

ISSN 1811-704X

THE RIGHT TO EDUCATION

**5th Economic and Social Rights Report Series
2002/2003 Financial Year**

South African Human Rights Commission

21 June 2004

PREFACE

In this 10th year of our young but thriving democracy, we are all engaged in some way or the other, in critically reflecting on the achievements we have secured over the past years as well as the unfinished work that lies ahead. In the context of the various rights guaranteed by our Constitution, they seek in their totality to ensure that the individual and the society are able to develop to their full potential and indeed that human rights becomes a central feature of our society. In this regard we have made much progress, and in the main, few argue against the notion that civil and political rights are well secured both in law and in practise.

However, the challenge that is situated at the heart of our Constitutional contract is how we advance social and economic rights and in so doing ensure that we advance the interests of the poor and those many who are still to enjoy the full benefits of our democracy. The inclusion of social and economic rights in the Bill of Rights was a clear articulation that democracy was as much about the right to vote, and of free expression and of association as it was about the right to shelter, the right to food, the right to health care, the right to social security, the right to education and the right to a clean and healthy environment.

The Constitution has tasked the Commission with a specific mandate to advance social and economic rights. In particular, section 184(3) requires that: “Each year the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment.”

A healthy and robust debate exists around these measures that the Constitution requires the State to take. In addition, the human rights discourse sees considerable contestation around issues such as the nature and scope of the right, the adequacy or otherwise of the measures taken and the meaning of the phrase ‘progressive realisation of rights.’ These are difficult issues and it is not always possible, nor may one say desirable, to always have consensus on them. In some instances the Courts have had to rule on them. We see this Report, however, not only as a contribution to those debates but also as a tool that can assist Government, Parliament and civil society in developing a critical understanding about social and economic rights and their implementation.

The modus operandi of the Commission in discharging its constitutional mandate to monitor and assess the observance of economic and social rights has in the main focussed on requiring organs of state to report to us on measures they have taken. This continues to pose several challenges, namely: to ensure that organs of State submit to the Commission reports that are timely, accurate and of good quality . We are pleased that good progress has been made on this front over the past year and the process of presenting draft reports to organs of state and civil society for comment has been most valuable to the Commission in finalising this report .

The launch of the 4th Economic and Social Rights report in April 2003 generated considerable interest and much debate and discussion on the Report ensued. We were invited by numerous parliamentary portfolio committees from the National Assembly and National Council of Provinces to present the Report. We certainly found the engagement with Parliament a very useful and mutually rewarding exercise. It provided the Commission with a unique opportunity to share its thinking and vision around its work

with Parliament while it enables us to better understand Parliament's expectation of the Report and its use to them as a tool in their work. There have been numerous valuable recommendations that have emerged from our presentations to Parliament which we are committed to giving effect to from our side.

So as we commence the beginning of the 2nd decade of our democracy the delivery of social and economic rights become crucial to the ongoing success of our nation and the entrenchment of a culture of human rights. It is certainly our hope, and the intention of this Report, to contribute to ensuring that the promise and the vision underpinning our Constitution is shared and enjoyed by all in our country.

Jody Kollapen

Chairperson - South African Human Rights Commission

TABLE OF CONTENTS

LIST OF TABLES.....	v
ACKNOWLEDGEMENTS.....	viii
INTRODUCTORY SECTION.....	ix
ACRONYMS.....	xxvi
THE RIGHT TO GENERAL EDUCATION AND TRAINING - EXECUTIVE SUMMARY.....	1
GENERAL EDUCATION AND TRAINING.....	6
1 INTRODUCTION.....	6
1.1 Meaning and Content of the Right.....	6
1.2 South African Constitutional Obligations.....	7
1.3 Analysis.....	8
2 PROGRESS IN THE REALISATION OF THE RIGHT.....	8
2.1 New Policy and Programmatic Measures.....	8
2.1.1 National Sphere.....	8
2.1.1.1 Curriculum Measures.....	9
2.1.1.2 School Nutrition Interventions.....	9
2.1.1.3 School Safety Programme.....	9
2.1.1.4 The Regulations to Prohibit Initiation Practices in Schools.....	9
2.1.1.5 Teacher Development.....	10
2.2 New Legislative Measures.....	10
2.2.1 National Sphere.....	10
2.2.1.1 Education Laws Amendment Bill of 2002.....	10
2.3 Budgetary Measures Affecting the Right to Education.....	11
2.3.1 National Sphere.....	11
2.3.1.1 Thuba Makote and Infrastructure Development.....	12
2.3.1.2 Early Childhood Development.....	13
2.3.1.3 HIV/AIDS Training.....	14
2.3.1.4 Teacher Development Programme.....	15
2.3.1.5 Adult Basic Education and Ikhwelo Project.....	15
2.3.2 Provincial Sphere.....	16
2.3.2.1 Gauteng Department of Education.....	16
2.3.2.2 Western Cape Department of Education.....	18
2.4 Policies, Programmes and Projects.....	18
2.4.1 White Papers on Early Childhood Development and Inclusive Education.....	20
2.4.2 Capacity-Building Programme for School Management Teams.....	21
2.4.3 Adult Basic Education and Training.....	21
2.4.4 Whole School Evaluation Programme.....	21
2.4.5 Values in Education.....	22
2.4.6 Education and Communication Technology.....	22
2.4.7 HIV/AIDS Training Programme.....	22
2.4.8 Advocacy Campaigns to Raise the Levels of Awareness of the Right to Apply for Exemption from Payment of School Fees.....	23
3 CHALLENGES FOR THE REALISATION OF THE RIGHT TO EDUCATION.....	23
3.1 Access to Schooling.....	23
3.2 School Fees Exemption.....	24
3.3 Inequities in Post-Provisioning.....	25
3.4 Translation of School Allocations into Goods and Services.....	25
3.5 Infrastructure Development.....	27
3.6 Ineffective Procurement Strategies.....	27
3.7 Textbook Pricing.....	27
3.8 Implementation of ECD Policy.....	27

