



A REPORT ON **THE STATE OF EDUCATION**

**TRENDS AND ISSUES CHARACTERISING THE
EDUCATION SECTOR OVER THE LAST 5 YEARS (2014 - 2019)**



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This report was published by the **Equal Education Law Centre (“EELC”)**.

The EELC is a public interest law centre with activist lawyers and researchers working to advance the struggle for quality and equality in education through legal research, advocacy and strategic litigation. The EELC works closely with Equal Education (“EE”), a membership-based, democratic movement of learners, parents, teachers and community members also striving for quality and equality in education in South Africa. The information in this report therefore draws on both the independent work of the EELC and the work it does in collaboration with EE.

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LIST OF ABBREVIATIONS

APP	Annual Performance Plan
ASIDI	Accelerated Schools Infrastructure Delivery Initiative
DBE	Department of Basic Education
DoT	Department of Transport
DPME	Department of Planning, Monitoring and Evaluation
DSD	Department of Social Development
ECD	Early Childhood Development
ECDoe	Eastern Cape Department of Education
EE	Equal Education
EELC	Equal Education Law Centre
EGRS	Early Grade Reading Study
EIG	Education Infrastructure Grant
FFC	Financial Fiscal Commission
MTBPS	Medium-Term Budget Policy Statement
MTEF	Medium-Term Expenditure Framework
MTSF	Medium-Term Strategic Framework: 2014-2019
NDP	National Development Plan 2030: Our future – make it work
NNSSF	National Norms and Standards for School Funding
PED	Provincial Education Department
PPN	Post Provisioning Norms
SAFE	Sanitation Appropriate for Education
SAHRC	South African Human Rights Commission
SASA	The South African Schools Act, 84 of 1996
SDGs	Strategic Development Goals
SGB	School Governing Body
SIBG	School Infrastructure Backlogs Grant



A. EXECUTIVE SUMMARY

The Department of Basic Education (“DBE”) has translated the National Development Plan 2030: *Our future-make it work* (“NDP”) Chapter 9 education goals into Action Plans, Strategic Plans and Annual Performance Plans. In its last published Annual Report for 2017/2018 (“Annual Report”), the DBE indicates it has made “substantial progress” towards achieving learning and education-related targets as set out in the NDP.

As the current electoral term draws to an end, it is important to critically assess the DBE’s overall progress, not only as last reported, but also more broadly over the last five years.

The report reveals critical system failures relating to data collection, the coordination and cooperation of government departments and other stakeholders, as well as severe legislative and policy gaps and implementation barriers.

The Equal Education Law Centre (“EELC”) set out to conduct research across some of its central thematic areas to assess the performance of the DBE and other government departments in advancing the right to basic education. Whilst acknowledging that there has been some progress made by the DBE during this time, the report questions whether such progress has been “substantial” in the light of regressive education funding, chronic underspending and a consistent failure to meet set targets.

This report presents additional, and in some cases, alternative critical information on the nature and extent of the DBE’s progress. Through an assessment of certain key targets in education over the last five years, the report reveals critical system failures relating to data collection, the coordination and cooperation of government departments and other stakeholders, as well as severe legislative and policy gaps and implementation barriers.

REGRESSIVE FUNDING TRENDS

It is widely acknowledged that progressive funding and efficient spending are needed to improve basic education outcomes.

However, South Africa has in fact shown regressive funding trends over the period under review. Amongst others, the DBE budget has decreased in real terms over the past 5 years and per learner spending has declined by about 8% since 2010.

The report recommends that along with an increase in the allocations to basic education, allocations to basic education must keep pace both with other components of the Learning and Culture budget and with inflation. In addition, the report recommends that provincial Education Departments (“PEDs”) must prioritise per-learner allocations made to no-fee schools so that national minimum thresholds for all quintiles are met. Further, the report recommends that norms and standards for resourcing must be adopted and must provide for all costs associated with education.



SCHOOL INFRASTRUCTURE AND SANITATION

Despite the fact that government has continued to assert that school infrastructure is a key priority and that “significant strides in addressing school infrastructure challenges” have been made, there has in fact been declining funding commitments to school infrastructure and a substantial failure to implement binding legislative norms and standards over the past five years.

Budget and expenditure trends are indicative of government compromising the implementation of Infrastructure Norms and Standards. The report analyses the decline in allocations to both the School Infrastructure Backlogs Grant (“**SIBG**”) and the Education Infrastructure Grant (“**EIG**”), as well as chronic underspending by PEDs.

In addition, the report notes with concern the need for the courts to direct government to carry out its constitutional obligations. Over the period under review, the failure to ensure effective provisioning of school infrastructure resulted in various litigious challenges with the courts ultimately ordering government to improve legal frameworks and ensure infrastructure delivery.

The report recommends more effective oversight mechanisms over provincial infrastructure spending as well as coherent implementation plans to ensure that significant failures over the previous period are remedied.

EARLY CHILDHOOD DEVELOPMENT AND EARLY READING

The President recently announced the introduction of two years of compulsory Early Childhood Development (“**ECD**”), a migration of ECD services from the Department of Social Development (“**DSD**”) to the DBE, and an expansion of the Early Grade Reading Study (“**EGRS**”).

These developments must be assessed against the existing challenges to the provision of quality ECD services, namely the inability of government departments to effectively co-ordinate responsibilities, the lack of reliable and credible data and insufficient funding and capacity at national, provincial and local government levels. Large-scale capacity building is required in national and provincial departments and districts for the effective provision of ECD services.

Current trends in funding and expenditure of the ECD conditional grant pose an additional challenge. The ECD conditional grant is effectively projected to remain almost stagnant over the next three years.

In order to realise the proposed ECD developments, it is imperative that National Treasury ensure that the ECD conditional grant is increased in order to accommodate the expansion of ECD services.

LEARNER TRANSPORT PROVISIONING

Notwithstanding the introduction of the National Learner Transport Policy (“**Learner Transport Policy**”) published by the Department of Transport (“**DoT**”) in 2015, provisioning of learner transport is only superficially addressed in the DBE’s Annual Report and is not adequately catered for in government plans.

Challenges to implementing the Learner Transport Policy include the lack of seamless stakeholder co-operation and co-ordination, failure to adequately monitor implementation, the absence of a clear funding mechanism, and the lack of reliable data. The failure to accommodate learners with disabilities is also of significant concern. Recommendations for improving scholar transport provisioning include, amongst others, a proposal that guidance be issued on the uniform implementation of the principles contained in



the Learner Transport Policy and that deliberate steps must be taken to clarify the exact roles and responsibilities of the DBE, the DoT and other stakeholders.

EXCLUSIONARY ADMISSION PRACTICES AND THE FAILURE TO REASONABLY ACCOMMODATE

The report highlights, with concern, a failure to acknowledge or address current practices in schools which exclude learners at the point of admission.

Examples of these exclusionary practices include the refusal to admit undocumented learners, the difficulty parents face in finding appropriate placement and support for children experiencing barriers to learning, and the failure of schools to help parents when applying for fee exemptions.

The practice of denying learners with disabilities admission to ordinary schools instead of providing learners with reasonable accommodation has been highlighted as an ongoing and concerning practice.

The report makes specific recommendations in relation to each of these issues, including the review, clarification and monitoring of existing legislation and policies in order to effectively ensure that all learners' rights to inclusion in education are protected.

GENERAL RECOMMENDATIONS

The report offers a point of critical engagement with the challenges encountered by the outgoing administration and some proposals to reverse the regressive trends which have characterised the last five years.

In light of the various regressive trends and implementation gaps identified, the report argues that key changes need to be made to the manner in which the DBE, as well as PEDs, other departments and National Treasury prioritise, plan and budget.

Education funding which maintains positive growth while keeping up with inflation is needed, alongside the eradication of factors which result in irregular and wasteful expenditure, as well as underspending of allocated funds.

The urgent implementation, according to uncompromising timelines, of existing laws (and where required, the urgent clarification of or passing of binding laws) which provide for education resourcing, the delivery of infrastructure, and the removal of all barriers to education and learning is necessary.

The capacitation of district officials, School Governing Bodies ("SGBs"), teachers, practitioners and other relevant role-players is required in order to facilitate implementation of binding laws.

Additionally, critical system changes must be put in place, including more effective and accurate data collection, consistent and meaningful coordination between government departments and other key stakeholders, and clarification of the roles and responsibilities of each department in delivering key outcomes.

As a new electoral cycle commences and a new administration gets ready to take the reins, this report offers a point of critical engagement with the challenges encountered by the outgoing administration and some proposals to reverse the regressive trends which have characterised the last five years.



B. INTRODUCTION – IN A “VICIOUS CYCLE”

BACKGROUND AND CONTEXT¹

1. The NDP was adopted by the South African government in 2012.² It was intended to provide a broad strategic framework to guide key choices and actions, including the planning, prioritisation, budgeting and actions of government departments.
2. In the education context, the NDP sets the goals and targets for the education sector. These are translated into medium-term actions in the Medium-Term Strategic Framework: 2014-2019 (“**MTSF**”), and, more specifically, in the DBE strategic plans. These include its Action Plan to 2019: Towards the Realisation of Schooling 2030 (“**Action Plan to 2019**”),³ its Five-Year Strategic Plans, and its Annual Performance Plan(s) (“**APP**”).
3. These strategic plans are in turn linked to budget plans, including annual national and provincial budgets and the Medium-Term Expenditure Framework (“**MTEF**”), to ensure that key objectives and priorities are budgeted for and achieved.

In the current context, the ‘*virtuous cycle*’ and social cohesion envisaged by the NDP, driven by ‘strong leadership’, ‘effective government’ and ‘active citizenry’, could well be replaced by a ‘*vicious cycle*’ and social division, marked instead by ‘weak leadership’, ‘ineffective government’ and an ‘inactive citizenry’.

4. Speaking at the Vision 2030 Summit in June 2018, the head of the secretariat of the National Planning Commission of South Africa, Tshediso Matona, said about the NDP and South Africa’s vision for 2030: “*The NDP is very ambitious given the current context. We cannot achieve this if we stay along this path that we’re on*”.⁴ Matona echoed the concerns of the Department of Planning, Monitoring and Evaluation (“**DPME**”) in its Mandate Paper 2018, which stated that “*if the current trends continue, it is unlikely that South Africa will achieve the NDP goals [.] progress and transformational targets set out*”.⁵
5. Commenting on the NDP two months after the Vision 2030 Summit in August 2018, researcher, writer and strategist Dino Galetti looked more closely at the “current context” and “current trends” facing South Africa. He noted that on the current path such context and trends might not only make NDP goals unachievable by 2030, but that the NDP itself may eventually be rendered wholly ineffective and irrelevant.⁶ It is a context in which, Galetti writes, the “*virtuous cycle*” and social cohesion envisaged by the NDP, driven by “strong leadership”, “effective government” and “active citizenry”, could well be replaced by a “*vicious cycle*” and social division, marked instead by “weak leadership”, “ineffective government” and an “inactive citizenry”.⁷
6. Matona’s statements and Galetti’s arguments are deeply concerning, but not surprising, as the NDP warns of its own fallibility, stating that achieving the capabilities required for development “*is not automatic, nor will they emerge if the country continues on its present trajectory*”.⁸



7. Needless to say, the failure to achieve NDP goals (and/or the redundancy of the NDP in its entirety) will ultimately and invariably result in the setting of equally unachievable, illusive sectoral targets and the failure to fund and execute them adequately. This is already evident in the education sector where, at least in the last five years, among other things: (i) there has been consistent underspending by government departments, as well as a failure to meet planned targets;⁹ (ii) basic education spending in particular is being outpaced by spending on higher education and training programmes;¹⁰ and (iii) the real growth rate of the overall education budget (national and provincial) has been stagnating, and in the case of the national DBE, has in fact been shrinking in real terms over the last four years.¹¹
8. In assessing the performance of the DBE and other government departments in advancing the right to basic education, it is important to examine the goals set by these departments, to determine whether these goals are being achieved within set timeframes, and examine the reasons for the failure to meet set goals and targets. Further, it is important to understand how the budgets to achieve these goals are formulated, allocated and ultimately spent. Without this, we are unlikely to change paths and to emerge from the “vicious cycle” in which we find ourselves.

PURPOSE OF THE REPORT

9. This report seeks to analyse the performance of the education sector in the light of NDP goals. This includes assessing education priorities and the budgets allocated and spent to fulfil them. In doing so, we refer, among others, to the DBE's last published Annual Report for 2017/2018 (“**Annual Report**”),¹² which looks at the DBE's performance relative to the targets set in its APP.¹³
10. In the Annual Report, the Minister of Basic Education, AM Motshekga (the “**Minister**”), commented on the DBE's progress towards achieving effective learning and the education-related outcomes articulated in the MTSF. She noted that:



substantial progress has been made towards achieving the set targets”¹⁴

11. The Minister maps the DBE's progress by identifying key advances made during the Annual Report reporting period. In particular, she lists the various ongoing steps and initiatives taken to achieve the Strategic Development Goals (“**SDGs**”);¹⁵ including, among others, government's scholar transport programme,¹⁶ the continued interdepartmental work conducted by the DBE with the DSD to expand access to ECD services,¹⁷ and the continuous improvement in the quality of teaching and learning through, among other things, the provision of adequate, quality infrastructure through the Accelerated School Infrastructure Delivery Initiative (“**ASIDI**”) and the EIG programmes.¹⁸
12. As the MTSF's 2019 planning horizon approaches and the current electoral term draws to an end, it is especially important to critically assess the DBE's overall progress, not only as last reported but also more broadly over the last five years, and to consider whether or not its progress has in fact been substantial.



13. This report therefore presents additional, and in some cases, alternative critical information on the nature and extent of the DBE's progress and seeks to assess the continuing challenges facing the education sector and plans for achieving the NDP education-related outcomes. Such information is presented in the light of current trends and issues in the education sector, including ineffective planning and implementation, and regressive budgeting over this period. Further, the report makes recommendations to the DBE and other departments, including National Treasury, to address some of these challenges and to effectively plan and prioritise for the forthcoming strategic planning cycle.

SCOPE AND STRUCTURE OF THE REPORT

14. At the outset, we note some of the current funding trends and indicators characterising the present state of basic education. These include budget and spending trends, the failure to adopt norms and standards for adequate resourcing and funding, and revision of the equitable share formula.
15. We then examine certain central thematic areas in the light of these trends and indicators. The scope of the report is limited to consideration of specific issues in relation to which the EELC does a significant amount of work, often in collaboration with EE. These issues include:
- 15.1 **school infrastructure and sanitation** – in particular, implementation of the Infrastructure Norms and Standards;
 - 15.2 **early childhood development** – in particular, the potential consequences of the migration of ECD services from DSD to DBE and the introduction of two compulsory years of ECD;
 - 15.3 **learner transport provisioning** – in particular, the challenges relating to implementing the Learner Transport Policy; and
 - 15.4 **exclusionary admission practices** – in particular, challenges with implementing the Regulations Relating to the Exemption of Parents from Payment of School Fees in Public Schools, included in the South African Schools Act 84 of 1996 ("**SASA**") ("**Fee Exemption Regulations**"), and cases relating to undocumented learners and the reasonable accommodation of those experiencing barriers to learning.
16. Finally, we present our key recommendations relating to each thematic issue.

The report focuses on four thematic areas, including:

- ✓ School infrastructure and sanitation;
- ✓ Early childhood development;
- ✓ Learner transport provisioning; and
- ✓ Exclusionary admission practices.



