the research instruments (research proposal, semi-structured interview sample and an informed participant consent form) which I intend to use in my research.

Should you require any further information, please do not hesitate to contact my supervisor or me. Our contact details are as follows:

**Researcher**

Cell:

E-mail:

**Supervisor**

Cell:

E-mail:

Upon completion of the study, I undertake to provide you with feedback.  
Your permission to conduct this study will be greatly appreciated.

Yours sincerely,

**Signature:**

**Name:**

**Rhodes University, Research Office, Ethics Coordinator: [ethics-committee@ru.ac.za](mailto:ethics-committee@ru.ac.za)  
t: +27 (0) 46 603 7727 f: +27 (0) 86 616 7707 Room 220, Main Admin Building, Drostdy Road,  
Makhanda, 613**

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### **RESEARCH PROJECT INFORMATION SHEET**

Education enables individuals to meaningfully engage with, and enjoy, different rights such as freedom of expression and association and political participation. It also helps facilitate access to other socio-economic rights (food, housing, healthcare), thus helping alleviate poverty. For this reason, education rights are entrenched in the Constitution to ensure social, political, and economic transformation.

Stunted by discriminatory apartheid policies, the South African education system needed urgent transformation upon the conception of constitutional supremacy. One acknowledges that apartheid legacy-related factors contribute to poor learner-performance. This legacy seems to hinder the realisation of the right to basic education, especially for learners in rural areas. However, one cannot deny that there might be other contributing factors. In 2011, the National Planning Commission identified poor school management and governance as contributing factors. For example, poor school governance may lead to financial, school property or human resource mismanagement.

These and related problems negatively impact learners' schooling and may make it difficult for teachers to fulfil their duties as educators. Accordingly, the Eastern Cape Department of Education established Programmes to ensure effective school governance. Alas, learner under-performance persists as evidenced by poor National Senior Certificate examination results. This research aims to determine whether and to what extent poor school governance remain among the factors contributing to learner under-performance.

The research will evaluate the adequacy and effectiveness of the adopted Programmes in the context of four secondary schools in Mount Fletcher, Eastern Cape. The evaluation will be through an assessment of documents establishing the Programmes. The assessment will be in light of relevant legislation, policy provisions and case law. Further, the information gathered from various school documents and interviews with various stakeholders (principals, SGB members, finance committee members, SMT members, district director and circuit managers) will be analysed. In essence, the study assesses the law in theory versus how it translates into reality, where one must consider several social and human factors.

Accordingly, the study requires an insight into the experiences, opinions and knowledge of the different stakeholders about their roles in school governance, particularly in relation to school financial management, the recommendation and employment of educator and non-educator staff and school policy making. Likewise, an insight into the interaction of the various stakeholders in school governance is essential. The different stakeholders' participation is therefore crucial for this research.

Ultimately, the researcher will make recommendations on improving Programmes adopted to ensure effective school governance, thus ensuring proper implementation of measures adopted to realize the right to basic education.

RENALELONA GOODNESS MAUMO (Master of Laws student, Rhodes University) Email:  
 \_\_\_\_\_ Cell: \_\_\_\_\_, Address: \_\_\_\_\_ Makhanda, 6139

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**PARTICIPANT INFORMED CONSENT  
 INFORMED CONSENT DECLARATION**

Project Title: **The adequacy of school governance Programmes: A case study of secondary schools in Mount Fletcher, Eastern Cape.**

**RENALELONA GOODNESS MAUMO** from the Department of **LAW**, Rhodes University has requested my permission to participate in the above-mentioned research project. The nature and the purpose of the research project and of this informed consent declaration have been explained to me in a language that I understand.