3.9 HIV/AIDS and Life Skills	28
3.10 Adult Basic Education and Training.....	28
3.11 Farm Schools Conditions.....	29
3.12 Sexual Abuse and Violence in Schools.....	30
4 CRITIQUE	31
4.1 Is the Right to Education Being Realised?.....	35
4.2 Constitutional Obligations.....	37
4.3 General Conclusion on the Realisation of the Right to Education.....	39
5 RECOMMENDATIONS.....	40
THE RIGHT TO FURTHER EDUCATION AND TRAINING – EXECUTIVE SUMMARY.....	43
THE RIGHT TO FURTHER EDUCATION AND TRAINING.....	46
6 POLICY AND PROGRAMMATIC MEASURES.....	46
6.1 National Policy and Programmatic Measures.....	46
6.1.1 National Curriculum Statements for Grades 10 to 12	46
6.2 National Legislative Measures.....	46
6.2.1 Education Laws Amendment Bill of 2002.....	46
6.2.1.1 Further Education and Training Act No. 98 of 1998.....	46
6.3 Provincial Policy and Programmatic Measures.....	47
6.4 Budgetary Measures.....	48
7 PROGRESS IN THE REALISATION OF THE RIGHT TO FET.....	51
8 CHALLENGES FOR THE REALISATION OF THE RIGHT TO FET.....	53
9 GENERAL INDICATORS	55
10 CRITIQUE.....	59
10.1 Constitutional Obligations.....	61
10.2 Learner Performance in Mathematics and Physical Science FET Secondary.....	61
11 RECOMMENDATIONS.....	64
HIGHER EDUCATION - EXECUTIVE SUMMARY.....	65
HIGHER EDUCATION.....	69
12 INTRODUCTION.....	69
13 POLICY, PROGRAMMATIC AND LEGISLATIVE MEASURES.....	69
13.1 Policies and programmatic measures.....	69
13.1.1 Language Policy.....	69
13.1.2 Higher Education Act 101 of 1997: Government Gazette No 22 138, Notice Number 230.....	70
13.1.3 National Higher Education Information and Applications Service for South Africa.....	70
13.1.4 Funding of Public Higher Education: A New Framework.....	71
13.2 Legislative developments.....	72
13.3 BUDGETARY MEASURES.....	72
14 PROGRESS AND CHALLENGES IN HIGHER EDUCATION.....	73
14.1 Access to Higher Education.....	74
14.2 Improvement of Participation Rates.....	74
14.3 Representation of Black Staff in some Higher Learning Institutions.....	77
14.4 Graduation Trends.....	78
15 CRITIQUE.....	78
16 RECOMMENDATIONS.....	82

LIST OF TABLES

Table 1: National Department of Education Total Budgetary Allocation	12
Table 2: National Department of Education Budgetary Allocation Programmes and/or Projects	12
Table 3: Number of Successful Targeted sites thus far and Per Head Spending on ECD	14
Table 4: Gauteng Department of Education Total Budgetary Allocation	16
Table 5: Gauteng Department of Education Budgetary Allocation Programmes and/or Projects	17
Table 6: Western Cape Department of Education Total Budgetary Allocation	18
Table 7: Western Cape Department of Education Budgetary Allocation Programmes and/or Projects	18
Table 8: Highest Level of Education of Over 20-year-olds	32
Table 9: Education Institution Attended by 5- to 24-year-olds	32
Table 10: Where Learners are Accommodated in Structures other than Classrooms	34
Table 11: Numbers of Actual and Planned Delivery on Priorities	41
Table 12: National Department of Education Total Budget Allocation	48
Table 13: Gauteng Total Budget Allocation for FET	48
Table 14: KwaZulu-Natal Total Budget Allocation for FET	49
Table 15: KwaZulu-Natal Budgetary Allocation Towards Programmes and/or Projects	49
Table 16: KwaZulu-Natal School Building and Maintenance Programme	50
Table 17: Mpumalanga Total Budgetary Allocation	50
Table 18: Mpumalanga Budgetary Allocation Towards Programmes and/or Projects	50
Table 19: Western Cape Total Budget Allocation for FET	51
Table 20: Eastern Cape Secondary Schools (Infrastructure)	55
Table 21: Western Cape Further Education And Training (Secondary)	56
Table 22: Western Cape Matric Pass Rate	57
Table 23: Western Cape Literacy Rates	57
Table 24: Western Cape Secondary Education (Infrastructure)	58
Table 25: Western Cape Number of Platoon Schools	58
Table 26: Gauteng Matric Pass Rate	58
Table 27: Gaunteng Secondary Education (Infrastructure)	59

Table 28: School Facilities and Services	63
Table 29: 2002 SCEs Results by Gender	64
Table 30: Total State Finance and Spending on Education as a % of GDP (R'000)	72
Table 31: Summary of State Budgets for the University and Technikon Sectors, 1995/96 – 2002/03	73
Table 32: Preliminary Enrolment at Universities, 2002	75
Table 33: Preliminary Enrolment at Technikon, 2002	76

ACKNOWLEDGEMENTS

Analytical framework and structure

Adv. Tseliso Thipanyane

Reasearchers and report writers

Land	Vusumzi Moyo
Housing	Thandisizwe Diko
Water	Johanna Ramaila
Food	Eric Watkinson
Health	Farida Dollie
Education	Vusi Shabalala
Environment	Morakane Mokoena, Sarah Kitonsa, Kgomotso Lekalakala
Social Security	Lindiwe Mavundla