C. FUNDING TRENDS AND RELATED ISSUES CHARACTERISING THE CURRENT STATE OF BASIC EDUCATION

17. This section looks briefly at the performance of the basic education sector, and more particularly the DBE, by considering certain key indicators. It also examines the size and composition of the basic education budget and considers the effectiveness, equity and adequacy of education spending in the last five years.
18. Investment in basic education does not appear to have facilitated the implementation of minimum norms and standards, or even to address legacy inequalities and resulting backlogs. This is apparent in the fact that the majority of learners attending public schools are failing to meet basic curriculum, literary and numeracy standards, while also being unable to access safe, sanitary and dignified learning environments.
19. Research shows that Grade 4 learners in South Africa scored the lowest of 50 countries participating in reading tests and that 78% of Grade 4 learners cannot read for meaning. Rural provinces are the worst affected, with 91% of Grade 4 learners in Limpopo, 85% of Grade 4 learners in the Eastern Cape and 83% of Grade 4 learners in Mpumalanga unable to read for meaning.¹⁹ At the same time, there is a failure to implement norms and standards of school infrastructure, regulations on public school fee exemptions, or national and provincial policies for the provision of learner transport.
20. Progressive funding and efficient spending are needed to improve these outcomes. Unfortunately, a closer look at the basic education budget shows that these elements are not in place.

TREND 1:

Basic education as a portion of the consolidated budget is declining

21. After debt servicing costs, education is often described as *“the fastest growing area of expenditure”*.²⁰ In the 2019 annual budget, R1.24 trillion was allocated to *Learning and Culture* over the MTEF. In 2019/20 in particular, R386.39 billion was allocated to Learning and Culture, making up about 21,2% of the consolidated budget.²¹ Learning and Culture is therefore a clear government spending priority.

Progressive funding and efficient spending are needed to improve basic education outcomes. Despite this, South Africa exhibits regressive funding trends over the period under review:



- ✓ **TREND 1:**
Basic education as a portion of the consolidated budget is declining.
- ✓ **TREND 2:**
Increases in allocations to PEDs do not necessarily translate into better service delivery.
- ✓ **TREND 3:**
Allocations to DBE are decreasing in real terms.
- ✓ **TREND 4:**
Allocations to DBE and PEDs compared to actual expenditure reveals patterns of underspending.
- ✓ **TREND 5:**
Per learner spending has declined by about 8% since 2010.



22. Importantly, basic education makes up only one component of the Learning and Culture budget, with 'Post-school Education and Training' and 'Arts, Culture, Sport & Recreation' making up the rest. The basic education sector budget, which includes money allocated to DBE as well as transfers to PED's, makes up about 14.4% of the total 2019/20 consolidated budget.²² Basic education is often signalled as being prioritised over other spending areas such as health and defence. However, as Table 1 below illustrates, the share of consolidated expenditure allocated to the basic education sector has declined from 15,40% in 2014/15 to 14,50% in 2021/22. Over the same period, the share of health spending increased, while spending on social development remained relatively constant.

Table 1: Learning and culture versus basic education % of consolidated budget

	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
	Outcomes				Revised	Medium Term Estimates		
Learning and Culture								
Nominal budget (R in billions)	251,80	277	295,3	322,9	354,8	3864,4	415,2	442,6
% of consolidated budget	20,49%	20,17%	20,42%	20,84%	21,31%	21,15%	21,30%	21,19%
Basic Education								
Nominal budget (R in billions)	189,2	203	216,9	231,1	246,6	262,4	282,3	302,8
% of consolidated budget	15.40%	14.78%	15.00%	14.91%	14.81%	14.36%	14.48%	14.50%

Source: 2019 Estimates of National Expenditure (Vote 14)

23. As Table 2 below reflects, the annual growth of the basic education sector budget has been far outpaced in recent years, both in nominal and real terms, by the annual growth of post-school education. Looking at the 2019/20 financial year alone, we see that the basic education budget grew by 6.41% while the post-school or higher education budget grew by more than double that, by 15.37% in nominal terms.²³

24. Figure 1 below plots the annual nominal growth rate of the basic education budget relative to that of post-school education and training. The disparity is considerable and suggests a direct trade-off between the rapid growth of higher education and training spending and the slow (almost stagnant) growth of the basic education budget.

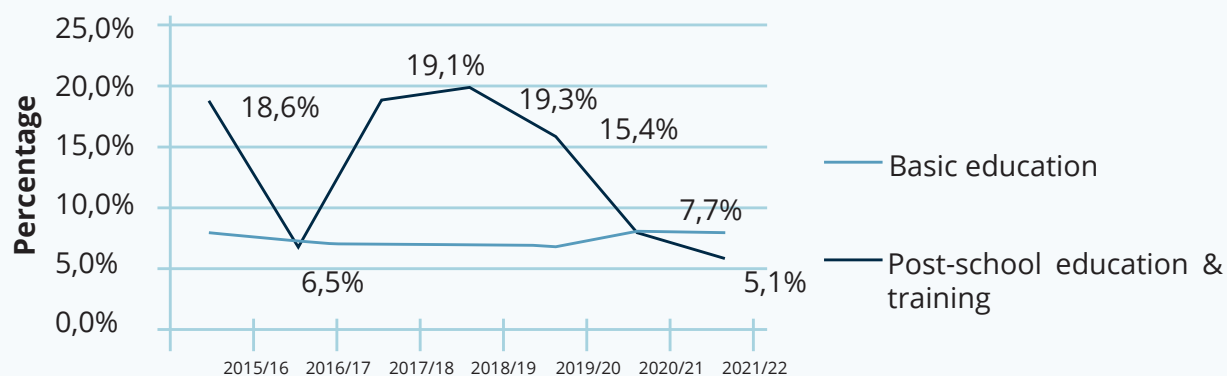
Table 2: Basic versus post-school education annual % change

	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
	Outcomes				Revised	Medium Term Estimates		
Learning and Culture								
Nominal budget (R in billions)	189,2	203	216,9	231,1	246,5	262,3	282,3	302,8
Nominal annual % change		7,29%	6,85%	6,55%	6,66%	6,41%	7,62%	7,26%
Post-school education & training								
Nominal budget (R in billions)	54,4	64,5	68,7	81,8	97,6	112,6	121,3	127,5
Nominal annual % change		18,57%	6,51%	19,07%	19,32%	15,37%	7,73%	5,11% ²⁴

Source: 2018 and 2019 Estimates of National Expenditure (Vote 14)



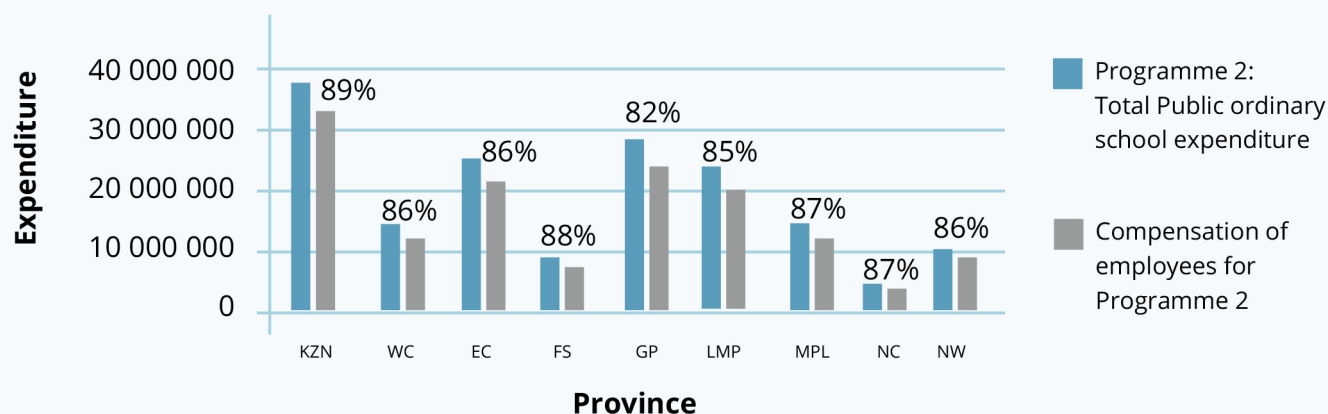
Fig.1 Basic versus post-school education annual nominal % change



TREND 2:

Increases in allocations to PEDs do not necessarily translate into better service delivery

25. It is also important to note that basic education is a labour-intensive sector. The Post Provisioning Norms (PPN)²⁵ provide for 80% of provincial education budgets to be spent on teacher salaries, with 20% left for non-personnel expenditure, which includes service delivery. While allocations to PEDs appear to be increasing, this does not always translate into service delivery, as a large proportion of this increase funds teacher compensation.²⁶
26. If provinces fail to pay salaries, they often exceed the 80:20 ratio. As Figure 2 below shows for the 2016/17 financial year, compensation of employees comprised between 80 and 89 per cent of provincial education budgets, encroaching on the 20% set aside for service delivery. Rising wage bills put a strain on all provinces. The worst affected will be those with *"less fiscal space to absorb the increases"*, such as Kwazulu-Natal.²⁷ Unchecked growth in the wage bills of provincial education departments puts a strain on the ability of these departments to facilitate equity and quality in school education.²⁸


Fig.2 Public ordinary school (Programme 2) expenditure versus portion spent on compensation 2016/17


TREND 3:

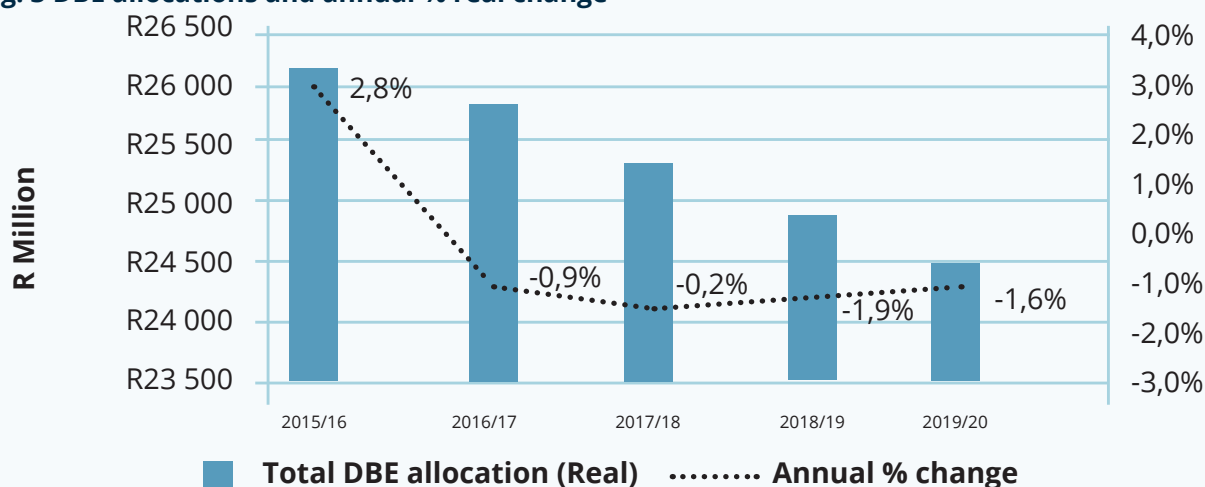
Allocations to DBE are decreasing in real terms

27. Taking the budget of the DBE on its own, that is, after transfers to PEDs have been made, the policy-making entity is left with only about 2.1% of the consolidated budget in 2018/19.²⁹
28. Table 3 below shows that, while allocations to the DBE have increased year on year, the nominal rate of increase slowed by an average of about 4.7 percentage points between 2015/16 and 2019/20. Unsurprisingly, when inflation is taken into account, the DBE budget has in fact been decreasing in real terms. This is also shown in Figure 3 below.

Table 3: DBE real and nominal allocations (2015/16 to 2019/20)

	2015/16	2016/17	2017/18	2018/19	2019/20
Nominal appropriation (R in millions)	R21 286	R22 413	R22 993	R23 699	R24 504
Annual nominal change (%)	8.1%	5.3%	2.6%	3.1%	3.4%
Real appropriation (R in millions)	R26 142	R25 896	R25 374	R24 900	R24 504
Annual real change (%)	2.8%	-0.9%	-2.0%	-1.9%	-1.7%

Source: 2018 and 2019 Estimates of National Expenditure (Vote 14)

**Fig. 3 DBE allocations and annual % real change****TREND 4:**

Allocations to DBE and PEDs compared to actual expenditure reveals patterns of underspending

29. Table 4 below shows that negative deviations or underspending of the DBE increased from between 0.8 per cent in 2014/15 to 4.2 per cent in 2016/17.³⁰ In 2013/14, the largest deviations were recorded in the Planning, Information and Assessment programme due to underspending of the SIBG and the EIG, liquidation of service contracts, and grant funding being withheld from provinces for poor spending.³¹

Table 4: DBE real and nominal allocations (2015/16 to 2019/20)

	2014/15	2015/16	2016/17	2017/18	2018/19
Nominal budget (R in millions)	R19 689	R21 286	R22 413	R22 993	R23 699
Expenditure (R in millions)	R19 528	R20 796	R21 476	R22 932	R23 686
Underspending variance (in millions)	R161	R490,30	R937,40	R61,60	R12,80
Variance (%)	0.82%	2,30%	4,18%	0,27%	0,05%

Source: Estimates of National Expenditure (Vote 14)

30. In its Budget Brief for South Africa, UNICEF notes consistent underspending by PEDs, usually resulting from cashflow challenges caused by, among other things, growing personnel budgets and the unauthorised use of conditional grants to alleviate low cash resources.³² In 2013/14, the provinces collectively underspent by 3.8%. The Free State PED underspent by close to 10% of its budget, and Gauteng PED underspent its budget by 6.2%.³³



31. In the context of enabling an inclusive education system, a DBE report assessing the implementation of Education White Paper 6 on Inclusive Education (**"White Paper 6"**)³⁴ noted that *"given the enormity of the support needs...spending is by far not enough"* and budgets were *"inconsistently allocated and spent"*, resulting in *"a very poor situation, especially in the poorer provinces."*³⁵ In its concluding observations on South Africa's report, the United Nations Committee on the Rights of the Child confirmed that comprehensive, transparent and equitable inclusive education budgets were a necessary component of the right to basic education for children with disabilities.³⁶
32. We acknowledge the progress made in securing a ring-fenced conditional grant for learners with severe to profound intellectual disabilities (**"PID conditional grant"**), which is in its second year of application. However, as the Financial Fiscal Commission (**"FFC"**) noted, apart from one province, all other provinces had been underspending the PID conditional grant, with *"average performance of provinces at 67 percent in 2017/18"*. The main reason for under-expenditure in some provinces was the delay in the recruitment of required personnel.³⁷

TREND 5:

Declining and inadequate learner allocations

Trend 5.1: Declining per learner allocations

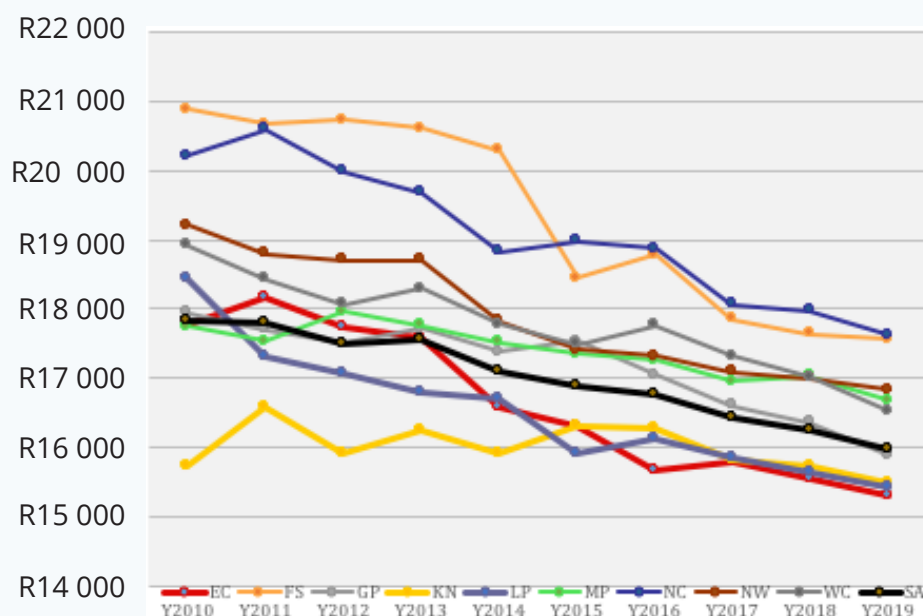
33. Goal 23 of the Action Plan to 2019 is to *"ensure that all schools are funded at least at the minimum per learner levels determined nationally and that funds are utilised transparently and effectively"*.³⁸ Despite this, we see diminishing funding for basic education, resulting in a growing shortfall in funding both of individual schools and learners.