I am aware that the purpose of the research project is to:

- **investigate the conceptualization and the implementation of the Programmes adopted by the Eastern Cape Department of Education to ensure effective school governance, and**
- **accordingly make recommendations on how to improve school governance to ensure effective implementation of measures adopted to realize the right to basic education.**

The Rhodes University has given ethical clearance to this research project (2021-4970-6078), and I have seen/may request to see the clearance certificate **by contacting Mr Siyanda Manqele (s.manqele@ru.ac.za).**

By participating in this research project, **I will be contributing towards improving school governance thus helping realize the right to basic education in public secondary schools in rural areas.**

I will participate in the project by answering questions in relation to **my experiences and perceptions on school governance with specific attention to school financial management, the recommendation and employment of educator and non-educator staff and school policy making. This will help the researcher to establish whether the Eastern Cape Department of Education's Programmes to ensure effective school governance are adequate and effective.**

My participation is entirely voluntary and should I at any stage wish to withdraw from participating further, I may do so without any negative consequences. I will not be compensated for participating in the research, but my out-of-pocket expenses will be reimbursed.

I am entitled to decline to answer questions without giving reason.

The following risks are associated with my participation:

**Health risks- COVID-19 related where the interviews are contact. However, the researcher and I will ensure that the precautions relating COVID-19 regulations are adhered to. We will wear face masks, sanitize our hands and the equipment used in the interview and always keep a 2-metre distance between us.**

**Legal risks- The information collected will only be used for purposes of this research. An exception might be where the information exposes illegal activities which could lead to investigation and prosecution by state authorities.**

The **Principal Researcher** intends publishing the research results in the form of a **Master's Degree Thesis as well as a journal article**. However, confidentiality and anonymity of records will be maintained, and my name and identity will not be revealed to anyone who has not been involved in the conducting of the research, **unless I indicate to the contrary/recognize that as a public figure my identity will inevitably be/become known. (Agree/Accept loss of confidentiality)**

I wish to communicate with the researcher through **telephonic calls, WhatsApp calls, WhatsApp voice notes, SMS, E-mail**. (Choose preferred)

I wish to/not to receive feedback in the form of a **written report** regarding the results obtained during the study.

I **agree/disagree** to the Principal Researcher's use of voice recording of my responses, comments, and opinions during interviews.

Any further questions that I might have regarding the research, or my participation will be answered by **Renalelona Goodness Maumo, Cell: \_\_\_\_\_, E-mail: \_\_\_\_\_**. By signing this informed consent declaration, I am not waiving any legal claims, rights, or remedies.

A copy of this informed consent declaration will be given to me, and the original will be kept on record. I, \_\_\_\_\_, have read the above information / confirm that the above information has been explained to me in a language that I understand, and I am aware of this document's contents. I have asked all questions that I wished to ask, and these have been answered to my satisfaction. I fully understand what is expected of me during the research.

I have not been pressurised in any way and I voluntarily agree to participate in the abovementioned project: \_\_\_\_\_ Participant's signature  
 \_\_\_\_\_ Date

Rhodes University, Research Office, Ethics Coordinator: ethics-committee@ru.ac.za t: +27 (0) 46 603 7727 f: +27 (0) 86 616 7707 Room 220, Main Admin Building, Drostdy Road, Makhanda



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### **INTERVIEW QUESTIONNAIRE- Principals**

*These questions will be asked about the year 2018 - 2020.*

Name?                      Gender?                      Age?                      Your highest qualification?  
 Your position in the SGB (chairperson/teacher-component/secretary etc.)?  
 How long have you been in this position?  
 Have you ever had this situation at another school? If so, for how long?

#### **Roles and Training**

1. According to your understanding, what is (effective) school governance?  
 2. Did you understand what your role would be in school governance when you were appointed as principal? What in fact was your role in relation to:

- Management of school finances**
- Recruitment of school staff**
- Taking care of school property**
- Making school rules**

3. Did the department of education train you to prepare you for this job? How many times have you been trained?
4. What were you told at the training? Especially regarding the following:
  - Management of school finances**
  - Recruitment of school staff**
  - Maintenance of school property**
  - The making of school rules**
5. How long were the workshops where you were trained?
6. Who trained you, department officials themselves or did they outsource?
  - In your opinion and from engaging in the training sessions, did the trainers seem to be appropriately qualified to train you?
7. Did you find the training useful? Why? Explain.
8. How would you advise the department in order to ensure better training for the next generation of SGB?