Administrative support

Thandeka Mpisi, Rashida Kalake and Nnono Matsaba

First draft structure and contents editing

Centre for Policy Studies

Written and verbal comments - Workshop 27-28 January 2004

Black Sash, Center for Policy Studies, Centre for Education and Policy Development, Children's Institute, DCA, NW Dept. SSACS, Dept. of Agriculture-National, Dept. of Agriculture-Western Cape, Dept. of Education-Gauteng, Dept. of Education-National, Dept. of Health -Gauteng, Dept. of Health and Welfare-Limpopo, Dept. of Health-Free State, Dept. of Health-National, Dept. of Housing Western Cape, Dept. of Housing-Mpumalanga, Dept. of Housing-National, Dept. of Housing North West, Dept. of Justice, Dept. of Land Affairs, Dept. of Provincial and Local Government, Dept. of Social Welfare, Dept. of Water Affairs & Forestry, Ethekwini Metro, GCIS, Makhado Municipality, Ministry of Justice, National House of Traditional Leaders, NATS, NIEP, Nkuzi Development Agency, PLAAS UWC, Planact, Polokwane Municipality, SA Homeless People's Federation, SAAPAWU, SADTU, SAHPF, TAC-Aids Law Project, The Presidency, Umgeni Water, University of Venda

Second draft language and style editing

Wordsmiths

Final layout and content editing

South African Human Rights Commission

INTRODUCTORY SECTION

The aim of the *Introductory Section* is to provide an outline of the common analytical framework used in the reports, briefly discuss the political and economic context of the year under review, and provide an integrated summary of the key findings and recommendations of all eight reports in the series. Details of the report production process are also included at the end of this introduction.

The 5th Economic and Social Rights Report follows a more user friendly format than previous reports. There are now separately bound, less bulky, reports on Land, Water, Environment, Food, Health, Social Security, Education and Housing. Each report has an executive summary to facilitate access to the main findings and recommendations. Issues that connect one right to another are highlighted in the body of each report to emphasise the interrelatedness and interdependence of the rights in the Bill of Rights of the Constitution of the Republic of South Africa Act 108 of 1996 (simply referred to as the Constitution throughout the reports).

A) Analytical Structure and Framework

Each report in this series follows a basic structure:

1. **Introduction:** a discussion of the meaning and content of the right with reference to the Constitution, case law and relevant international human rights instruments.
2. **Progress in the realisation of the right:** a factual description of measures instituted by government during the period under review and their impact, especially on vulnerable groups.
3. **Challenges for the realisation of the right:** a description of key challenges that hamper the realisation of the right, and in some cases, government's response to these challenges.
4. **Critique of measures instituted:** a consideration of some of the shortcomings of the measures instituted by government.
5. **Recommendations:** a set of recommendations that may encourage progressive realisation of the right as expeditiously as possible.¹

Each report consolidates information from various sources including: relevant government protocol responses, government Annual Reports and Strategic Plans, the Intergovernmental Fiscal Review, as well as research funded by government, international donors or other agencies.

All reports employ the standard of reasonableness as laid down in the *Grootboom*² and *TAC*³ judgements of the Constitutional Court, in conjunction with relevant international human rights instruments.

¹ Some reports in the series end with a conclusion.

² Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR 1169 (CC)

The constitutional provisions pertaining to socio-economic rights require the State to “take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of [these rights]”.⁴ This requirement, read with the provision on the obligation of the State to “respect⁵, protect⁶, promote⁷ and fulfil⁸ the rights in the Bill of rights” in section 7(2) of the Constitution ensures an effective guarantee of socio-economic rights in South Africa. The judicial enforcement of these rights by the courts and the constitutional mandate of the South African Human Rights Commission to monitor and assess the observance of the rights by the State⁹ and non-State entities also contribute to the effectiveness of the constitutional guarantee of these rights.

The Constitutional Court has played a significant role in ensuring the effective guarantee of socio-economic rights in our country. On the obligation of the State, Judge Yacoob held in the *Grootboom* case:

*The State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.*¹⁰

On the effective guarantee of basic necessities of life for the poor, Judge Yacoob further said:

*This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the State to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The State must also foster conditions to enable citizens to gain access to land on an equitable basis. Those in need have a corresponding right to demand that this be done.*¹¹

3 Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC)

4 See sections 26(2), 27(2) and 29(2) of the Constitution.

5 Respect is a negative obligation, which requires the State to refrain from denying or limiting equal access for all persons to the enjoyment of the rights. This also means that the State should abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure which violates the integrity of the individual or which in any way interferes or limits his/her right to pursue the enjoyment of the rights in the Bill of Rights.

6 The obligation to protect places a positive obligation on the State to prevent the violation of any individual's rights by a third party.

7 The obligation to promote places a positive obligation on the State to create a conducive atmosphere in which people can exercise their rights and freedoms by promoting awareness of their rights through public education.

8 The duty to fulfil places a positive obligation on the State to institute active measures that enable each individual to access entitlements to the right and which cannot be secured through exclusively personal efforts. State parties are also obliged to provide a specific right when an individual or group is unable, for reasons beyond their control, to realise the right themselves by the means at their disposal. e.g. people in disaster situations or those in dire need.

9 See sections 184(1) and (3) of the Constitution.

10 Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR 1169 (CC) [24]

On the role of the courts in ensuring that the State fulfils its role in giving effect to these rights and thus ensuring that there is an effective guarantee of these rights, Judge Yacob said:

I am conscious that it is an extremely difficult task for the State to meet these obligations in the conditions that prevail in our country. This is recognised by the Constitution which expressly provides that the State is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the State to give effect to them. This is an obligation that Courts can, and in appropriate circumstances, must enforce.¹²

A similar position was taken by the Constitutional Court in another seminal judgment, *Minister of Health and Others v Treatment Action Campaign and Others*, where the Court held:

The state is obliged to take reasonable measures progressively to eliminate or reduce the large areas of severe deprivation that afflicts our society. The courts will guarantee that the democratic processes are protected so as to ensure accountability, responsiveness and openness, as the Constitution requires in section 1. As the Bill of Rights indicates, their function in respect of socio-economic rights is directed towards ensuring that legislative and other measures taken by the state are reasonable.¹³

In outlining the role of the courts, the Court also stated:

The primary duty of courts is to the Constitution and the law...Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to do so.¹⁴

While there might be some criticism directed at the Constitutional Court pertaining to the determination of when there are no available resources for the State to fulfil its obligation pertaining to socio-economic rights, the courts, particularly the Constitutional Court, have and will continue to play an important role in ensuring that the provisions in the Bill of Rights are effectively guaranteed for our people.