The decline in per learner funding and expenditure impacts the quality of education, 'reversing all gains made in education', and depriving learners of essential aspects of the right to basic education.

34. Education researcher Nic Spaull identifies declining per-learner public expenditure as *"one of the underappreciated trends of the last seven years"*.³⁹ Spaull writes that per-learner spending has declined by about 8% in real terms since 2010, if one takes into account such factors as a spike in birth rates, an increase in public school enrolments, and above-inflation increases to teacher salaries.⁴ This is despite information from National Treasury stating that basic education spending per learner has simply plateaued since 2011/12. Figure 4 below depicts the decline in each province.



Fig. 4 Current provincial per learner expenditure on basic education 2010 to 2019



Source: Taken from Spaull, N "Priorities for Education Reform in South Africa: A Report to President Ramaphosa & Minister 41Mboweni", 2019.⁴¹

Trend 5.2: The failure to meet per learner allocation thresholds

35. In a recent meeting of the Portfolio Committee on Basic Education, on the question of implementing the amended National Norms and Standards for School Funding ("**NNSSF**"),⁴² the Committee noted that, while there was improvement in meeting minimum thresholds, budget cuts meant that these thresholds were becoming "*moving target[s], almost like a tantalising mirage*".⁴³
36. The Committee further noted that the decline in per learner funding and expenditure impacted the quality of education, "reversing all gains made in education",⁴⁴ and depriving learners of essential aspects of the right to basic education. For example, as we discuss below, a great number of learners continue to travel several kilometres to school every day, and the DBE claimed that there were insufficient funds to transport these learners. Spaull cites further examples of how discriminatory and regressive funding impacts the quality of education, noting that the average Grade 4 class size increased from 40 in 2011 to 45 in 2016, with the largest increases occurring at the poorest schools, and that international assessments showed no improvement in reading outcomes across the country during this period.⁴⁵
37. The NNSSF requires PEDs to classify their public, ordinary schools into five categories, or quintiles, for the purposes of receiving state funding. Schools are ranked from quintile 1 to quintile 5, with quintile 1 to 3 schools in the poorest communities, judged by the condition of the school and the relative poverty of the community in which it is located.⁴⁶
38. Quintiles 1 to 3 are declared 'no-fee' schools by the Minister. As such, these schools are prohibited from charging school fees and are completely dependent on the minimum per learner subsidy from government.



39. Every year, the DBE determines national targets that aim to guide PEDs in the way they should fund learners attending schools in each quintile. The following per-learner thresholds were determined for the 2017/18 period:⁴⁷

Table 5: 2017/18 per learner allocation thresholds quintile 1-5

Quintile 1	R1243
Quintile 2	R1243
Quintile 3	R1243
Quintile 4	R 623
Quintile 5	R 215

40. As Table 5 shows, according to the national targets for 2017/18, PEDs should have allocated almost twice as much to each learner attending a quintile 1-3 school, relative to those attending quintile 4 schools. Similarly, learners attending quintile 1-3 schools should have received over five times more than each learner at a quintile 5 school.⁴⁸
41. Notwithstanding these national targets, PEDs are empowered to determine their own levels of spending, but, as reflected in Table 6 below, they do not always meet these national thresholds.

Table 6: 2017/18 actual per learner allocations quintile 1-5

Provincial Education Department	Quintile 1-3 schools	Quintile 4 schools	Quintile 5 schools
National Threshold	R1243	R623	R215
EC	R1177	R590	R204
FS	R1243	R623	R240
GT	R1243	R623	R623
KZN	R955	R522	R179
LP	R1241	R621	R205
MP	R1059	R530	R183
NC	R1177	R736	R346
NW	R1243	R623	R215
WC	R1243	R993	R369

Source: DBE Presentation to the Select Committee on Education and Recreation

42. In terms of actual per-learner allocations made by PEDs in 2017, the Eastern Cape, KwaZulu-Natal, Limpopo, and Mpumalanga provinces allocated funds below the national threshold across all 5 quintiles. In addition, the Northern Cape province failed to meet the national target for quintile 1-3 schools.⁵⁰
43. No-fee schools, especially in more rural provinces such as the Eastern Cape, Limpopo and KwaZulu-Natal, are often severely under-resourced. Additional challenges include inappropriate or deteriorating infrastructure, and a lack of basic water and sanitation. Consequently, these schools need targeted interventions, with additional funding to ensure that learners enjoy access to equitable



and quality education. Unfortunately, the DBE recently indicated that, in terms of the current budgetary constraints experienced by provinces, *“most PEDs will probably not be able to find the additional funding required within their existing budgets”*.⁵¹

Recommendations:

Allocations to basic education must keep pace with other components of the Learning and Culture budget, and allocations to DBE must keep pace with inflation.

For per-learner allocations:

- The DBE, along with National Treasury, must conduct updated research into the causes, true extent and real effects of the decline in per-learner expenditure.
- Funding should be increased, and any additional funds should be ring-fenced for specific education outcomes interventions, for example, to improve reading or mathematics.⁵²
- PEDs, particularly in rural provinces such as KwaZulu-Natal, Mpumalanga and Eastern Cape, must prioritise the per-learner allocations made to no-fee schools so that national minimum thresholds for all quintiles are met.

Failure to adopt norms and standards to enable adequate resourcing and funding

44. We note that government departments often publish guidelines rather than prescriptive, binding norms and standards relating to resourcing and funding.
45. This can be seen, for example, where the National Strategy on Screening, Identification, Assessment and Support (“SIAS”) policy provides for *“the development of norms and standards for resourcing an inclusive education and training system”* which is *“an immediate requirement for the successful implementation of the policy.”*⁵³ Despite this, the DBE announced in 2017 that the Council of Education Ministers had considered the proposal to develop norms and standards, but had instead decided to publish guidelines for comment, as opposed to binding norms and standards. The Annual Report therefore notes that draft Guidelines on Resourcing of Inclusive Education were approved by the Minister for public comment in February 2018.⁵⁴
46. This is concerning, given that guidelines will not have sufficient weight to compel provinces to resource inclusive education adequately. In addition to this, the funding model proposed in the guidelines continues to incentivise special education over inclusive education.”⁵⁵

Recommendation

- Norms and standards for resourcing inclusive education must be adopted and inclusive education must be comprehensively funded to provide for all costs of education, such as appropriate transport, assistive devices and learner teacher support materials.



Revision of the Equitable Share Formula

47. EE and EELC have advocated for reforms to the equitable share formula which determines how national funds are allocated to provinces. In particular, as noted above in relation to funding and spending trends and inadequate per learner allocations, there are concerns about underspending in certain provinces and the failure to meet the NSSF requirements for per-learner allocations.

Reforms to the equitable share formula are required in order to facilitate reversal of regressive funding trends.

48. Accordingly, the EE and EELC made comprehensive presentations and submissions to the Standing Committee on Appropriations, highlighting, among other things, the failure of the equitable share formula to cater for the higher costs of delivering education in rural provinces. In 2019, EE acknowledged National Treasury's commitment to reviewing the formula, but requested time frames of the review process to be made public. EE also acknowledged the change from the use of the Schools Reality Survey to the Learner Unit Record Information Tracking System. EE and EELC have urged that factors such as the historic underfunding of former 'homelands', smaller population densities, historical infrastructural disadvantage, age demographics and the effects of rural poverty be taken into account.⁵⁶

Recommendation

- In addition to specific recommendations on how the equitable formula can be remodelled, EE and EELC encouraged National Treasury to publish the timelines by which this review will take place, and to make clear the mechanisms for public participation. We reassert this recommendation here.



D. SCHOOL INFRASTRUCTURE AND SANITATION

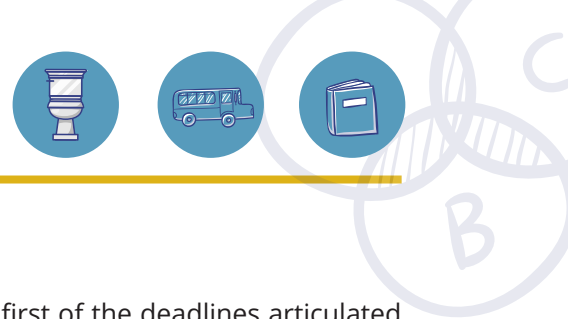
49. School infrastructure is a clear priority outlined in South Africa's key planning documents. The NDP identifies the need to *"ensure that all schools meet minimum standards for infrastructure and commit to upgrading each school's infrastructure to meet optimum standards"*.⁵⁷ This goal is reflected in the DBE's Action Plan to 2019, in which there is an undertaking to ensure that *"the physical infrastructure and environment of every school inspire learners to want to come to school and learn, and teachers to teach"*.⁵⁸
50. The Annual Report also confirms school infrastructure as being at the forefront of the MTSP priorities and states that the DBE has made *"significant strides in addressing school infrastructure challenges"*.⁵⁹ The DBE illustrates its progress in the Annual Report with reference to what has been achieved through ASIDI, namely the replacement of inappropriate structures (the completion of 12 schools in 2017/2018); and the provision of sanitation (a total of 54 Completion Certificates between 2015/16-2017/2018), water (a total of 75 Completion Certificate between 2013/14-2017/18), and electricity (67 Completion Certificates between 2012/13-2017/18).⁶⁰
51. The true significance of the progress made to address infrastructure challenges needs to be assessed in the light of the current trends in the education sector. In particular, we must consider the effect of cuts to school infrastructure funding, of underspending, of the consistent failure to meet infrastructure targets, and of government's seeming unwillingness to commit entirely to these targets.

Government's commitment to the delivery of school infrastructure - Implementation of the Infrastructure Norms and Standards

52. Perhaps the best indicator of the commitment to overcome infrastructure challenges is the extent to which the Infrastructure Norms and Standards have been implemented.
53. For years members of EE campaigned, first for the adoption of the Infrastructure Norms and Standards,⁶¹ and then for the state to comply with the deadlines contained therein, set by the Minister. At the same time, attempts were made to persuade the Minister to close unconstitutional loopholes and to fix the vague language contained in the Infrastructure Norms and Standards. In particular, EE wished to engage the Minister on what it referred to as the *"escape clause"*.⁶² This had the effect of relegating targets set out in the Infrastructure Norms and Standards to mere aspirational goals, the achievement of which was subject to available resources and the buy-in and co-operation of other government departments, with no guarantee that they would ever be achieved. The *"escape clause"* stated:



*the implementation of the norms and standards contained in these regulations is, where applicable, subject to the resources and co-operation of other government agencies and entities responsible for infrastructure in general and the making available of such infrastructure".*⁶³



54. Attempts to engage the Minister failed, and during this time the first of the deadlines articulated in the Infrastructure Norms and Standards, 29 November 2016, by which date no schools should have been without water, electricity or sanitation, and schools built from mud, wood, asbestos or metal should have been replaced by proper structures, had come and gone. Tragically, learners continued to face indefensible conditions. Michael Komape died two months after the Infrastructure Norms and Standards were adopted, and Lumka Mkhethwa died more than a year after the deadline had passed.

Our courts are being increasingly relied upon to direct government, rather than government showing the requisite will to carry out its constitutional obligations.

55. In the Annual Report, the Minister highlights the need to strengthen processes and systems, reflecting on the death of learners as a tragedy which makes the DBE “*more resolute to continue to work jointly with PEDs*” in addressing the backlogs and maintaining the existing infrastructure.⁶⁴ We are however concerned that this sentiment does not translate into a commitment to implement the Infrastructure Norms and Standards with immediate effect and according to stipulated deadlines.
56. Compelled to approach the courts for a declaration that regulation 4(5)(a) is unconstitutional and therefore unlawful and invalid, EE, represented by the EELC, was ultimately granted an order entirely in its favour by the Bhisho High Court in *Equal Education and Amatolaville Primary School v the Minister of Basic Education and Others* (“**Bhisho High Court matter**”).⁶⁵ The Minister attempted to argue, despite clear constitutional jurisprudence declaring otherwise, that the right to basic education is progressively realisable.⁶⁶ She also argued that her office was hamstrung by a lack of adequate resources and reliance on other state organs.⁶⁷
57. Acting Justice Msizi rejected each of these arguments, reasoning that the natural consequence flowing from the stance of the Minister would be that government would never be called to account and that the public would never be able to ascertain “*whether, when and what school infrastructure to expect*”, and that this was simply untenable.⁶⁸ Msizi AJ also noted that the Minister’s responses, as they related to her decision to prioritise schools made *entirely* of inappropriate materials over and above those made in part with inappropriate materials, failed to assist the Court in determining what was in fact being ‘prioritised’.⁶⁹
58. Despite the Bhisho High Court’s clear confirmation of the law regarding the immediate realisability of the right to basic education as it has long been established by our Constitutional Court, the DBE launched an application for leave to appeal the judgment. This was arguably another indication of its seeming unwillingness to accept its obligations and to work towards implementing the Infrastructure Norms and Standards. Another three and a half months passed, further delaying the delivery of infrastructure to schools. On 2 November 2018, the Constitutional Court issued an order refusing to hear the appeal, saying that it had “no prospects of success”. Once again, our courts had to be relied on to direct government, rather than government showing the requisite will to carry out its constitutional obligations.



59. Also deeply concerning was the inadequate and unconstitutional plan which the national and Limpopo education departments submitted to the Polokwane High Court in response to an order of the Court directing departments to fix inadequate and unsafe sanitation in the province.⁷⁰ The plan was severely lacking in detail,⁷¹ and, horrifyingly, only anticipated the commencement of work to address sanitation infrastructure in 2026.⁷² This was notwithstanding the 29 November 2016 deadline which had already been passed, and the deadline of 29 November 2020 articulated in regulation 4(1)(b)(ii) read with 4(3)(c) of the Infrastructure Norms and Standards, by which adequate sanitation must be achieved, including proper, safe and sanitary latrines and a hygienic ratio of learners to toilets at schools.⁷³ The DBE, as well as, in this case, the Limpopo PED, therefore appeared to be significantly off track when it came to meeting critical infrastructure deadlines and implementing the Infrastructure Norms and Standards.
60. When the then Finance Minister Malusi Gigaba announced a R7.2 billion cut to the school infrastructure budget in the 2018 National Budget over the MTEF,⁷⁴ the Minister noted the “disastrous effect” of this, and claimed that *“achieving minimum norms and standards in government schools – such as water, electricity and sanitation – will be set back by between five to 10 years as a result of the budget cut”*.⁷⁵ The judgment of the Bhisho High Court made it clear that this reaction was unacceptable. Without losing sight of this judgment, we examine budget and expenditure trends which are compromising the implementation of the Infrastructure Norms and Standards.