#### Support & responsiveness

1. Did you have a plan on how you would fulfil your role in SGB? What guided the plan/where did you get it from?
2. Did you have methods you used to evaluate and monitor your performance? What were those methods? Did they work for you?
3. Did the department have mechanisms to monitor your performance or SGB in general? What were those methods? Did you see them work well? Explain?
4. Would you say that the department provided support to help you do your job properly? What kind of support did it provide? Explain and give examples.
5. When you asked for help from the department, did you get it? After how long did the department respond? Did it provide you with the help you sought or a satisfactory response? Explain with examples.

#### Experience

1. Can you say that the SGB followed its own and the school's rules correctly regarding the following (explain and give examples):
    - Management of school finances**
    - Recruitment of school staff**
    - Maintenance of school property**
    - The making of school rules**

What do you think the SGB and you as the principal could have done better in relation to the above?
  2. What were the challenges in relation to the following and how did you deal with them?:
    - Management of school finances**
    - Recruitment of school staff**
    - Maintenance of school property**
    - The making of school rules**
  3. What is your advice to other SGBs, especially principals, to try to help schools be properly governed?
  4. What is your advice to the department about trying to ensure proper governance in schools? What do you think the department can and should improve on?
-



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### **INTERVIEW QUESTIONNAIRE- other members**

*These questions will be asked about the year 2018 - 2020.*

Name?                      Gender?                      Age?                      Your highest qualification?  
Your position in the SGB (chairperson/teacher-component/secretary etc.)?  
How long have you been in this position?  
Have you ever had this situation at another school? If so, for how long?

#### Roles and Training

1. According to your understanding, what is school governance?
2. Did you understand what your role would be in school governance when you were elected? What was your role in relation to:
  - Management of school finances**
  - Recruitment of school staff**
  - Taking care of school property**
  - Making school rules**
3. Did the department of education train you to prepare you for this job? How many times have you been trained?
4. What were you told at the training? Especially regarding the following:
  - Management of school finances**
  - Recruitment of school staff**
  - Maintenance of school property**
  - The making of school rules**
5. How long were the workshops where you were trained?
6. Who trained you?
7. Did you find the training useful? Why? Explain.
8. How would you advise the department in order to ensure better training for the next generation of SGB?

#### Support & responsiveness

1. Did you have a plan on how you would fulfil your role in SGB? What guided the plan/where did you get it from?
2. Did you have methods you used to evaluate and monitor your performance? What were those methods? Did they work for you?
3. Did the department have mechanisms to monitor your performance or SGB in general? What were those methods? Did you see them work well? Explain?
4. Would you say that the department provided support to help you do your job properly? What kind of support did it provide? Explain and give examples.
5. When you asked for help from the department, did you get it? After how long did the department respond? Did it provide you with the help you sought or a satisfactory response? Explain with examples.

#### Experience

1. Can you say that the SGB followed its own and the school's rules correctly regarding the following (explain and give examples):
  - Management of school finances**
  - Recruitment of school staff**
  - Maintenance of school property**
  - The making of school rules**
2. What were the challenges? How did you deal with them?
3. What is your advice to other SGBs to try to help schools be properly governed?

4. What is your advice to the department about trying to ensure proper governance in schools?

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***PRIVATE AND CONFIDENTIAL***  
**DATA COLLECTOR AGREEMENT**

Between

**Principal Researcher:**

ID number: \_\_\_\_\_

And

**Data Collector:**

ID number: \_\_\_\_\_

Physical address	
Cell number	
Email address	

**Research Project Title:** The adequacy of school governance measures: A case study of secondary schools in Tlokoeng, Eastern Cape.

**Stipend:** R\_\_\_\_\_ (excluding research costs which include travel costs and communication costs).

**Research assistant Responsibilities:**

Establish who the 2018–2020 SGB members were for a particular school.

Contact them to schedule a consultation.

Explain the research to them.

Seek their informed consent to participate.

Interview the SBG members and record the audio.

Share the audio record with the principal researcher only.

Delete the audio records when the research is completed.

**Confidentiality:** Research assistant shall keep the contents of the interviews confidential.

**Termination:** Upon completion of the research.

**Research Assistant signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Principal Researcher signature:** \_\_\_\_\_