B) The Political and Economic Context of the Year Under Review

The period under review, 1 April 2002 to 31 March 2003, followed the 11 September 2001 attacks and a 24% depreciation of the South African currency (Rand) near the end of 2001. Consumer Price Inflation, especially for goods and services bought predominantly by the poor, increased sharply to the highest level since 1994. Concerns were signalled to the Competition Commission about the impact of import parity pricing in several sectors of the economy, most notably in food production, processing and retailing as well as metals and engineering. Interest rates were raised in an attempt to curb inflation, with a

11 Ibid., [93]

12 Ibid., [94]

13 *Minister of Health and Others v Treatment Action Campaign and Others* (1) 2002 (10) BCLR 1033 (CC) [36]

14 Ibid., [99]

subsequent dampening effect on the rate of economic growth in the latter part of the financial year. According to the Reserve Bank Quarterly Bulletin for March 2003, economic growth stood at a robust 3% in 2002.

As a result of prudent fiscal management, the government introduced a more expansionary Budget in February 2002. Total government expenditure increased from R262,6 billion in 2001/2002 to R291,8 billion in 2002/2003. Overall, the budget directed more resources towards reducing poverty and vulnerability, improving education and training, developing skills amongst the youth, building and enhancing physical infrastructure and basic municipal services, as well as making communities safer places to live, work and play.

It is also important to note that the February 2003 Budget provided for significantly greater expenditure than the previous year. Total expenditure was R331,7 billion for 2003/2004. The additional allocations accommodated substantial policy changes for all three spheres of government and also provided for *higher than anticipated inflation in 2002*.

By the end of the reporting period in March 2003, the Rand had appreciated by 18%. This created concern about the job losses that could arise out of an increase in import competition. Therefore, during the period under review, the goals of progressively realising economic and social rights took place in the context of significant macro-economic volatility, inflation and an expanding government budget.

C) Key Interrelationships Amongst Economic and Social Rights

The Right to Land

The State was responsible for achieving progressive realisation of the right to land during the reporting period. The Commission demonstrates that there was a year on year improvement in land delivery performance by the State, especially through the Land Restitution and Land Redistribution sub-programmes. Improvements in rural tenure reform were less noticeable.

Between 2000 and 2001 there were 12 094 settled Restitution claims, while in February 2002 there were approximately 32 000 settled claims. By March 2003, there were 36 488 settled claims recorded. Although the majority of these claims were in the urban areas, settled rural claims show a substantial increase. The people working on the Land Redistribution for Agricultural Development sub-programme delivered 103 682 ha against a target of 81 555 ha for the year under review. Whereas the Department had targeted to benefit 3 601 people, the programme ended up benefiting 6 170. Concerning tenure reform, the State initially delivered 30 000 ha of land through 201 projects. Beyond that, the State is working towards bringing the Extension of Security of Tenure Act (ESTA) and Labour Tenants Act (LTA) together in the Consolidated ESTA/Labour Tenants Bill.

Throughout the report, the Commission reflects on the demand, voiced by landless people and others, that the pace of land redress is too slow and inattentive to vulnerable groups. The report recommends accelerating land reform to meet its new targets by relieving budgetary constraints and the associated problems of personnel shortages, lack of quality training and understandable communication; land acquisition; and improvements in monitoring and evaluation.

The Commission would also like to highlight that it was informed by the Department of Land Affairs that it was impossible to represent the racial and gender composition of land purchase transactions and reposessions, according to the size and value of land parcels.

The Right to Education

The right to education is analysed as a continuum of three bands of schooling- General Education and Training, Further Education and Training and Higher Education and Training. The State instituted measures to respect, protect, promote and fulfil the right to General Education and Training, and in the Commission's overall assessment, it succeeded in achieving progressive realisation of this right.

The Department of Education succeeded in ensuring that all targeted Early Childhood Development sites for children between the ages of five and six were operating. However, the Department acknowledges the challenge, which has budgetary implications, that only 13% of all children have access to the programme. In the context of a substantial increase in the rate of student enrolment in primary schools between 1994 and 2001, the National Department focused on further increasing access to General Education and Training through reviewing public school financing and the system of school fee exemptions. The report highlights the shortcoming that some schools and Provincial Departments of Education failed to make parents aware of the school fee exemption.

While progress was made in eliminating instances where learners are forced to receive education in environments that are not conducive to teaching and learning, the report emphasises that more needs to be done to address infrastructure backlogs, especially when it comes to water and sanitation. The Department also made progress in developing a redistribution model for personnel and operating expenditure that would achieve equality of teaching quality and equality of learning outcomes in the schooling system from 2003/2004 onwards. All stakeholders in education, including the SAHRC need to explore and come up with a definition of quality basic education which could be measurable and relatively easy to monitor.

Conditions in farm schools were identified as hinderance to progress in the realisation of the right to General Education and Training. The issue of street-children also has to be given some serious attention by all the relevant stakeholders. Amongst other recommendations to further observance of the right to General Education and Training, the report calls for better-published medium term strategies and improved spending on Adult Basic Education and Training. In the 2001 Census, 4,5 million people aged 20 years and older did not have a formal education and 4 million people had primary schooling only.