Budget, spending cuts and irregular expenditure compromise the delivery of infrastructure and the ability to meet infrastructure targets

61. Two grants address school infrastructure challenges, namely the direct EIG, disbursed to and implemented by provincial education departments, and the indirect SIBG, which funds the ASIDI and is implemented by the DBE on behalf of PEDs, often through the contracting of non-governmental contractors in charge of building school infrastructure (**“implementing agents”**).

School Infrastructure Backlogs Grant

62. In its submission to the Standing Committees on Appropriations and the Select Committee on Appropriations on 6 March 2019, EE noted a clear downward trend in allocations to the school infrastructure grants. In the case of the SIBG in particular, EE raised the concern that this downward trend continued between the 2018/19 and 2019/20 financial years, with a 15.2% decrease in the allocation in real terms; that is, when taking inflation into account.⁷⁶ This is particularly concerning when government claims to be prioritising school infrastructure and when Infrastructure Norms and Standards deadlines have passed. Unfortunately, declining infrastructure funding is not the only challenge facing infrastructure delivery. Spending on and performance of the ASIDI are also key factors.
63. The SIBG was meant to be a temporary high impact grant. Accordingly, one would expect allocations and spending to reflect this.⁷⁷ Instead, as the FFC pointed out in its briefing to the Portfolio Committee on Basic Education on 9 October 2018, spending of the SIBG, *“despite improving in 2017/18, has been poor with an average spending performance of only 66% since 2011”*.⁷⁸ The FFC went on to say that this, *“coupled with the astonishing lack of progress on ASIDI targets..., cannot simply be accepted by Parliament”*.⁷⁹



64. Figure 5 below illustrates the poor performance of the ASIDI between 2016/17 and 2018/19.⁸⁰ It also reflects how poor delivery ultimately results in the downward revision of targets in the following year. This has the real effect of putting the Infrastructure Norms and Standards deadlines even further out of reach. In fact, in the Annual Report, the DBE states that “target setting will be revised to be more realistic with effect from the 2019/20 APP”.⁸¹

Fig. 5 ASIDI targets and performance

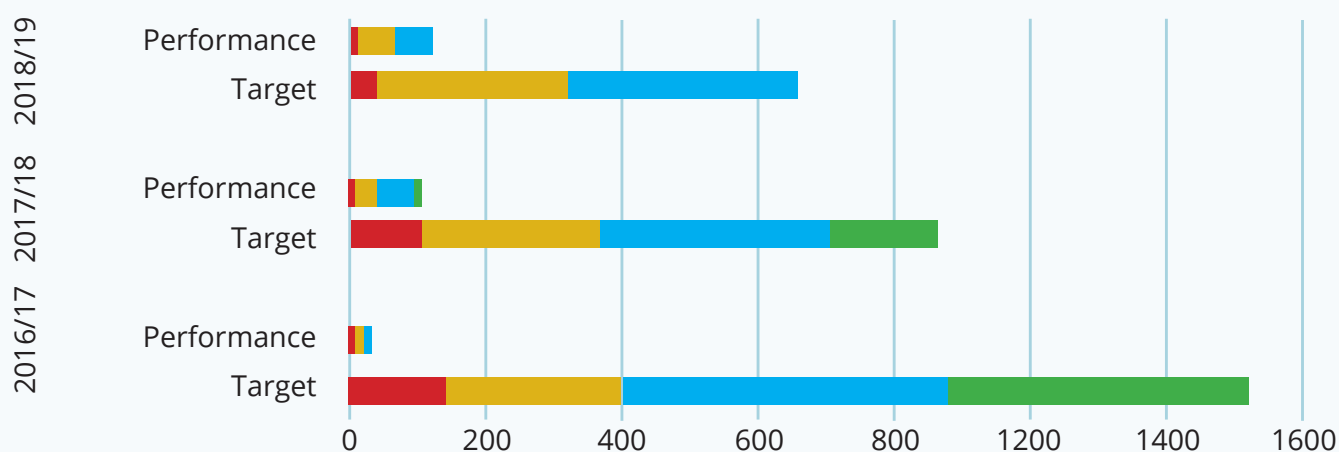


Fig. 5 ASIDI targets and performance

	2016/17		2017/18		2018/19	
	Target	Performance	Target	Performance	Target	Performance
Schools Built	136	16	115	12	50	9
Sanitation	265	9	257	29	285	64
Water	459	10	344	43	325	64
Electricity	620	0	134	17		

Source: DBE Annual Report 2017/2018; 2018 Adjusted Estimates of National Expenditure (Vote 14) and 2019 Estimate of Adjusted Expenditure (Vote 14)

65. The Annual Report lists various reasons for the failure to meet the above targets, including poorly performing contractors or implementing agents. We are encouraged by the DBE’s work to continuously engage with and monitor implementing agents and note the positive impact of this work on the implementation and completion of some of the ASIDI projects.⁸³ Still, as the FFC noted during a briefing to the Portfolio Committee on Basic Education in October 2017, there needs to be continued strengthening of oversight and control in the accountability chain to counter recurring underspending.⁸⁴

66. Moreover, the Annual Report also notes that “irregular expenditure”, or expenditure incurred in contravention of legislation, amounted to almost R154.478 million in the 2017/18 financial year. This, according to the Auditor General’s report, is mainly the result of supply chain processes not being followed and the appointment of implementing agents outside of the legal requirements of their appointment.⁸⁵



Education Infrastructure Grant

67. Like the SIBG, allocations to the EIG have also decreased in real terms over the years between 2015/16 and 2019/20. Between 2017 and 2018 alone, seven (7) of the nine (9) provinces had their budget allocations reduced.⁸⁶
68. In the Bhisho High Court matter, EE made specific reference to underspending of the EIG in the Eastern Cape. EE noted that in 2014/15 budget, R1 177 914 000 was allocated to the Eastern Cape through the EIG and that R181 343 000 of this amount was unspent, after which National Treasury stopped the allocation of the EIG to the Eastern Cape in terms of Section 19 of the Division of Revenue Act.⁸⁷ Section 19(1) of the Division of Revenue Act provides that allocation of funds may be stopped on a number of grounds, including if the National Treasury anticipates that a province or municipality will substantially underspend on the allocation, or on any programme partially or fully funded by the allocation, in the 2015/2016 financial year.⁸⁸
69. Accordingly, EE argued that the reason the grant was stopped in this case was because it was anticipated that the Eastern Cape would again substantially underspend its allocation, and further that this demonstrated that proper planning and implementation were not taking place in cooperation with other departments, even where funds were made available.⁸⁹
70. Table 7 below shows the Eastern Cape failed to meet its EIG targets for classrooms built, as well as the provision of water, electricity and sanitation in 2016/17.

Table 7: EIG Targets versus performance (2016/17)

	Target	Performance
Classrooms	509	88
Sanitation	246	88
Water	165	77
Electricity	95	10

Source: Adapted from Budget Justice Coalition's Submission to the Standing and Select Committees on Appropriations, 2019.

71. As was the case with the administration of the SIBG, common challenges resulting in the variances between targets and performance of the EIG included the non-performance of implementing agents and poor project management capacity and practices.⁹⁰
72. It is worth noting that EE launched a report on implementing agents at the Eastern Cape Department of Education ("**ECDoE**") offices in December 2018.⁹¹ The report highlighted the key enablers of effective school infrastructure delivery, which would ensure that implementing agents timely built and fixed schools. The launch was attended by provincial government officials and representatives from certain implementing agents. Themba Kojana (ECDoE Head of Department) committed to preparing an action plan for carrying out the recommendations made during EE's presentation on the report. These included:
- 72.1 engaging with the DBE in order to develop guidelines for how Heads of Department appoint implementing agents and evaluate their capacity;
 - 72.2 introducing a mechanism which would allow the public to access important information on construction projects at specific schools;



- 72.3 holding regular meetings at schools with implementing agents to keep communities updated on project progress; and
- 72.4 addressing challenges resulting in the failure to blacklist underperforming contractors.⁹²
73. Last year, President Cyril Ramaphosa called for a sanitation audit and announced the launch of the Sanitation Appropriate for Education ("**SAFE**") initiative, a partnership between government, the United Nations Children's Fund, the Nelson Mandela Foundation and the National Education collaboration Trust, offering a potential opportunity to leverage private finance to meet sanitation obligations.⁹³
74. Speaking at a recent ANC manifesto briefing, the Minister called for the establishment of an education infrastructure unit, modelled on the South African National Road Agency and aimed at relieving the DBE of *"non-teaching and learning pressures"*.⁹⁴ The Minister went on to say that it was *"high time that the department no longer played a central role in the implementation of school infrastructure..."*⁹⁵ We hope that this announcement does not serve to distract from what is really important - the delivery of safe infrastructure and sanitation, without any delay, for any reason.
75. We do not need more initiatives or the migration of responsibility to an independent body if there is no guarantee that the same inefficiencies will not be dragged along. Instead, we need a clear plan for implementing the Infrastructure Norms and Standards, with responsibilities and responsible parties clearly identified, deadlines stipulated, and the imposition of severe penalties for failing to meet these deadlines.

Recommendations

In the light of the above, we make the following recommendations:

- The DBE and PEDs must put in place more effective oversight mechanisms for school infrastructure grants and must develop "clear performance evaluation frameworks" for these grants to be able to monitor performance based on "quality, cost and time factors".⁹⁶
- Like the ECDoE, other PEDs should adopt the recommendations made by EE in its Implementing Agents Report and more stringent penalties must be put in place for poorly performing implementing agents.
- National Treasury must not reduce the allocations to school infrastructure.
- Government to present a clear plan on how the sanitation crisis is to be addressed, who will take responsibility for leading the implementation of the plan, what the role of SAFE will be, and what steps will be taken to ensure that the performance challenges befalling the ASIDI will not be repeated, so that pit latrines can be eradicated within a reasonable timeframe.



E. EARLY CHILDHOOD DEVELOPMENT AND EARLY LEARNING

76. Universal access to two years of ECD, as well as to universal quality early childhood education,⁹⁷ are both goals in the NDP, while access to quality ECD below Grade 1 is given further priority status in the Action Plan to 2019.⁹⁸
77. In 2015, Cabinet approved the National Integrated Early Childhood Development Policy ("**ECD Policy**"). The ECD policy outlines short, medium and long-term goals. Its long-term goal of "*full comprehensive age and developmentally stage appropriate quality ECD...*" aligns with the timing of the NDP. Its medium-term goal is to secure the "*essential components*" of comprehensive quality ECD services by 2024, while its short-term goal, which should have been achieved by 2017, was to establish the necessary "*legal framework(s)*", "*organisational structures*" and "*institutional arrangements*", to undertake the "*planning*", and to put in place the "*financial mechanisms*" necessary to support and realise the commitments to ensure universal availability and access to ECD services.⁹⁹
78. It is encouraging that the President has drawn attention to ECD and early learning more broadly in both his 2018 and 2019 State of the Nation addresses. This, together with the establishment of the ECD conditional grant in the 2017/2018 financial year, indicates government's commitment to achieving the above-stated goals.
79. In his most recent address, the President announced the introduction of two years of compulsory ECD, a shift of ECD services from DSD to DBE, and an expansion of the EGRS.¹⁰⁰ This announcement was not accompanied by any further explanation as to how any of these decisions would be carried out or financed. Unfortunately, the February 2019 annual budget offered no further insight. Consequently, the announcement raised many questions, the most pertinent of which are perhaps: What will be achieved by the migration of services to DBE? Will it alleviate some of the existing challenges facing implementation of the ECD programme? Will it ensure that government achieves its ECD goals and targets? How will the DBE administer and finance two years of compulsory ECD? And what plans are in place to expand the EGRS and to achieve effective results?
80. To begin to answer these questions, we must examine some of the existing challenges facing the provision of ECD services. These include difficulties with planning and coordinating ECD as an inter-sectoral programme and with administering and implementing the ECD conditional grant. Put differently, we must assess whether the short-term goals of the ECD Policy have been achieved, whether working frameworks and structures have been put in place, and whether the government is on track to achieve the medium-term goal of securing the "*essential components*" of ECD services by 2024, which include, most importantly for our purposes, securing quality early learning opportunities.¹⁰¹



The inter-sectoral nature of ECD

81. Government has long understood the need for ECD services to be holistic, attending to the child's *"health, nutrition, development, psychosocial and other needs"*, and that *"collaboration between sectors is therefore of the utmost importance"*.¹⁰²
82. Whilst the Children's Act, 38 of 2005, acknowledges the inter-sectoral nature of ECD services, it clearly identifies DSD as the party responsible for registering, supporting and monitoring ECD centres, and does not clearly identify any other role-players responsible for other components of the ECD programme. The ECD Policy attempts to provide clarity by explaining that many role-players and departments, including DSD, DBE, the Department of Health, the Department of Home Affairs and others, are involved in the provision of ECD services.¹⁰³

Departments have expressed concern about the ability to coordinate ECD services, about the availability of credible data and the lack of sufficient capacity at national and provincial levels.

83. The organisational structures, institutional arrangements, planning and financial mechanisms envisaged by the ECD Policy must therefore be responsive to the inter-sectoral nature of ECD services.¹⁰⁴ To this end, the ECD Policy makes provision for the establishment of an Inter-Ministerial Committee (to be supported by the Inter-Departmental Committee) responsible for coordinating, monitoring and overseeing the implementation of the policy and the national ECD programme.¹⁰⁵ The effectiveness of these committees has often been called into question.
84. In particular, the Departments of Basic Education, Social Development and Health have previously expressed concern about their ability to effectively coordinate and integrate, particularly where departments have concurrent responsibilities for ECD services. Moreover, departments have expressed concern about the availability of credible data and information due to unreliable data collection and information systems, as well as the lack of sufficient capacity at national and provincial levels.¹⁰⁶
85. In 2019, the President announced that there were *"over 700 000 children accessing early childhood education"*.¹⁰⁷ This was a departure from his announcement the year before that there were *"nearly a million children in early childhood development facilities"*.¹⁰⁸ The discrepancy in numbers is telling and calls into question whether departments have a clear picture of the state of access to quality ECD services.
86. The move of ECD services to DBE might have the effect of elevating ECD as a priority deliverable, alongside other basic education performance deliverables. However, this possibility must be viewed in the light of the trends and challenges characterising the basic education sector, as our report outlines above.
87. Moreover, as social investment specialist Tess Peacock warns, we must be careful not to mistake the migration of ECD to DBE as *"a panacea to the challenges facing the provision of ECD..."*¹⁰⁹ Peacock



also highlights additional concerns about the capacity and position of the DBE to take on the role, and points out that the transfer:

- 87.1 may result in the “school-ification” of ECD, where ECD is viewed as a “school for younger children” and where, instead of learning through creativity and play, 3-4 year-olds might be sitting behind desks, without any age-appropriate stimulation;
- 87.2 may lead to the centralisation of ECD centres, which are currently run by entrepreneurial women and are particularly accessible to communities;
- 87.3 will not ensure effective management of other essential components of the ECD programme, such as nutrition for pregnant mothers and young children, parent/care-giver support, integrated support for children with disabilities, and integrated language and early learning strategies from birth to school-going age; and
- 87.4 will not address the challenges related to the lack of coordination of government departments and would simply have the effect of shifting inefficient, poor delivery systems from one department to another.

