



# POLICY BRIEF



*"The Charter is a culmination of an extensive engagement process and research by the Commission and stakeholders. It aims to provide a common legally grounded planning, monitoring and advocacy framework that is child-centred and recognises the interconnectedness of human rights. Whilst the Commission intends using the Charter as a monitoring tool, it can also be potentially used by all relevant stakeholders in their advocacy work." - Commissioner Lindwe Mokate (SAHRC) - Foreword, SAHRC Charter of Children's Basic Education Rights*

## 1. Introduction

The following is intended to provide a brief synopsis of the South African Human Rights Commission's (SAHRC's) Charter of Children's Basic Education Rights. It is aimed at providing an outline of how this publication can be of use to multi-level stakeholders working in the child rights and basic education sectors.

## 2. The SAHRC's Mandate

The SAHRC is mandated to:

- Promote respect for human rights and a culture of human rights;
- Promote the protection, development and attainment of human right; and,
- Monitor and assess the observance of human rights in the Republic.
- A select number of obligations on the state to realise the right to basic education;
- Child-focused indicators which would mark the fulfilment of the various obligations;

In partnership with UNICEF South Africa, it has developed the Charter of Children's Basic Education Rights in South Africa for use in fulfilling this mandate. This was done through an extensive consultative process with inputs from a diverse range of stakeholders.

## 3. Background

The right to basic education is enshrined in section 29(1)(a) of the Constitution. It is an unqualified socio-economic right and thus immediately enforceable. In addition to its own constitutional imperatives and national legislation and policy, South Africa has also committed to a spectrum of international instruments that address this right. These solidify basic education as both a legal and developmental priority. Since the inception of constitutional democracy, significant strides have been made towards realising this fundamental right. Despite this, many challenges remain.

It had become clear that the lack of a common and consolidated national statement of the scope and content of the right to basic education, and obligations to realise the right, hinders the fulfilment of the right of children to basic education. This pointed to a clear need for guidance for the different stakeholders involved in ensuring the fulfilment of the right to basic education.

## 4. Aims of the Charter

Against this backdrop, the Commission has developed the Charter of Children's Basic Education Rights. The Charter aims to provide a statement of:

- A select number of obligations on the state to realise the right to basic education;
- Child-focused indicators which would mark the fulfilment of the various obligations;

# SAHRC CHARTER OF CHILDREN'S BASIC EDUCATION RIGHTS



*"We have a fairly good idea of what we'd like our education system in South Africa to look like, and at times that idea does seem like a castle in the air when juxtaposed with the reality of conditions on the ground. I believe that the Human Rights Commission's Charter will go a long way to helping all the role players put the needed foundations under our castle." Cameron MacConnachie (Legal Resources Centre) - Launch of the Charter*

- The roleplayers responsible for realisation of the obligations; and,
- The relevant commitments made by the state and recommendations to ensure optimal realisation of the right to basic education for all children in South Africa.

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

### 5. Theoretical Legal Framework

It was decided that the Charter should be based on Tomasevski's internationally acclaimed "4A Framework".

The 4A Framework stipulates that to meet prescribed legal standards, State action must ensure that education is:

1. **Available:** this requires that the State provide:
  - a. Government-funded education system;
  - b. Adequate infrastructure; and
  - c. Trained teachers able to provide an education.
2. **Accessible:** This requires that the state ensure that:
  - a. Education is not discriminatory;
  - b. Education is made accessible to all by addressing economic and physical barriers; and
  - c. Positive steps are taken to include the most marginalized communities and children.
3. **Acceptable:** this requires that:
  - a. The content of education is non-discriminatory
  - b. The content is culturally appropriate
  - c. Education is of sufficiently high quality; and,
  - d. That the school environment is safe.
4. **Adaptable:** This requires that education is
  - a. Flexible and able to respond to the needs of children; and
  - b. Able to respond to the changing needs of society (UN General Comment 13, December 1999) (Tomasevski K 2001)(Right to Education Project, 2010)

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

### 6. Choice of Indicators

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

### 7. Format of the Document

The elements of the 4A Framework comprise the titles of each of the Chapters in the Charter. At the beginning of each is a concise explanation of what is meant by the title. The body of the Charter is in tabulated form. The same four column headings occur through the document. This is extremely valuable as it gives the reader a consolidated view of the right and its core content. Below is a segment of the Charter displaying the user-friendly format

1.1 National recognition of the right to basic education	Indicators/rights	Commitments and recommendations for optimal realisation of the right	Responsible role-player(s)
State's obligations	National and provincial policies and laws are enacted to protect and fulfil the right to basic education of all children. <sup>1</sup>	1 Section 29(1) of the Constitution of the Republic of South Africa (1996) provides that "[e]veryone has the right to basic education." 2 The right is immediately realisable. It is not subject to progressive realisation within available resources (Governing Body of Juma Masjid Primary School and another v Esay N. O., 2011) [Section 27 and 2 Others v Minister of Education and Others, 2012]. 3 This, in essence, forward to fill the gaps as measured against the Charter, the State must act without delay.	National Assembly National Council of Provinces National and provincial departments of Basic Education
State's obligations	Legally recognise, respect, protect and promote the right to basic education.		

### 8. How can the Charter be used by Stakeholders?

The Charter can be used for the following purposes:

- As a means of educating children and care-givers about children's rights
- As a planning and educational tool for schools, governing bodies, principals and teachers;
- As a monitoring tool for Parliament;
- A planning, educational, monitoring and advocacy tool for civil society, including NGO's, CBO's, research institutions and trade unions; and a planning and monitoring tool for development partners and donors

### 9. Conclusion

The SAHRC takes great pride in having initiated this exciting process. It is our hope that this instrument will contribute significantly to the overall realisation of the right to basic education. The Commission wishes to express its appreciation to all who contributed to the development of the Charter, in particular UNICEF South Africa, Patricia Martin of Advocacy Aid, the Minister for Basic Education and the Department of Basic Education, the Staff of the SAHRC and various other stakeholders.

For more information on the Charter, or to download an electronic copy, please visit [www.sahrc.org.za](http://www.sahrc.org.za) or contact the Commission's Offices on 011 877 3676.



*"The origins of the Charter are very clearly linked to the failures of the Democratic State to realise the aspirations of the Freedom Charter, and to the ongoing struggles to transform the legacies of Apartheid. This Charter is much more than a simple Charter as it spells out in considerable detail what the state's obligations are in realising the rights enshrined in the Constitution... The indicators in the Charter are extremely detailed and more extensive than anything we have got in South Africa at the moment. They are also very contextual and have the potential to become the priorities of government and civil society" - Dr Linda Chisholm (Special Adviser to the Minister of Basic Education)*