Most of the developments in the Further Education and Training band met the Constitutional requirement to respect, protect, promote and fulfil the right. *Dinaledi*, the programme that seeks to improve participation and performance of learners from historically disadvantaged backgrounds in Mathematics, Science and Technology (MST), reportedly surpassed its target of 10% of students enrolling for MST in its first two years of implementation. The development of Recognition of Prior Learning (RPL) is another development that contributes to the realisation of the right to Further Education and Training. RPL recognises non-formal and/or non-academic education. RPL also stands to maximise learning opportunities for those without formal and/or academic qualifications to acquire formal qualifications in Further Education and Training institutions, which must all be registered with the State.

Areas where the State fell short of its obligations to progressively realise the right to Further Education and Training include: insufficient public education on school fee exemptions and insufficient Learner Support Materials and/or their late delivery. The report also highlights that participation rates in education by girl learners were being negatively affected by girls' involvement in income generating activities.

While Higher Education and Training is not explicitly recognised as a right in the Constitution, it obviously depends on the learning outcomes achieved in General and Further Education and Training. Here, there seems to be room for improvement as the average graduation rate for university and technikon students is 15%; less than half the ideal average of 33%.

Key challenges associated with the Higher Education and Training band include assisting potential students with subject selection choices and career guidance at school and university level, as well as lowering the high costs of accessing higher education and applying to different tertiary institutions. The report recommends ensuring that admission requirements to tertiary institutions are transparent and fair, promoting indigenous languages as academic/scientific/legal languages, mobilising funds for bridging courses and improving access for mature and post-graduate students, including part time students.

The Right to Water

Ever since 2001 and the introduction of Regulations Relating to Compulsory National Standards and Measures to Conserve Water, the State instituted a national measure to fulfil the right to water by supplying 6000 litres of free, clean water, per household per month, otherwise known as Free Basic Water.

During the reporting period, approximately 1,6 million people gained access to improved piped water supplies through Department of Water Affairs and Forestry's Community Water Supply and Sanitation Programme. Approximately 65 thousand toilets facilities were constructed during the reporting period under the same programme, but it should be noted that these figures exclude the large number of sanitation facilities that were delivered as part of the State's housing programmes. Less than 530 000 households also benefited from water and sanitation projects through the Department of Provincial and Local Government's Consolidated Municipal Infrastructure Programme. Although the above indicates that the roll-out of water and sanitation infrastructure is proceeding towards the Department's medium delivery targets, the report raises concerns about the level of dysfunctional infrastructure and projects, especially in rural areas.

At the end of the reporting period in March 2003, access to Free Basic Water by poor people stood at 38% or approximately 12,2 million people. Access to Free Basic Water by non-poor households stood at close to 100% or approximately 14,2 million people. A large number of poor people (19,6 million) were still to receive their Free Basic Water allocation. Where Free Basic Water was not available, the average cost of 6 kilolitres (kl) was approximately R13 per month. The price for 6kl of life-line supply was highest in Limpopo province at approximately R19 per month. Gauteng and KwaZulu-Natal also had comparatively high average charges for life-line supplies where Free Basic Water services were not operational.

In order to remove these glaring inequities in Free Basic Water provision, the report calls for an urgent revision of the pricing system to include a significantly greater level cross-subsidisation from high volume water users to low volume users in the 0-6 kl range.

More support and funding is required to assist municipalities with capacity problems in implementing Free Basic Water. During droughts, local governments should ensure that Free Basic Water supplies for domestic users are assured and that a situation cannot develop where agricultural, mining and industrial users are allocated large volumes of water at similar prices to low-volume users.

The report describes some aspects of the devolution of domestic water quality monitoring and testing from Provincial Departments of Health to local municipalities and calls for rapidly providing sufficient funds for water quality monitoring to prevent serious disease outbreaks and illness.

The report recommends that the Department of Water Affairs and Forestry (DWA) should take a leading role in making sure that farm dwellers, residents near commercial farms and poor households in rural and urban areas access clean water and proper sanitation services. DWA should also ensure that it develops and implements a plan to address the specific problems of water access experienced by people living with HIV/AIDS.

The report suggests that monitoring bodies should be created at local level to effectively monitor the implementation of policies and laws aimed at fulfilling the right of access to water. The report warns that monitoring will only be effective if monitoring bodies from local, regional and national spheres work together. Where possible and when possible, the Free Basic Water allocation should be increased to cater for higher levels of domestic water consumption. A 50kl water allocation per household per month would bring South Africa's Free Basic Water allocation into the 'low level of health concern' range defined by the World Health Organisation.

The Right to Health Care

The report on the right to health care focuses on key developments in three key health programmes of the State (Health Service Delivery, Strategic Health Programmes and Administration). Although the policy and legislative measures developed in the fiscal year under review can be said to be "reasonable" in their conception, there remain large gaps in implementing them in a manner such that all the provinces, urban and rural peoples, rich and the poor have equal access to the same high quality of care.

The three most important, and universally acknowledged, indicators to measure the health status of a nation are Life Expectancy at Birth, the Maternal Mortality Ratio, and the Infant Mortality Rate. Life expectancy has fallen from 56 years in 1996 to 52,5 in 2002 and is projected to fall to 47 by 2005. The infant mortality rate has increased from 45 in 1998 to 59 in 2002. This means that more children under the age of one died in 2002 as compared to 1998. The under five-mortality rate has risen from 61 in 1998 to 100 in 2002. Similarly, the maternal mortality ratio shows a steady increase since 1998 and is estimated to be 150 per 100 000 live births. The National Department of Health, as well as independent researchers, have concluded that this is due to HIV/AIDS related deaths.