Wherever ECD services are ultimately located, we cannot bypass the need to build coordinated, integrated multi-departmental approaches to meet ECD-related goals.

- 88. Wherever ECD services are ultimately located, we cannot bypass the need to build coordinated, integrated multi-departmental approaches to meet ECD-related goals. The failure to meet the short-term goal set out in the NDP Policy will undoubtedly stymie any progress in achieving its medium- and long-term goals.
- 89. It is also worth noting that the EELC made submissions on the draft amendments to the Children’s Act published for comment last year. We emphasised the need for a clear and coherent legislative framework regulating early childhood development, including progressive measures to properly fund and support ECD facilities and programmes. Briefly, we argued:
 - 89.1 in relation to the conditional registration of ECD centres, that the link between the funding of partial care facilities and ECD programmes and their registration status, which in turn is linked to their ability to meet the required norms and standards, is problematic if the norms and standards are set at the highest attainable standard; and
 - 89.2 in relation to general registration requirements, the current process of registration is overly burdensome in that it requires compliance with the norms and standards as well as other regulatory requirements (including local by-laws) merely to register as a partial care facility or ECD programme. We raised the point that if the norms and standards are sufficiently comprehensive there should be no need for parallel requirements. Our recommendation was that the process be streamlined so that the norms and standards are the only ones to be met for the purpose of registration, and



that where disparity exists between the local by-laws in different provinces, all by-laws should be brought in line with the norms and standards within a specified time frame.¹¹⁰

90. It was disappointing to see when the Children's Amendment Bill was published in March 2019 that our recommendations had not been considered or incorporated.

Recommendation

- Planning, prioritisation, implementation and monitoring of ECD must be coordinated and collaborative and must not be conducted in departmental silos.
- Regular inter-ministerial and departmental meetings must be held to strengthen cooperation, and the minutes of such meetings must be made public.

Underspending of the ECD conditional grant

91. In the 2017/18 financial year, additional funding for ECD was established through an ECD conditional grant. The primary purpose of the grant is to address inequality and increase the number of children accessing subsidised ECD services by improving infrastructure and subsidising centres which offer ECD services to children from low-income households. The ECD conditional grant is currently managed and administered by DSD.
92. In 2016/17, R317.6 million was allocated to the ECD conditional grant, of which only R248.9 million was spent. R490.8 million was allocated in 2018/19 and an allocation of R518.2 million is projected for 2019/20. The ECD grant is therefore effectively projected to remain almost stagnant over the next three years, barely keeping pace with inflation.
93. Table 8 on the next page breaks down the allocation and expenditure of the ECD conditional grant in 2017/18. It shows that 31% of the grant went unspent nationally. Provincially, in the Eastern Cape, Free State and North West underspending exceeded the national percentage, and was particularly acute in the Eastern Cape, where 51.4% of the grant went unspent.

**Table 8: ECD conditional grant - Allocations versus expenditure 2017/18**

	2017/18 Allocation (R thousands)	2017/18 Expenditure (R thousands)	Percentage expenditure
Eastern Cape	56 365	27 393	48.6%
Free State	18 398	12 658	68.8%
Gauteng	38 489	35 949	93.4%
KwaZulu-Natal	71 879	59 372	82.6%
Limpopo	41 085	36 031	87.7%
Mpumalanga	25 799	25 799	100%
Northern Cape	13 761	14 311	104%
North West	32 686	20 298	62.1%
Western Cape	19 150	19 150	100%
National Total	317 612	248 892	78.4%

Source: Estimates of National and Provincial Expenditure

94. The ECD conditional grant can be broken up into a subsidy component, where success indicators include the number of children accessing subsidised ECD services through partial care facilities, and an infrastructure component, where indicators include the number of ECD centres registered and the number of centres which progress from conditional registration to full registration through the infrastructure maintenance component.
95. Table 9 below illustrates the performance of the subsidy portion of the grant. The Eastern Cape and Limpopo provinces have subsidised fewer children than targeted and are failing to subsidise the children for 264 working days, which is the annual number of days contained in one of the conditions of the ECD conditional grant during which children should be subsidised in the 2017/18 financial year as stipulated in the conditions of the ECD conditional grant.¹¹²

Table 9: ECD conditional grant - Target versus performance (child subsidy component) 2017/18

	Target (children per recommended 264 days)	Performance (children per actual days)
Eastern Cape	11 047	8 420 for 209 days
Free State	2 085	2 084 for 264 days
Gauteng	8 818	9 079 for 264 days
KwaZulu-Natal	14 614	14 614 for 248 days
Limpopo	7601	9 414 for 215 days
Mpumalanga	4 625	4 625 for 264 days
Northern Cape	910	1 221 for 264 days
North West	6 631	6 632 for 248 days
Western Cape	4 151	4 265 for 264 days

Source: Adapted from information contained in the report of the Select Committee on Appropriations on the ECD Grant¹¹³



96. As for the performance of the infrastructure component, once again the Eastern Cape failed to meet its target of 96 ECD centres, of which none were upgraded or maintained. In the North West, only 10 of 42 ECD centres were upgraded or maintained.¹¹⁴

97. On 16 May 2018, the Select Committee on Appropriations heard presentations by National Treasury, National DSD and three provincial departments of Social Development on the ECD conditional grant expenditure as at the fourth quarter of the 2017/18 financial year.

98. Based on the presentations, the Select Committee made the following observations about the reasons contributing to underspending of the ECD conditional grant and its underperformance against subsidy and infrastructure maintenance targets:¹¹⁵

98.1 Underspending resulted from delays in the supply chain management process for the appointment of contractors.

98.2 There appeared to be a limited number of suitable service providers available for ECD maintenance projects.

98.3 Late conclusion of Service Level Agreements between provincial departments of Social Development and ECD centres.

The Select Committee on appropriations noted that underspending of the ECD conditional grant and underperformance against subsidy and infrastructure maintenance targets could be attributed to, amongst other things:

- ✓ Delays in the supply chain management process for the appointment of contractors.
- ✓ The apparent shortage of suitable service providers for ECD maintenance.
- ✓ Late conclusion of Service Level Agreements between DSD and ECD Centres.

99. Importantly, the Select Committee noted with concern that the failure by the provincial departments of Social Development to spend the ECD conditional grant could lead to a complete withdrawal of the grant by the National Treasury.¹¹⁶ The Select Committee also noted challenges relating to the cooperation between provincial departments. Finally, the Select Committee recognised the need to consider developing minimum standards for ECD centres.¹¹⁷

100. It is clear that the above problems with underspending and underperformance will not dissipate simply through a migration of ECD services to DBE, and with an anticipated 120 000 children needing to be provided with these services this year,¹¹⁸ departments must work with National Treasury to address this continued underspending.



Recommendations

- National Treasury must ensure that the ECD conditional grant is increased in order to accommodate the expansion of ECD services, including introducing two years of compulsory, quality ECD and expanding the EGRS, in particular its teacher coaching component.
- Relevant departments must regularly assess ECD conditional grant spending and performance and hold the respective implementing agents accountable for poor performance, including by putting in place more stringent penalties.

Two years of compulsory (quality) ECD

101. As with the migration of ECD services to the DBE, we must consider the announcement of two compulsory years of ECD, given the challenges of a stagnating and underspent ECD conditional grant, as well as of the general funding trends in the basic education sector.
102. Perhaps more importantly, along with the question of how two years of compulsory ECD will be funded, we must also consider the quality of the learning which will take place during those two years. Research published in 2015 considered the possibility of introducing an additional year of ECD and argued that *"implementing an additional year of early childhood care and education will not have the expected (and much-needed) impact if it will only be of the same quality as current Grade R provision,"*¹¹⁹ and that the rapid expansion of Grade R had produced *"virtually no measurable impact for the poorest three school quintiles"*.
103. Pre-Grade R provision must be of high quality before its benefits can be realised.

Recommendations

We make the following recommendations based on the research conducted by Kotzé on the "Readiness of the South African education system for pre-Grade R":¹²⁰

- there must be extensive investment in infrastructure and learning and teaching support material;
- large-scale capacity building is required among the national departments, provincial departments and districts, and sufficient staffing and ECD expertise are required on all three levels to ensure that ECD centres and practitioners will receive the necessary professional support in implementing a pre-Grade R curriculum; and
- teachers need to be trained and provided with the necessary skills, and significant additional funding needs to be made available for practitioners.



The Early Grade Reading Study

104. The EGRS aims to address the cognitive levels of literacy challenges. Established in the North-West Province and then extended to Mpumalanga, the EGRS uses formal impact evaluation methods to investigate new ways to improve reading outcomes in the foundation phase. It points to the potential value of giving teachers lesson plans, additional reading materials and on-site coaching. In many ways, it is a tool for improving outcomes and quality.
105. Despite the purpose of the EGRS and the progress made in improving foundational reading skills, the Annual Report points out the inefficiencies in the system. In particular, grade repetition figures remain high, especially among male learners, with repetition higher in secondary schools than in primary schools, particularly between Grades 9 and 11.¹²²
106. Importantly, in the Report to the Select Committee on Appropriations, the committee pointed out that one of the indicators of the success of ECD programmes was a reduction in the number of times a child repeated grades at advanced school levels.¹²³ The Annual Report echoed this, pointing out that evidence-based policies and programmes emphasised the importance of mastering certain learning foundations in earlier grades for the sake of further learning, and that intervening earlier, rather than later, was more cost-effective. The costs accrued at a later stage include high rates of grade repetition and dropping out of the education system. The Annual Report therefore envisaged that the *"EGRS will assist in addressing this challenge"*.¹²⁴
107. As noted above, it is encouraging that the President recognised the importance of EGRS and announced its expansion into 20 000 additional schools in his 2019 State of the Nation. Unfortunately, while the President recognised *"reading resources, expert reading coaches and lessons plans"* as components of the EGRS, he focused only on *"substantially expanding the availability of [the] early reading resources"* across the foundation phase of schooling.¹²⁵ This, despite the fact that research shows that the on-site coaching element of the EGRS has had the biggest impact. It also shows that children in primary schools where teachers are given on-site coaching are likely to be ahead by 40% of a year's worth of learning, compared to those in schools without such intervention.¹²⁶

Recommendation

- Accordingly, in order to improve learning outcomes and quality, and to reduce grade repetition, government must meaningfully expand the teacher training component of the EGRS.

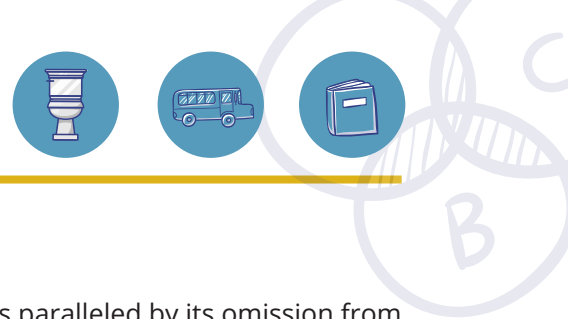


F. LEARNER TRANSPORT PROVISIONING

108. Every day learners across the country are compelled to walk long distances to school, often traversing dangerous terrain, exposed to the elements and threats of violence, in order to realise their right to basic education. In an effort to address these challenges, the Department of Transport (“DoT”) published a Learner Transport Policy in October 2015, which recognised the State’s duty to provide scholar transport as part of its constitutional mandate.¹²⁷
109. In January 2016, the EELC, together with EE, made submissions to the DBE, DoT and Portfolio Committee on Education, commenting on the effectiveness of the Learner Transport Policy. In our submissions, we welcomed the publication of the policy, but noted certain key areas of concern. The main issues were:
- 109.1 The lack of clarity on how the multi-stakeholder coordination envisaged by the Learner Transport Policy would be facilitated;
 - 109.2 the lack of guidance on how planning for learner transport provisioning would be implemented;
 - 109.3 gaps in ensuring effective monitoring and implementation of the Learner Transport Policy and the failure to set out timeframes and deadlines for implementation; and
 - 109.4 absence of mechanisms to ensure adequate funding.
110. In March 2018, following an order of the Pietermaritzburg High Court¹²⁹ requiring, among other things, that the Kwa-Zulu Natal Provincial Education Department (“KZN PED”) and Kwa-Zulu Natal Department of Transport (“KZN DoT”) report back to the court on the status of the scholar transport policy being implemented in KwaZulu-Natal, EE also made representations to members of the KZN PED on the key principles which should inform any provincial scholar transport policy.
111. While we will not rehash each of the arguments made in our submissions, for the purpose of this report we will take a closer look at how some of the gaps identified in those submissions persist and have resulted in the failure to uniformly implement the key principles of the Learner Transport Policy across the provinces, to the detriment of learners.
112. Unfortunately, the Annual Report makes minimal reference to learner transport provisioning, referring only twice to the programme, perhaps primarily as a means of ensuring that the SDGs are realised.¹³⁰

Challenges associated with the provision of learner transport include:

- ✓ The lack of effective **multi-stakeholder coordination**.
- ✓ The lack of guidance on how **planning** for learner transport provisioning should be implemented.
- ✓ **Gaps in ensuring effective** monitoring and implementation of the Learner Transport Policy and the failure to set out timeframes and deadlines for implementation.
- ✓ Absence of mechanisms to ensure **adequate funding**.



113. The failure to address learner transport in the Annual Report is paralleled by its omission from other DBE planning documents. The Action Plan to 2019 makes no reference to scholar transport, despite an admission by the DBE in its previous Action Plan to 2014 that *"although scholar transport interventions of some kind exist in all provinces, clearly not all needs are being met."*¹³¹
114. Similarly, the DBE's 2017/ 2018 APP makes limited reference to learner transport, merely recognising that many learners across the country continue to walk long distances to schools, while emphasising only one undertaking for the 2017/2018 reporting period, namely a formal evaluation of the scholar transport programme that was planned to take place during 2017.¹³² As set out in Annexe A to this report, the purpose of an APP is to reflect, as accurately as possible, those performance targets that the DBE wants to achieve, given the resources allocated in a specific period. These omissions are therefore telling, indicating a systemic failure to prioritise the learner transport programme and to plan more strategically for positive outcomes.
115. Below we address some of the challenges of implementing the Learner Transport Policy at provincial level. These include the lack of seamless stakeholder co-operation and coordination, failure adequately to monitor implementation of the Learner Transport Policy and provincial scholar transport policies adequately, the absence of a clear funding mechanism, and the lack of reliable data.

Stakeholder co-operation, integrated planning and monitoring, and evaluation

116. The Learner Transport Policy recognises that learner transport planning and implementation require a *"multi-sectoral coordination approach where various government departments play significant roles"*.¹³³ It further highlights as particular obstacles the lack of coordinated planning between the provincial departments of education and transport and local authorities, and the failure to clearly allocate roles and responsibilities to national and provincial departments of education and transport.
117. At a meeting of the Standing Committee on Appropriations on Learner Transport held on 28 February 2018 (**"SCOA Meeting"**), the Committee expressed its serious concern about the lack of intergovernmental cooperation, *"particularly between the departments of Basic Education and Transport"*,¹³⁴ and the lack of clearly defined departmental roles, resulting in neither department admitting responsibility or accountability.
118. It is therefore important that responsible departments and stakeholders (including SGBs, teachers, parents, district offices, etc.) be clearly identified and that timelines be laid down according to which each party must fulfil its obligations. Ideally, a single responsible party should be identified for each function (making multiple parties responsible for the same function often leads to a failure of any party to lead on the execution of that function). Where multiple responsible parties are identified, clear processes must be put in place to ensure seamless coordination.

Advocating for a learner transport conditional grant

119. There is marked inconsistency across the provinces about the roles and responsibilities of DoT and DBE when it comes to scholar transport funding, and this lack of clarity often results in neither party taking ownership of procuring adequate funding.