The single most important challenge that government faces is the one posed by the AIDS pandemic and the high incidence of opportunistic diseases such as tuberculosis. It is estimated that about one tenth of the population of the population is infected with the HI virus i.e. close to 5 million people. The number of AIDS orphans is estimated to be one million. In a landmark case instituted by Treatment Action Campaign against the Minister of Health, the Constitutional Court, in 2002 confirmed the finding of the High Court that

government's policy to limit Nevirapine to research and training sites was in "breach of the States obligations under section 27(2) read with 27(1)(a) of the Constitution." The report recommends that the Comprehensive National Aids Plan should be rolled out effectively in all the provinces so as to meet targets and timelines in order to substantially reduce new infections and to prolong the lives of those already infected.

In spite of the fact that policies and programmes directed at improving the health status of the country have been put in place such as the Integrated Management of Childhood Illnesses, the AIDS pandemic continues to be the single most cause of death in South Africa. This has placed an enormous strain on an already overburdened health system and undermines the efforts made by the State. This is compounded by the fact that the other economic and social rights, which contribute substantially to the health status of a nation, are also not fully enjoyed by the vast majority of poor South Africans due to the huge backlogs inherited from the past. Inadequate housing, poor sanitation, overcrowding, lack of clean drinking water, lack of efficiently run social services, insufficient nutrition and health education exacerbate the diseases of poverty. Moreover, a household that is affected by AIDS contributes to depleting the financial resources available to the family, thereby increasing the level of poverty.

government developed legislative and other measures to comply with its constitutional obligations in terms of section 7(2) of the Constitution. However, despite national policies and programmes, which, in the main comply with international standards and targets, the health care system has not been able to successfully deliver quality health care on an equitable basis in all the provinces. Provinces do not spend the same amount per capita on health care delivery, and there is a serious lack of managerial capacity in the health system. The biggest challenge facing the efficient running of the health system is training managers to operationalise efficient systems especially for running clinics and hospitals where many problems have been identified. Efficient management systems in conjunction with effective engagement with labour should be operationalised with immediate effect in the public health sector so as to ensure that hospitals and clinics run well.

The report also recommends that there is a need to increase efforts in promoting preventative health measures by the State as well as by non-state actors. Programmes and policies should also be put in place to address the needs of the poor and vulnerable members of society, including a National Health Insurance System. Inequities in the health system such as intra- and inter-provincial health expenditures, access to clinics and hospitals, number of doctors, specialists, and nursing staff need to be addressed so as to give meaning to the constitutional right to universal and equal access to everyone. Finally, Departments of Health are strongly advised to improve their monitoring, evaluating, and reporting systems

The Right to Social Security

The Constitution provides that everyone has a right to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. The number of social assistance beneficiaries increased dramatically by 966 311 people from April 2002 to the end of March 2003, mostly as a result of increased registration for Child Support Grants for children up to the age of seven. By the end of March 2003, 5,6 million people were beneficiaries of social assistance, which mostly comprised of child support grants (2,5 million people), old age pensions (2 million people), disability grants (897 050 people) and foster care grants (133 309 people). The most rapid increases in uptake of social grants took place in Gauteng, Free State, KwaZulu-Natal, Mpumalanga and

Limpopo. Take up rates were considerably lower in the Northern Cape, North-West, Eastern Cape and Western Cape.

Most provincial departments indicated that the allocated budget was not enough and that numbers of grant beneficiaries were constantly increasing, resulting in overspending for social security. However, the delivery of social services has not been efficient in some parts of the country as a result of administrative problems, lack of documentation as barriers to accessing grants, poor conditions at pay points, as well as corruption and maladministration.

As a result of rapid inflation in the cost of basic goods bought by the poor, in 2002/2003, the State moved swiftly to implement above inflation related increases in social grants. The old-age pension was increased by R20 to R640, the child-support grant increased by R10 to R140, the grant in aid increased from R120 to R130, the foster-care grant from R450 to R460, and the care dependency grant from R620 to R640.

The National and Provincial Departments of Social Development spent 90% of the R49 million allocated to the HIV/AIDS (home based/community based care) programme. The Home/Community Based Care programmes, through the collaborative work of government, non-governmental organisations, including faith-based organisations, and communities have benefited 29 612 children orphaned or vulnerable to HIV/AIDS by the end of March 2003. The programme reached 75 000 children orphaned or vulnerable owing to HIV/AIDS since its inception in 2000.

The State also instituted new measures to further the right to social security, including disability assessment panels, a social relief of distress policy and the implementation of the National Food Emergency Scheme/Programme. Figures of the number of households that were assisted with food parcels in the pilot phase of the National Food Emergency Programme from December 2002 to the end of March 2003 range from 60 089 to 149 779.

The social security system at present does not cater for everyone and not everyone in need of social assistance is afforded such assistance. This is especially so for children in child headed households and children who live in the streets who sometimes engage in exploitative forms of labour. Some parents also fail to provide and take care of their children and put strains on the maintenance and social assistance systems.

The report recommends that the Department of Labour should take the International Labour Organisation's Decent Work for All Strategy forward in South Africa. It is also recommended that the relevant organs of State achieve better regulation of the insurance, health and maintenance systems. Particular attention should be paid to the coverage of old age pensions for workers in non-formal employment. The Department of Social Development is encouraged to continue fostering collaboration with all stakeholders, such as other government departments, Faith Based Organisations and Non-Governmental Organisations. The Basic Income Grant should continue to be considered as a viable option for addressing poverty in the country, especially amongst people of working age. The proposal to extend social assistance to all children in need (up to the age of 18), should also be kept alive.

The Right to Food

The report concludes that many people, and children in particular, had their right to food violated during the reporting period as they lost access to affordable food due to high prices and/or unreasonable plans devised and supervised by government. During the reporting period, 101 152 children were admitted to hospital with severe malnutrition and it was not possible for the Commission to state how many children died of malnutrition. However, it is alarming that case fatality rates for severe malnutrition in two under-resourced hospitals in the Eastern Cape ranged from 21% to 38%.

The report finds the National Department of Health's targets for reducing malnutrition to be unreasonable in their conception because the targets for 2000 and 2005 were virtually identical. The report also finds two elements of the Primary School Nutrition Programme to be unreasonable in their conception.

The first issue concerns the reduced allocation of resources to the programme in 2002/2003 as compared to 2001/2002. In 2001/2002 the total cost of the school food "meal" ranged from approximately 99 cents to R2.10. In 2002/2003, the maximum budgeted resource available per targeted learner per day was less than 67 cents. This is clearly an unreasonable set of parameters for the programme to be improved to meet the higher standards set by Cabinet.

The second element of the programme that was unreasonable was the reduction in the targeted number of children who should benefit from the programme. In the context of increasing numbers of children enrolled in schools, the Primary School Nutrition Programme did reach 4,5 million children in grades R to 7, however this was 151 615 children less than the year before. The drop in the number of learners who were reached is connected with government reducing its target from 5,4 million learners in 2001/2002 to 4,9 million learners in 2002/2003 as well as rapid increases in the cost of food procured for the programme. A three month gap in the implementation of the programme in the Eastern Cape also reduced access to the programme.

Non-State actors appear to have fallen short in their observance of their positive obligations to fulfil the right to food. As one example, the Yiyo Lena sifted maize relief programme introduced by a group of companies is alleged to have sold relief maize packs at a 20% discount, despite that fact that the companies announced that the programme would entail a 50% discount.

High basic food prices during the reporting period, were partly attributable to inadequate safeguards on the South African Futures Exchange, where maize prices are formed. High prices for maize were passed on to low-income consumers, who could ill afford such dramatic basic food price increases for such a sustained period of time. The potential for market manipulation should have been prevented by the Johannesburg Securities Exchange when allegations of abuse were first signalled in 2002. The report identifies that there are weaknesses in the State's observance of its obligation to protect against fraud, unethical behaviour in trade and contractual relations.

There were some signs of improvement in the State's delivery of production support to emerging farmers and people who grow their own food. For example, the Comprehensive Farmer Support Package was instituted during the reporting period to assist land reform beneficiaries. However, it was implemented in some provinces only.

The LandCare programme, which is one of the major production support programmes from the National Department of Agriculture, was heavily underspent at 65% of the total conditional grant to provinces. There is also a significant gap in production support for rural restitution beneficiaries.

It was found that very few Provincial Department's of Agriculture were operating well funded programmes designed specifically to provide grants or revolving loans to support increased access by small scale and emergent farmers to production and/or marketing related infrastructure. Production support materials and learning support materials that are relevant to resource to poor farmers in water scarce areas were also not readily available.

On the whole, the report determines that the State absorbed the heavy burden of duty to achieve the progressive realisation of the right to food as expeditiously as possible, within its available resources. However, there was a crucial weakness in the measures to protect the right to food from being violated by non-State actors or third parties that need not be repeated in future.

The report suggests that there is a need for greater care in the preparation of strategic and financial planning targets so that they inspire civil society to marshal their resources in support of the progressive realisation of the right. The report recommends: public education to raise awareness of malnutrition, rolling out the Integrated Food Security Strategy at a provincial level, improving food safety, achieving better regulation of the food industry through State procurement, accelerating agrarian reform, and communication policy and legislative developments more effectively. Finally, the report supports the call for government, labour, community and business representatives to negotiate an agreement at the National Economic Development and Labour Council (NEDLAC) to ensure the right to food and quality job creation in the food industry.

The Right of Access to Adequate Housing

In order to fill some gaps in the housing policy framework, the State identified medium density housing, rental housing, social housing and emergency housing as the key policy priorities for 2002/2003. Emergency, medium density, rental and social housing are part and parcel of addressing inequalities in access to transport and the legacy of racial segregation. The Emergency Housing Policy Framework was conceptualised as a result of the *Grootboom* judgment and aims to assist groups of people that are deemed to have urgent housing problems, owing to circumstances beyond their control (e.g. disasters, evictions or threatened evictions, demolitions or imminent displacement or immediate threats to life, health and safety). The report highlights that it was not clear whether the Emergency Housing Policy should also cover people living in informal settlements, because they are living in intolerable circumstances. Social Housing projects demonstrate that socially, environmentally and sunshine conscious design principles can make a difference to the quality of State subsidised housing.

The State reported on measures to protect the right to housing in the form of the Prevention of Illegal Eviction from Occupation of Land Amendment Bill and the commencement of the Home Loan and Mortgage Disclosure Act 63 of 2000. With a view towards curbing discriminatory practices, the Act compels financial institutions to disclose information in their financial statements on home loan patterns according to categories of persons and geographic areas (both of which may be prescribed). The Community Reinvestment Bill confirmed the State's intention to increase private sector investment in the lower end of the housing market. The report highlights that the State

was also attending to some aspects of the Housing Act 107 of 1997, as amended, in order to ensure that the Act, and its implementation, did not violate an individual's right to property in terms of the Constitution.

In terms of on-going policies and programmes, in 2002/2003, the State reported 203 288 houses completed or under construction, whilst the State approved 519 498 subsidies to households with a joint monthly income less than or equal to R3 500, or R1 500 if the house was built under the apartheid system. By the end of 2002/2003, the State reported that over 1,4 million houses had been delivered since 1994, whilst the number of families without houses (i.e. dwellings in backyards, informal dwellings, backyard dwellings in shared properties and caravans/tents) was reflected as 2 399 825- from the 2001 Census. The State also increased the subsidy amounts for the housing programme to keep pace with inflation and maintain the well-known quality and size of housing. Sixty-three projects were also completed as part of the Human Settlement Redevelopment Programme in order to correct imbalances and dysfunctionalities in existing settlements that cannot be funded through the housing subsidy scheme (e.g. sports facilities, business hives, labour exchanges, cemeteries, parks and ablution blocks).