120. Currently, learner transport is funded through the provincial equitable share allocation, by which a share of revenue raised nationally is unconditionally allocated to each province to enable them to supply basic services and perform allocated functions.¹³⁵ Since the allocation is unconditional, the departments exercise discretion in how it is spent. As a result, learner transport is often not prioritised and is under-funded.
121. EE and the EELC have made submissions and presented on the Division of Revenue Bill since 2016, calling for the creation of a learner transport conditional grant. An alternative funding mechanism, such as a conditional grant, would ensure that money is 'ring-fenced' and dedicated solely to learner transport. In addition, a conditional grant would require a higher standard of accountability and transparency in terms of how the grant was spent, ensuring that money was allocated for the specific use of learner transport.
122. National Treasury and the DPME have consistently stated that they are considering the option of establishing a conditional grant, and the DBE has taken steps to investigate the feasibility of such a grant. However, it is concerning that no steps have been taken to clarify the roles and responsibilities of the various departments when it comes to provisioning learner transport. Without such steps, it seems unlikely that a conditional grant for learner transport could be implemented. In 2016, National Treasury responded to recommendations made by the Standing Committee on Appropriations in relation to the 2016 Division of Revenue Bill, advising that:



[T]he current policy on scholar transport allows provinces to assign the function to either the provincial department of transport or education. The result is that in some provinces the scholar transport function is performed by basic education departments, while in others it is performed by transport departments. This makes it impossible to structure a conditional grant, as the grant would have to be administered by multiple departments at national level and transferred to different departments in each province. The Departments of Basic and Education need to clarify their respective sector roles before a conditional grant could be considered.”¹³⁷

123. The failure to clarify departmental roles and responsibilities and to put in place adequate processes for coordination indicates a severe lack of prioritisation and responsiveness to the challenges facing budget allocations for learner transport. It is therefore imperative that these processes be urgently put in place and that National Treasury release timeframes for when the investigation into a learner transport conditional grant will be finalised.

Inadequate data and data collection processes

124. We note that planning, budgeting and costing of learner transport provisioning can only take place effectively if the need has been adequately established. This requires quality and complete data. The Learner Transport Policy states that “*learner transport planning must start with determination of need*”, and that “*this information should feed into the development of provincial learner transport strategies and municipal [Integrated Transport Plans] to ensure alignment and integration with other public transport programmes*”.¹³⁸



125. This issue was also highlighted in the SCOA Meeting referred to above, where Dr Peter Jacobs of the Economic Performance and Development Research Programme recognised the lack of reliable data, *“especially at district level”*, and where the committee stated that *“effective data systems provide important building blocks for planning and implementation”*.¹³⁹
126. In the various provincial learner transport policies, it is apparent that the criteria according to which learners qualify as needing transport differ widely. For example, some provinces use a unit of learners walking 3 kilometres or more to school, while other provinces apply a 5-kilometre measure. Consequently, the total number of learners who qualify for learner transport is misleading, to the extent that beneficiaries are not identified in an equitable manner across the country.
127. In the context of KwaZulu-Natal and the litigation EE is involved in there,¹⁴⁰ the KZN PED was prompted to reassess the number of learners qualifying for transport in KwaZulu-Natal. After this assessment, the department filed a report amending their initial statement that 90 000 learners qualified to around 360 000 learners for the 2018/2019 period. This large discrepancy raises concerns about the accuracy of the identified need, and calls into question the data collection processes used by the DBE across the country.

Accommodating learners with disabilities

A recent evaluation commissioned by the DPME on the implementation of the Learner Transport Policy confirms that most children with disabilities are not covered by provincial learner transport programmes.

128. The Learner Transport Policy acknowledges that the current system of provisioning learner transport does not adequately consider children with disabilities and obliges provincial departments of education to select learners who qualify for learner transport, giving priority to those with disabilities. Many provincial learner transport policies, where they exist and are being implemented, contravene these stipulations.
129. In 2015, the DBE estimated that 138 000 children with disabilities in KwaZulu-Natal were not at school. According to research conducted by public interest law centre SECTION27, learners with disabilities faced systemic exclusion in accessing education. This exclusion, SECTION27 argues, is *“sustained by an absence of proper planning and chronic underfunding of state-subsidised transport services for school children”*.¹⁴¹ A recent evaluation commissioned by the DPME on the implementation of the Learner Transport Policy confirms that most children with disabilities are not covered by provincial learner transport programmes.¹⁴²
130. The Learner Transport Policy notes that the service design process requires *“extensive consultation with other relevant stakeholders to ensure a fair distribution of learner transport services”*.¹⁴³ We submit that such consultation must include taking into account the needs of learners with disabilities.



Recommendations:

- Guidance must be issued on the uniform implementation of the principles contained in the Learner Transport Policy in provinces, including the adoption and implementation of specific provincial learner transport policies which adhere to these principles.
- Deliberate steps must be taken to clarify the exact roles and responsibilities of the DBE, DoT and other stakeholders in the provision of learner transport.
- National Treasury must set down and publicise timeframes according to which the investigation into a scholar transport conditional grant will be finalised.
- Uniform, accurate, and thorough data collection processes must be established to verify the number of learners qualifying for scholar transport across the country.
- Service design processes must include consultation which takes into account the needs of learners with disabilities.



G. EXCLUSIONARY ADMISSION PRACTICES AND THE FAILURE TO REASONABLY ACCOMMODATE

131. In the Annual Report, the Minister highlighted the duty of all *“to ensure that the right of our learners to quality, effective, inclusive, and efficient basic education is not negotiable”* [Emphasis added].¹⁴⁴ The Annual Report also made reference to the important White Paper 6, which set out the intention of the DBE to implement inclusive education at all levels of the system by 2021. Such an inclusive system, the Annual Report explained, *“will facilitate the inclusion of vulnerable learners and reduce barriers to learning through targeted support structures and mechanisms that will improve the retention of learners in the education system, particularly learners who are prone to dropping out”* [Emphasis Added].¹⁴⁵
132. It is encouraging that the DBE, through the terminology used in the Annual Report, acknowledges the shift away from a narrow conception of inclusivity accommodating ‘learners with disabilities’ or ‘learning difficulties’ or ‘special needs learners’, to a more holistic and encompassing notion of addressing all ‘barriers to learning and development’.¹⁴⁶ This conception takes into account such factors as poverty, race, gender, language, and nationality, to name a few.¹⁴⁷

Barriers to learning are “difficulties that arise within the education system as a whole, the learning site and/or within the learner him/herself which prevent access to learning and development for learners”.

133. It is equally encouraging, as stated in the Annual Report, that the implementation of the SIAS policy has to date reached 66 804 teachers from 17 554 schools and 3 485 officials.¹⁴⁸ The DBE published the SIAS as part of its strategy to implement an inclusive education system, and defines ‘barriers to learning’ as “difficulties that arise within the education system as a whole, the learning site and/or within the learner him/herself which prevent access to learning and development for learners”.¹⁴⁹
134. Despite this conceptual shift, it is concerning that the Annual Report fails to acknowledge¹⁵⁰ or address current practices in schools which exclude learners at the point of admission, or which fail to accommodate and retain all learners in the education system. This omission is paralleled by the failure of key planning documents, in particular the Action Plan to 2019, to prioritise the eradication of these practices.
135. In the last few years the EELC has noted an increasing number learners who are refused admission to school on the grounds of not being South African citizens, or even if they are born in South Africa, for not having the ‘requisite’ documents. In addition, we note the difficulty facing parents in finding adequate placement for children experiencing barriers to learning, and the failure of schools to help parents when applying for fee exemptions.



136. The cases we outline below show that, while South Africa has taken positive steps towards the development of policy frameworks for an inclusive education system, government has a long way to go before it implements 'inclusive education at all levels of the system'. It is unlikely to achieve this by 2021, particularly given such clear barriers, firstly to gain admission to the system, and then to being reasonably accommodated and retained therein.

Inadequate implementation of Fee Exemption Regulations

137. In 2006, the Minister published Fee Exemption Regulations, in terms of which parents of learners attending ordinary public schools could apply for school fee exemptions.
138. Read with the NNSF, which stipulates that "*fees must not be allowed to become an obstacle in the schooling process, or a barrier preventing access to schools*",¹⁵¹ the Fee Exemption Regulations contain safeguards designed to ensure that parents are both informed of, and able to assert, their rights to fee exemptions.
139. The Fee Exemption Regulations provide for an informed, facilitative process whereby a SGB must, among other things, display the Fee Exemption Regulations at a school in a conspicuous place, provide parents with a copy of the regulations upon request, and investigate whether a parent qualifies for an exemption before taking further legal steps should the parent fall in arrears with payment of school fees.
140. Despite the clear processes set out in the Fee Exemption Regulations, the EELC has become aware, through the work conducted by its in-house law clinic, that parents are not always made aware of their right to apply for fee exemptions when enrolling learners in ordinary public schools. In addition, debt collecting processes have reportedly been instituted against parents without any prior investigation by the SGB into whether the parents qualify for a fee exemption.¹⁵²

Fees must not be allowed to become an obstacle in the schooling process, or a barrier preventing access to schools

141. Apart from requiring that parents be made aware of the Fee Exemptions and whether or not they qualify to be exempted from paying fees, the Fee Exemption Regulations are also designed to ensure that parents receive adequate assistance when applying for such exemptions. In particular, the regulations outline the circumstances in which educators and principals must assist a parent to complete an application for a fee exemption and indicate that no applicant may be disqualified on the ground that their application form is either incomplete or incorrectly completed. However, EELC is informed that, in some instances, instead of assisting parents to ensure their applications are approved, parents are subjected to unlawful, often discriminatory practices by schools and SGBs.
142. One such practice is to demand proof of income from both parents during the application process. This has, in some cases, had the effect of unfairly prejudicing single parent applicants,



often single mothers or caregivers who for various reasons are unable to obtain the father's proof of income.

143. In 2013, an application was launched in the Western Cape High Court concerning the issue of a single mother being unable to obtain the details of the learner's father. The matter was ultimately heard in the Supreme Court of Appeal ("**SCA**"). In this case, the SCA confirmed that in circumstances where the non-custodial parent has refused, or failed, to provide details of their income, public schools must grant a conditional fee exemption to the custodial parent, taking account only of his or her income. This conditional fee exemption must be the total, or partial, fee exemption to which the applicant would have been entitled were he or she the only parent of the learner concerned. In addition, the court stated that granting such a conditional exemption would not limit the public school from taking legal steps to enforce payment by the other parent for the balance of the school fees, ensuring that where appropriate non-custodial parents are held responsible.
144. Since the judgment was handed down in December 2017, the EELC has been contacted by several parents from across the country seeking clarification on the impact of this court decision. While the Western Cape Education Department has issued circulars informing schools of the effects of the SCA's decision, no consistent national policy has been drafted to give effect to the judgment. Given its importance, it is imperative that schools and SGBs are informed of the SCA's judgment and are directed to adhere to the principles set out therein when processing fee exemption applications of single and divorced parents.

Recommendations

- DBE district officials must be compelled to monitor proper implementation of Fee Exemption Regulations.
- Relevant role players, including teachers, principals and SGB members must be adequately trained and capacitated to investigate whether a parent qualifies for a fee exemption and to assist parents during the fee exemption application process.
- The DBE should issue a national directive to PEDs pertaining to the impact of the judgment of the SCA.

Failure to reasonably accommodate children experiencing barriers to learning

145. According to Section 12(4) of the SASA, the MEC must, where reasonably practicable, "*provide education for learners with special education needs at ordinary public schools and provide relevant educational support services for such learners*". The SIAS policy also provides that all learners must first be accommodated in ordinary schools before consideration is given to accommodating them in special schools.¹⁵³



The focus is on inclusion and overcoming barriers in the system, rather than on integration, which is predicated on having the learner 'fit in'.

146. Learners are screened in terms of the SIAS policy at admission and at the beginning of each new school phase in order to determine the particular needs of the learner. Only if the learner's needs cannot be *reasonably accommodated* at an ordinary school, will the he or she be placed at a special school.¹⁵⁴ "Reasonable accommodation" refers to the "*necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms*".¹⁵⁵
147. If a learner is identified as requiring additional support, the teacher should assume the role of a case manager, managing and co-ordinating the process of arranging proper learning support.¹⁵⁶ Where a teacher's support is ineffective, the matter should be referred to a School-Based Support Team,¹⁵⁷ which aims to offer further strategies and interventions to help the learner. In the event of a learner needing a higher level of support, a District-Based Support Team¹⁵⁸ will become involved and will compile an action plan to assist the learner further at her or his local school.¹⁵⁹
148. Placing a learner in a specialised setting in order to access support is a last resort and temporary measure.¹⁶⁰ The focus is on inclusion and overcoming barriers in the system, rather than on integration, which is predicated on having the learner 'fit in'.¹⁶¹
149. Ultimately the SIAS policy seeks to implement White Paper 6 and create structures and processes at school and district level which will ensure that learners are properly assessed, supported, monitored and ultimately placed in school in a manner which facilitates *inclusion* as opposed to mere *integration*. Despite this objective, the EELC has observed the failure to effectively implement the SIAS policy, and the resulting challenges facing parents attempting to secure their children's access to basic education and to overcome barriers to their learning. Issues which have arisen include:
 - 149.1 The failure by schools and districts to help parents with placing their children in special schools when the learners' needs cannot reasonably be accommodated in an ordinary school. Learners are removed from ordinary schools without being given an alternative, adequate schooling option.
 - 149.2 Inadequate support at special schools – the EELC received reports of learners enrolled in special schools where they were not receiving the adequate level of



educational support necessary to facilitate their development. In one reported case, a learner's ability to read and write began to decline after being enrolled in a special school. The parents engaged with the school, which admitted that it was no longer able to offer adequate support for the learner. Despite this, the parents received no help from district officials in accommodating the learner in a more suitable facility.

150. A learner with multiple disabilities was placed in a special school, but was not assessed by the school during the first two terms. After the school threatened to refuse the learner admission in the following year, the parent sought assistance from the relevant district office. Having received no significant response from the office, the parent wrote the following:



Ours is a painful and ongoing battle. Progress! Zero. Around June I managed to get the attention of a District official who swore to make sure [that] my son would be effectively placed within two weeks. That was the last time I heard of her or managed to get in touch with her. I've been trying ever since but her phone just rings and nobody answers. I tried smses but there was no response until around the beginning of the month when she acknowledged receipts of my smses and promised to get in touch shortly. She never did and it was the last I heard of her. At school my son continues to remain a fixture of the class and is not receiving any assistance. The situation remains exactly the same..."

151. The SIAS policy establishes clear roles and responsibilities for both schools and district officials in placement and accommodation in the education system. The above cases reveal a failure of both schools and district offices to adequately assess, support and monitor the educational needs of learners. As a result parents, who often do not have the resources or the know-how to do so, have been burdened with the responsibility of highlighting challenges and advocating for placement of their children in learning environments which are able to cater to their specific needs at all times. Ultimately, these factors bar learners from realising their right to quality basic education.

Recommendations

The DBE must:

- ensure implementation of White Paper 6, the SIAS policy and the various national guidelines, including those relating to Special Schools, Full-Service Schools and District-Based Support Teams, through the publication of circulars and administration of training;
- improve monitoring, accountability and evaluation of the implementation of the above policies and guidelines; and
- capacitate and provide adequate resources to schools and districts to implement the relevant policies.



Undocumented learners

152. Section 29(1)(a) of the Constitution clearly recognises that *everyone* has the right to basic education, including undocumented persons.¹⁶³ In its position paper on undocumented learners in South Africa, the South African Human Rights Commission (“**SAHRC**”) defined the ‘undocumented learner’ as *“an individual of school-going age, or any person who is or who desires to be enrolled at a school, and who is not in possession of official documentation required for proof of identity”*.¹⁶⁴
153. Notwithstanding this clear constitutional right and an international legal framework recognising the right of access to basic education of all learners, undocumented learners in South Africa, including South African nationals, foreign nationals and stateless persons, face significant challenges in accessing basic education. These challenges arise, among other things, from a lack of clarity on the extant legal and policy framework.¹⁶⁵
154. SASA and the National Admission Policy for Ordinary Schools (“**National Admission Policy**”)¹⁶⁶ require certain documentation to be submitted to the school when applying for admission, namely a birth certificate, copy of permit for temporary or permanent residence, a study permit or evidence that an application has been made to the Department of Home Affairs for learners or parents to legalise their stay in the country.¹⁶⁷ Section 15 of the National Admission Policy also states that learners *may* be conditionally admitted if the required documentation is not available, but requires parents to ensure that the admission of the learner is finalised within three months of conditional admission.
155. Importantly, Section 9 of the National Admission Policy specifically states that the admission policy of a public school and the administration of admissions by an education department must not unfairly discriminate in any way against an applicant.
156. Despite clear provisions for conditional admission of learners without documentation, Section 39 of the Immigration Act, 13 of 2002 (“**Immigration Act**”), prohibits learning institutions from providing training to “illegal foreigners”. Section 44 of the Immigration Act goes on to state that:



when possible, any organ of state shall endeavour to ascertain the status or citizenship of the persons receiving its services and shall report to the Director-General any illegal foreigner, or any person whose status or citizenship could not be ascertained, provided that such requirement shall not prevent the rendering of services to which illegal foreigners and foreigners are entitled under the Constitution or any law. [Emphasis Added]

157. The above legislation creates a degree of legal uncertainty. In particular, use of the word “may” in Section 15 of the National Admission Policy suggests that conditional registration is discretionary. Further, it is unclear whether the learner could be excluded should the 3-month conditional registration period be exceeded. Where the Immigration Act is concerned, despite the clear proviso relating to the provision of services stipulated under the Constitution (which must include basic education), it is unclear whether schools are subjected to criminal sanction when admitting “illegal foreigners”.



158. In its position paper, the SAHRC presents a cogent interpretation of the above legislation and concludes that (i) all learners have the right to basic education, (ii) no learner may be excluded on the basis of a lack of documentation, (iii) schools may not be subject to the imposition of sanctions for admitting “illegal foreigners”, and (iv) the 3-month conditional registration period does not allow for the exclusion of learners once the period has elapsed.¹⁶⁸
159. Despite this clear interpretation, the EELC, along with many other civil society organisations, continues to record concerning trends of learners being denied admission, or later removed from schools, for not being able to submit the ‘requisite’ documentation. We give details from some of our most recent cases below. Each case represents a type of issue encountered and often multiple cases of this nature are received by the EELC.¹⁶⁹

CASE 1

Ruth is nine years old and does not currently attend any school. She was born in Zimbabwe and lived there until she came to live in South Africa with her mother, who works here. Ruth does not have a birth certificate. In January 2018, her mother approached two primary schools in Gauteng for admission. Both schools informed Ruth and her mother that a birth certificate was required for admission. Ruth’s mother approached the relevant district office for assistance, but the office refused to assist until she could produce Ruth’s birth certificate. Ruth’s mother has made several attempts to obtain documentation from the Department of Home Affairs, without success. The EELC addressed a letter to the district office requesting that Ruth be placed in a school immediately, despite not having the necessary documentation. The request was rejected by the district office. The EELC continues to make efforts to engage the MEC for Education in Gauteng to place the learner in a school.

CASE 2

Nomfundo is eight years old and was born in South Africa. Nomfundo’s mother was unable to register her birth as she is not in possession of a South African ID.¹⁷⁰ Nomfundo was sent home from school because she did not have a birth certificate, despite many attempts to obtain one from the Department of Home Affairs. The EELC began engaging with the school principal on Section 15 of the National Admission Policy and Nomfundo was ultimately allowed to attend school again. Regrettably, not all cases have resulted in the placement of children.



CASE 3 – SUNNYSIDE PRIMARY

The EELC, in collaboration with other coalition organisations, wrote to the Gauteng Department of Education in connection with a letter issued to parents urging them to submit evidence of their application for permission to stay in the country. Parents were given a period of about two weeks to submit the necessary documentation, failing which, the school would inform the Department of Home Affairs and the South African Police Service of any illegal immigrants. In our response we acknowledged that *“while immigration control may be a legitimate government concern and function, it should never be addressed through the violation of children’s rights. No reason whatsoever, including irregular migration, can ever justify harming children through unlawful arrest or the denial of education.”* Accordingly, we requested that the school in question be directed to withdraw the letter and to issue a written apology to all parents at the school.

Recommendations

- Undocumented learners must be systematically included in national development plans, education plans and budget and monitoring systems so that the issue can be prioritised.¹⁷¹
- The DBE is directed to issue an immediate directive to schools outlining the obligations of schools to admit and retain undocumented learners, and confirming that all migrant, refugee and asylum-seeking children have access to education regardless of their immigration status.
- The existing legal framework must be reviewed and clarified in a manner which establishes the protection and promotion of the rights of the learner to basic education, notwithstanding his or her status or documentation.



H. CONCLUSION

160. As a new administration gets ready to take the reins, it is important, for purposes of rejoining the path to achieving NDP and other strategic planning goals, to take heed of the challenges encountered by the outgoing administration and to reverse the regressive trends which have characterised the last five years.
161. While we acknowledge the noticeable progress made by the DBE during this time, we question whether such progress has been “significant”, in the light of regressive education funding, chronic underspending and a consistent failure to meet set targets. We recognise that, for these trends to be reversed, key changes have to be made to the manner in which the DBE, as well as PEDs, other departments and National Treasury prioritise, plan and budget.
162. Specifically, reversal of these regressive trends will require, among other things:
 - 162.1 education funding which maintains positive growth while keeping up with inflation, and the eradication of factors which result in irregular and wasteful expenditure, as well as underspending of allocated funds, including conditional grants;
 - 162.2 the urgent implementation, according to uncompromising timelines, of existing laws (and where required, the urgent clarification of or passing of binding laws) which provide for education resourcing, the delivery of infrastructure, and the removal of all barriers to education and learning;
 - 162.3 the capacitation of district officials, SGBs, teachers, practitioners and other relevant role-players in order to facilitate implementation of these binding laws.
163. Additionally, critical system changes must be put in place, including more effective and accurate data collection, consistent and meaningful coordination between government departments and other key stakeholders, and clarification of the roles and responsibilities of each department in delivering key outcomes.



KEY DOCUMENTS	
Document	Purpose
National planning documents	
NDP	Provides broad strategic framework to guide key choices and actions in order to achieve stipulated goals by 2030.
MTSF	The MTSF is Government's strategic plan for the 2014-2019 electoral term and reflects its commitment and the actions to be taken to achieve the NDP's Vision 2030.
Mandate Paper 2018	Paper commissioned by Cabinet and published by the DPME to strengthen the alignment of the South African Budget, the MTSF and the NDP and to establish the strategic framework for decision-making on budget priorities that are required to advance the goals of the NDP, particularly in the last 24 months of the current administration.
Budget documents	
Annual Budget and MTEF	The annual budget sets out what funds an institution is allocated to deliver services. The annual budget indicates the resource available for the year ahead and sets indicative future budgets over the MTEF. The annual budget is tabled in February each year.
MTBPS	The MTBPS sets out the policy framework for the coming budget. It describes Government's goals and objectives. It explains the economic environment within which those objectives are being addressed, and projects the total level of resources that will be available. The MTBPS is tabled in October each year.
DBE planning documents	
Action Plan to 2019	Sets out the actual education outcomes to be achieved and the processes for achieving these outcomes by 2030.
5-year Strategic Plan(s)	These plans set out the DBE's policy priorities, programmes and project plans for a five-year period. They focus on strategic outcomes - oriented goals and objectives for each main service-delivery area, aligned to the budget programmes.
APP(s)	DBE APPs set out what the DBE intends doing in the upcoming financial year and during the MTEF to implement its strategic plan. The document sets out performance indicators and targets for budget programmes to enable the DBE to meet its goals and objectives as set out in its strategic plan.
Annual Report(s)	Provides information on the performance of institutions in the preceding financial year for purposes of oversight. Performance is looked at relative to the targets set in the APP and how the budget was implemented.
Quarterly Performance Report(s)	These plans provide progress updates on the implementation of the DBE's APP in the previous quarter, with particular reference to monitoring delivery against quarterly performance targets.



ENDNOTES

1. Annexe A sets out a list of key national and DBE planning and budget documents referred to in this report.
2. The Presidency, 2012. "The National Development Plan 2030: Our Future - make it work". Available at: <https://www.gov.za/documents/national-development-plan-2030-our-future-make-it-work>.
3. Department of Basic Education, 2015. "Action Plan to 2019: Towards the Realisation of Schooling 2030". Available at: <https://www.education.gov.za/Portals/0/Documents/Publications/Action%20Plan%202019.pdf>
4. Menon, S. "The National Development Plan target is way off" Times Live, 20 June 2018. Available at: <https://www.timeslive.co.za/politics/2018-06-20-national-development-plan-target-is-far-off>.
5. Department: Planning, Monitoring and Evaluation, 2017. "Mandate Paper Budget 2018," p.8. Available at: <https://www.dpme.gov.za/publications/Reports%20and%20Other%20Information%20Products/DPME%20Mandate%20Paper%20final%20for%20public%20release.pdf>
6. Galetti, D. "Why the NDP no longer applies, and what to do about it." Business Live. 20 August 2018. Available at: <https://www.businesslive.co.za/bd/opinion/2018-08-20-nation-building-is-central-to-realising-ndp-target-of-growing-the-economy>.
7. Galetti, D, note 6; Mandate Paper Budget Paper, note 5.
8. National Development Plan, note 2, at p.26.
9. Equal Education. Post-MTBP Statement: "Empty promises as bleak picture for basic education funding continues", 25 October 2018. Available at: https://equaleducation.org.za/2018/10/25/47611/#_ftn6
10. United Nations Children's Fund, 2018, "Education Budget South Africa 2017/2018," p.10. Available at: https://www.unicef.org/esaro/UNICEF_South_Africa_-_2017_-_Education_Budget_Brief.pdf
11. Equal Education. Budget Speech Statement: "Empty platitudes as budget fails to back up government's bold education claims", 21 February 2019. Available at: <https://equaleducation.org.za/2019/02/21/equal-education-budget-speech-statement-empty-platitudes-as-budget-fails-to-back-up-governments-bold-education-claims>
12. Department of Basic Education. "Annual Report 2017/2018," p. 8. Available at: https://www.gov.za/sites/default/files/gcis_document/201718-annual-report.pdf.
13. An annual report is only available at the end of a financial year, so by the time the Annual Report 2017/2018 became available, all plans and budgets for 2018/2019 were already in place. For this reason, quarterly (particularly 2nd and 3rd quarterly) financial and performance reports are also important inputs.
14. Annual Report 2017/2018, note 12, p. 8.
15. A collection of 17 global goals set by the United Nations General Assembly in 2015.
16. Annual Report 2017/2018, note 12, p.8.
17. Ibid.
18. Annual Report 2017/2018, note 12, p.9.
19. National Centre for Educational Statistics, 2017. "The Progress in International Reading Literacy Study (PIRLS)."
20. National Treasury, 2018. "Medium-Term Budget Policy Statement." Available at: <http://www.treasury.gov.za/documents/mtbps/15.pdf>.
21. National Treasury, 2019 "Budget Speech." Available at: <http://www.treasury.gov.za/documents/national%20budget/2019/speech/speech.pdf>.
22. National Treasury, 2019. "Estimates of National Expenditure, Vote 14." Available at: <http://www.treasury.gov.za/documents/national%20budget/2019/ene/Vote2014%20Basic%20Education.pdf>
23. In the 2018/2019 financial year the former Finance Minister announced a R57 billion reallocation to fund free higher education over the MTEF. This reallocation coincided with a reduction in the basic education budget and a R3.6 billion reduction in school infrastructure grant allocations over the MTEF.
24. It is worth noting that given the large annual increases in expenditure on higher education, the low projection for this function at the end of this MTEF is not indicative of any accurate planning functions, but more likely reflects the uncertainty of the outcome of discussions and bargaining in this sector. See UNICEF's Education Budget South Africa 2017/2018, note 10, at p.8.
25. Note that the Post-Provisioning Process is set out in three pieces of legislation, namely the Employment of Educators Act 76 of 1998, The South African Schools Act 84 of 1996, and The Labour Relations Act 66 of 1995.
26. Spaull, N. "Basic education thrown under the bus – and it shows up in test results," Business Day, 16 April 2018. Available at: <https://www.businesslive.co.za/bd/opinion/2018-04-16-basic-education-thrown-under-the-bus--and-it-shows-up-in-test-results/>.
27. UNICEF South Africa, 2018. "2018/19 Education Budget Brief South Africa", p. 10. Available at: https://www.unicef.org/southafrica/SAF_resources_budgetbrief_education2018.pdf.
28. Ibid at p.12.
29. UNICEF South Africa, 2018. "2018/19 Education Budget Brief South Africa", p. 10. Available at: https://www.unicef.org/southafrica/SAF_resources_budgetbrief_education2018.pdf.
30. National Treasury, 2019. "Estimates of National Expenditure," Vote 14.
31. UNICEF South Africa, 2018. "2018/19 Education Budget Brief South Africa", note 27, p. 10. See sections below relating to spending of infrastructure grants and the ECD conditional grant.
32. Ibid.
33. UNICEF South Africa, 2018. "2018/19 Education Budget Brief South Africa", note 27, p. 12. See sections below relating to spending of infrastructure grants and the ECD conditional grant.
34. Department of Basic Education, White Paper 6, 2001, "Special Needs Education: Building an Inclusive Education and Training System".
35. Department of Basic Education, 2016. "Report on the Implementation of Education White Paper 6 on Inclusive Education: An Overview for the Period: 2013 – 2015", p. 45.
36. Committee on the Rights of the Child, 2016. "Concluding Observations on the Second Periodic Report of South Africa", para. 44.
37. Portfolio Committee on Basic Education, 17 October 2018. "Budgetary Review and Recommendation Report (BRRR) of the Portfolio Committee on Basic Education on the performance of the Department of Basic Education for the 2017/18 financial year". Available at: <https://pmg.org.za/page/PCBasicBRRR>.
38. Action Plan to 2019, note 3, p.3.
39. Spaull, N, 2019 "Priorities for Education Reform in South Africa: A Report to President Ramaphosa & Minister Mboweni", p. 6. Available at: <https://nicspaull.com/2019/01/18/priorities-for-education-reform-background-note-forminister-of-finance-19-01-2019/>
40. Ibid.
41. Spaull, N, 2019 "Priorities for Education Reform in South Africa: A Report to President Ramaphosa & Minister Mboweni", p. 6. Available at: <https://nicspaull.com/2019/01/18/priorities-for-education-reform-background-note-forminister-of-finance-19-01-2019/>. Fig 4 depicts current provincial per learner expenditure on basic education 2010-2019 (using real cost drivers and expressed in 2017 Rands, 2017-2019 projections based on MTEF).
42. National Norms and Standards for School Funding (NNSSF), as amended, originally published in Government Notice No 890, Government Gazette No 29179 of 31 August 2006, in terms of the South African Schools Act 84 of 1996, para 99.
43. Portfolio Committee on Basic Education, 2018. "Minutes of Meeting held on 17 April 2018 Department of Basic Education 2018/19 Budget and Annual Performance Plan". Available at: <https://bit.ly/2wv0u8j>.
44. Ibid.
45. Spaull, N, 2018. "Basic education thrown under the bus – and it shows up in test results", note 26.
46. National Norms and Standards for School Funding, note 42 para 99.
47. Government Gazette notice 40818 no.394 (28 April 2017).
48. The Western Cape Education Department has previously raised the argument that the "quintile policy is iniquitous" because many schools classified as quintile 4 and 5 are in fact serving poor



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- communities. The result is that these schools are largely unable to collect adequate school fees to make up for the lower per learner allocation as families could not afford it. See the State's answering affidavit in *T Adonisi & others v Minister of Public Works and Transport & Others*.
49. Table presented by the Department of Basic Education to the Select Committee on Education and Recreation on 29 November 2017.
 50. It is worth noting that in Grade R programming, poor provinces spend less than 70% of the national per learner average. See UNICEF South Africa, 2018. "2018/19 Education Budget Brief South Africa", note 27, p. 15.
 51. Presentation made by the Department of Basic Education to the Select Committee on Education and Recreation on 29 November 2017.
 52. See Spaull, N, 2019. "Priorities for Education Reform in South Africa," note 39.
 53. SIAS Policy, note 149, p. 20.
 54. Annual Report, note 12, p.69.
 55. Beere, R and Stuurman, C, 2018. "Education for all: Realising the right to Education for Children with Disabilities", p.14.
 56. Equal Education and Equal Education Law Centre, 2018. Joint Submission to the Standing Committee on Appropriations on the 2018 Division of Revenue Bill. Available at: <https://equaleducation.org.za/wp-content/uploads/2018/03/EE-Comments-on-the-DoRB.pdf>. See other Equal Education submissions on the Division of Revenue Bill for 2016-2019, available at: <https://equaleducation.org.za/submissions/>.
 57. National Development Plan, note 2, p.303.
 58. Action Plan to 2019, note 3, p. 3.
 59. Annual Report, note 12, p.14.
 60. Ibid.
 61. The Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure were published under Government Notice No R920 in Government Gazette No 37081 of 29 November 2013 in terms of the South African Schools Act, 84 of 1996.
 62. Equal Education, 2018. Letter addressed to the President and Minister of Basic Education, "The school infrastructure crisis: The courts have fixed the law – the time is no, to fix South Africa's schools". Available at: <https://equaleducation.org.za/wp-content/uploads/2018/08/Equal-Education-Letter-to-President-Cyril-Ramaphosa.pdf>.
 63. Regulation 4(5)(a) of the Infrastructure Norms and Standards, note 61.
 64. Annual Report, note 12, p.10.
 65. [2018] 3 All SA 705 (ECB) (19 July 2018).
 66. Ibid at para 48.
 67. Bhisho High Court matter, note 65, at paras 64, 73 and 187.
 68. Ibid at para 184.
 69. Bhisho High Court matter, note 65, at paras 188 and 191.
 70. *Komape and Others v Limpopo Department of Education and Others* (1416/2015) [2018] ZALMPPHC 18 (23 April 2018). EE joined that matter as amicus curiae.
 71. Second Amicus Curiae's Affidavit in *Komape and Others v Limpopo Department of Education and Others*, Moyo, P, 3 October 2018, para 38.
 72. Ibid at para 46.
 73. Second Amicus Curiae's Affidavit at para 70.
 74. National Treasury of the Republic of South Africa, 2018. Budget Review, p.25.
 75. Eye Witness News Report, "Motshekga slams R7.2BN Cut to School Infrastructure Budget", September 2018. Available at: <https://ewn.co.za/2018/09/06/motshekga-slams-r7-2-billion-cut-to-school-infrastructure-budget>
 76. Equal Education, 2019. Submission to the Standing and Select Committees on Appropriation on the 2019 Division of Revenue Bill, p. 7.
 77. Portfolio Committee on Basic Education. "Minutes of the briefing of the Financial and Fiscal Commission," 9 October 2018 Available at: <https://pmg.org.za/committee-meeting/27136/>. Botha, C. "School infrastructure backlog – Clearing the rot in the weak accountability chain demands immediate action." Politicsweb. 23 October 2018. Available at <https://www.politicsweb.co.za/opinion/school-infrastructure-backlog>.
 78. Ibid. See also Equal Education's Submission to the Standing and Select Committees on Appropriations, note 56, p. 8.
 79. Ibid.
 80. Performance for 2018/19 only reflect progress for the first part of the year.
 81. Annual Report, note 12, p.118.
 82. Ibid.
 83. Annual Report, note 12, p.14.
 84. Portfolio Committee on Basic Education. Minutes of the briefing of the Financial and Fiscal Commission. October 2017. Available at: <https://pmg.org.za/committee-meeting/27136/>.
 85. Annual Report, note 12, pp. 183 and 186.
 86. Budget Justice Coalition, 2019. Submission to the Standing and Select Committees on Appropriation, pp 11-13.
 87. Act 1 of 2015.
 88. Bhisho High Court matter, note 65, at para 64.
 89. Ibid at para 65.
 90. Botha, C, note 77.
 91. Equal Education, 2018. "Implementing Agents: The Middlemen in Charge of Building Schools". Available at: <https://equaleducation.org.za/wp-content/uploads/2018/11/Equal-Education-Implementing-Agents-Report-November-2018.pdf>.
 92. Equal Education, 2018. Media Statement: "Victory! Eastern Cape Education Department commits to implementing all recommendations in our new infrastructure report". Available at: <https://equaleducation.org.za/2018/12/04/4845/>.
 93. The Presidency, Media statement: "President Cyril Ramaphosa launches safe sanitation for schools", 14 August 2018. Available at: <https://www.gov.za/speeches/president-cyril-ramaphosa-launches-safe-sanitation-schools-14-aug-2018-0000>.
 94. Mvumvu, Z. "Motshekga wants special unit to handle school infrastructure". 3 March 2019. Timeslive. Available at: <https://www.timeslive.co.za/news/south-africa/2019-03-03-motshekga-wants-special-unit-to-handle-school-infrastructure/>.
 95. Ibid.
 96. Adapted from recommendations made by the FFC to the Portfolio Committee on Basic Education, note 77.
 97. National Development Plan, note 2, at pp. 30 and 43.
 98. Action Plan to 2019, p.3.
 99. Department of Social Development, 2015, "National Integrated Early Childhood Development Policy", p.49.
 100. Ramaphosa, C. 2019. "State of the Nation Address". Available at: <https://www.gov.za/sona2019>.
 101. ECD Policy, note 99, at p. 9.
 102. Department of Social Development, 2006. "The Guidelines for Early Childhood Development Services", p.1.
 103. Ibid at p.10.
 104. Department of Social Development, 2006. "The Guidelines for Early Childhood Development Services", p.36.
 105. Ibid at p.87.
 106. Portfolio Committee on Basic Education, 2017. "Early Childhood Development implementation: Basic Education, Social Development, Health Departments inputs." Available at: <https://pmg.org.za/committee-meeting/25345/>.
 107. Ramaphosa, C, 2019. "State of the Nation Address." Available at: <https://www.gov.za/sona2019>
 108. Ramaphosa, C. 2018. "State of the Nation Address." Available at: <https://www.parliament.gov.za/state-nation-address-cyril-ramaphosa-president>
 109. Peacock, T, 2019. Tshikululu Social Investments. "Migration of Early Childhood Development from DSD to DBE: The hard work lies ahead." Available at: <http://tshikululu.org.za/migration-early-childhood-development-dsd-dbe-hard-work-lies-ahead/>
 110. Equal Education Law Centre, 2018. Submission on the Children's Third Amendment Bill. Available at: <https://eelawcentre.org.za/wp-content/uploads/framework-for-inputs-childrens-third-amendment-bill-eelc.pdf>.
 111. Peacock, T raises an additional question to be considered relating to the powers the President is relying on to announce the migration of services from DSD to DBE. She argues that such shift must surely will necessitate an amendment to the Children's Act, which would in turn trigger a Parliamentary process, which must facilitate public participation. The question arises whether the migration would be effective in the absence of such participation.



- The Children's Amendment Bill does not address the migration.
112. National Council of Provinces, 2018. "Early Childhood Development Grant performance: hearing; Eastern Cape Department of Social Development: follow-up; with Minister". Available at: <https://pmg.org.za/committee-meeting/26818/>.
113. Select Committee on Appropriations, 2018. "Report on the Early Childhood Development Grant Expenditure as at Fourth Quarter 2017/18 Financial Year." p.3.
114. Ibid.
115. Report on the Early Childhood Development Grant Expenditure, note 113, pp.3 and 11-13.
116. See the discussion relating to the withdrawal of the EIG in terms of section 19 of the Division of Revenue Act.
117. Report on the Early Childhood Development Grant Expenditure, note 113, p.12.
118. National Treasury, Estimates of National Expenditure, 2019. Vote 17, p.342. Available at: <http://www.treasury.gov.za/documents/national%20budget/2019/ene/Vote%2017%20Social%20Development.pdf>.
119. Kotzé, J, 2015. "The readiness of the South African education system for a pre-Grade R year, Stellenbosch Economic Working Paper," p.24.
120. Ibid.
121. Annual Report, note 12, p. 9.
122. Ibid.
123. Report on the Early Childhood Development Grant Expenditure, note 113, p.12.
124. Annual Report, note 12, p.9.
125. Ramaphosa, C, 2019. "State of the Nation Address". Available at: <https://www.gov.za/sona2019>.
126. Department of Basic Education, 2017. "Summary Report Results of Year 2 Impact Evaluation: The Early Grade Reading Study", p.14. Available at: <https://www.education.gov.za/Portals/0/Documents/Reports/EGRS%20Summary%20Report.pdf?ver=2017-08-17-090215-583>
127. National Department of Transport, 2015. "National Learner Transport Policy Government Gazette no 39314, 2015."
128. EE and EELC, 2016. Submissions relating to the 2015 National Learner Transport Policy. Available at: <https://eelawcentre.org.za/challenges associated with the implementation of the Learner Transport Policy at provincial level/wp-content/uploads/2016/03/Letter-from-Equal-Education-Law-Centre-re-National-Learner-Transport-Policy-22-January-2016.pdf>
129. On November 7, 2017, the court handed down an order declaring that the KwaZulu-Natal departments of education and transport must provide transportation to 12 schools from the district of Nguthu by April 1, 2018, following a three-year campaign led by EE for greater access to scholar transport in KwaZulu-Natal.
130. Annual Report, note 12, pp8, 36, 148-150, 152 - 154,
131. Department of Basic Education, 2011. "Action Plan to 2014: Towards the Realisation of Schooling 2025," p.163.
132. Department of Basic Education. "Annual Performance Plan 2017/2018," p.12.
133. Learner Transport Policy, note 127, p.17.
134. Media Statement issued by Parliament Communication Services on behalf of the Chairperson of the Standing Committee on Appropriations, 28 February 2018.
135. National Treasury, 2017. Medium-Term Budget Policy Statement, 2017. Available at: <http://www.treasury.gov.za/documents/mtbps/5.pdf>.
136. Equal Education and Equal Education Law Centre, 2018, "Joint submission to the Select Committee on Appropriations on the 2018 Division of Revenue Bill". Available at: <https://ealeducation.org.za/wp-content/uploads/2018/04/EE-and-EELC-April-2018-submission-on-DoRB-1.pdf>. Similar arguments were posed by EE and EELC to the Select Committee on Appropriations in 2016 and 2017.
137. The Report of the Minister of Finance to Parliament: Response to Recommendations by the Standing Committee on Appropriations on the 2016 Division of Revenue Bill, dated 3 July 2016.
138. Learner Transport Policy, note 127, p.20.
139. Media Statement issued by Parliament Communication Services on behalf of the Chairperson of the Standing Committee on Appropriations, 28 February 2018.
140. Equal Education v Member of Executive for Education, KwaZulu-Natal and Others, case no 3662/17P.
141. Deochand, E and McLaren, D, 2019. "Children with disabilities left behind by learner transport policy", Mail & Guardian, 29 January 2019. Available at: <https://mg.co.za/article/2019-01-29-00-children-with-disabilities-left-behind-by-learner-transport-policy>.
142. Deochand, E and McLaren, D, 2019, note 141.
143. Learner Transport Policy, note 127, p.22.
144. Annual Report, note 12, p.11.
145. Annual Report, note 12, p.23.
146. Murungi, LN, 2015. "Inclusive Basic Education in South Africa: Issues in its conceptualisation and implementation". Vol 18(1), p.3173.
147. Department of Education, 1997. "Quality Education for All: Report of the National Commission for Special Needs in Education on Training and the National Committee on Education Support Services".
148. Annual Report, note 12, p.65.
149. Department of Education, 2014, "National Strategy on Screening, Identification, Assessment and Support", p.7.
150. The DBE reports that during the 2017/18 financial year, it worked together with PEDs and resolved 185 cases out of 227 that were reported via its Call Centre which related to challenges regarding, among others: the admission of learners; school fees; ill-treatment of learners by teachers; school management and governance; assault of learners; suspension and expulsion at schools, payment of pension benefits; and parliamentary questions.
151. Note 42, para 153.
152. Mzakwe, S, 2018. "Schools ignore the law when enforcing payment of school fees." Available at: <https://www.groundup.org.za/article/schools-ignore-law-when-enforcing-payment-school-fees/>
153. Department of Basic Education, 2014. "Policy on Screening, Identification, Assessment and Support", pp. 13 and 27.
154. A school equipped to accommodate learners who need access to high-intensity educational and other support either on a full-time or part-time basis.
155. Definition provided in Article 2 of the Convention on the Rights of Persons with Disabilities and adopted in the SIAS Policy.
156. SIAS Policy, note 149, p.27.
157. Teams established by schools to put coordinated school, learner and teacher support in place.
158. A management structure at district level established to coordinate and promote inclusive education through, training, curriculum delivery, resource distribution, infrastructure development, identification, assessment and addressing barriers to learning.
159. SIAS Policy, note 149. pp. 27-28.
160. SIAS Policy, note 149, p.16.
161. White Paper 6, note 34, p.17.
162. See paragraphs relating to resourcing an inclusive education system.
163. This interpretation is reaffirmed by various supranational bodies, such as the Committee on Economic, Social and Cultural Rights in General Comment 13, 1999 and the Committee on the Rights of the Child in General Comment 6, 2005.
164. South African Human Rights Commission, 2018, "Position Paper on Access to Basic Education for Undocumented Learners in South Africa, p.3.
165. Ibid p.10.
166. National Admission Policy for Ordinary Schools, 1998, published in terms of the National Education Policy, Act 27 of 1996.
167. Section 5 of SASA and sections 15-21 of the National Admission Policy.
168. SAHRC Position Paper note 164, p.13.
169. In some cases, personal details of learners and schools have been anonymised or fictitious names have been provided.
170. There are a number of reasons why a mother could be 'undocumented'. Nomfundo's mother could be a foreigner without any documentation of her own, but she might also have been born in South Africa and her parents did not have documentation to register her birth.
171. Special Rapporteur on the right to education, Koumbou Boly Barry, 2018. United Nations General Assembly. Available at: <https://www.right-to-education.org/resource/report-un-special-rapporteur-right-education-governance-and-right-education>.

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