There was under expenditure on housing delivery amongst many provincial departments responsible for housing. Reporting on the constraints associated with underspending was not complete, but included the following in some cases: failure to secure suitably located land, delays in tender adjudication, municipalities failing to submit business plans, delays in the National Department approving projects, weaknesses and staff shortages at municipal level, incompetence, corruption, political intervention and nepotism, slow delivery associated with the People's Housing Process and delays at the Deeds Office.

Comparing performance in relation to targets was a problem in that provincial information was reported in the format of the number of units completed *or* under construction. Nevertheless, Gauteng and Limpopo provinces stand out as the only provinces to show a reduction in units, whether complete or under construction, from 2001/02 to 2002/03. The Gauteng Department of Housing reported delivering 59% of the target in the incremental housing programme and 39% of the target in the Social Housing programme. A Customer Support Service in the province acknowledged 83 714 queries and responded to a further 11 774 by letter.

According to the National Department of Housing, in 2002/2003, 6 469 houses did not conform to the Department's construction and safety standards. The National Home Builders Registration Council's (NHBRC) Warranty Scheme was instituted to provide assurance to beneficiaries that houses built and financed through the housing subsidy scheme are of an adequate quality. After trying to resolve disputes about the quality of construction, a housing subsidy beneficiary can forward complaints to the NHBRC. However, the report highlights that public education is required to empower consumers to identify quality problems and make use of the complaint procedures of the NHBRC. The Mpumalanga Department of Housing also reported that building works inspectors from provincial government and local government monitored the work of contractors.

The report makes one urgent recommendation, namely: to establish the dedicated fund for acquiring well-located land for low-cost housing. Other recommendations include reducing policy incoherence and institutional fragmentation, improving monitoring and evaluation, interpreting the Peoples' Housing Process as a route for strengthening culturally adequate housing, creating an informed and supportive environment for whistleblowing, and ensuring effective participation in the delivery of housing. Specific

attention is drawn to the plight of farmworkers and vulnerable groups, especially HIV/AIDS orphans and People with Special Needs.

The Right to a Healthy Environment

Section 24 of the Constitution establishes the right to environment in order to ensure the health and well-being of present and future generations. At its core, the right to environment aims to grant this benefit to everyone in South Africa, not just to the few. Although, translating this vision of the benefit of environmental health into reality has become increasingly complicated, ensuring that there are no violations of this right is as urgent as any violation of other rights in the Bill of Rights.

Analysts of data from South Africa's Global Atmosphere Watch station at Cape Point contend that continued emissions of greenhouse gases are cause for concern. Like many countries, South Africa is sensitive to global climate change and there are also occasions, especially in major urban areas, when more localised air pollution becomes a health threat.

By way of illustration, the Johannesburg *State of the Environment Report 2003* indicates that “while in many parts of Johannesburg, air quality is within acceptable standards, approximately 20% of the City, particularly dense settlements and lower income townships, experience severe air pollution, with ambient air pollution levels exceeding acceptable guidelines by approximately 20-30% particularly during winter when temperature inversions prevent emissions from dispersing.” The report goes further to state that “levels of particulate matter in certain townships can exceed the World Health Organisation standards by as much as 250% in winter.”

Progress in the realisation of the right to environment could not be very well monitored and observed by the Commission during the year under review because annual progress reports in terms of section 11 of the National Environmental Management Act 107 of 1998, were inaccessible at the time of writing. These progress reports should contain detailed information on the implementation of measures instituted to ensure the right to environment.

Nevertheless, the Commission did observe the growing influence of the Committee for Environmental Co-ordination through an interpretation of its review, and subsequent consolidation, of Environmental Implementation Plans and Environmental Management Plans submitted by relevant organs of State. These reports contain the planned and *aligned* outputs of national and provincial departments with an impact on, or management function over, aspects of the right to environment. The Commission also recognises that some Environmental Co-ordinating Committees were established at the provincial sphere, also for the purposes of alignment and co-operative governance.

Progress has been made, through the courts and other avenues, towards realising the procedural aspects of the right to environment (access to information, participation in decision-making processes, redress and remedy). The report includes several examples of objections and court applications lodged by Non-Governmental Organisations, with a view towards safeguarding environmental health in low-income areas. Despite these opportunities to access information and participate in decision making, some remedies for old violations could not be realised without concerted action on the part of the State. One example, is the case of workers with mercury poisoning, which first occurred many years

ago. In March 2003, Thor Chemicals was served with a R60 million toxic chemical clean-up directive by the State.

On the substantive issue of waste management and pollution control, what was reported by government to the Commission fell short of what was expected in terms of the strategic objectives of the policy and strategy for pollution and waste management. The report highlights that there is still no clear understanding among the different mandate holders for this function of what they are required to do and as a result, implementation was not as effective as it could be. Having said this, there were positive developments during the period under review, including the introduction of waste buy-back centres which address brown issues and could assist in strengthening the bargaining power of the very low income people who do the hard work of collection.

On the issue of Air Quality, the report acknowledges that progress was made in the Southern Industrial Basin through the focused action of the State and Community Based Organisations (CBOs) in linking asthma in school children to emissions, however there is an urgent need for national legislation to institute mechanisms and standards to effectively protect against pollution that threatens health and well-being, possibly including pollutant release and transfer registers.

Several new control measures were introduced to manage water pollution, including the second draft of the National Water Quality Management Framework Policy and the Waste Discharge Charge System. The Working for Water programme succeeded in protecting and preventing against water loss due to alien invasive plant species, however it was not clear how much of this work focused unfairly on commercial farmlands and not on areas inhabited by vulnerable sections of the population.

Most of the work by the State on inland as well as marine and coastal biodiversity and conservation was reasonable in as far as it related to tourism and the economic development of the country.

The report highlights that the challenges facing South Africa in terms of the right to a healthy environment include: allocating sufficient resources for progressive realisation of the right for the benefit of vulnerable groups; educating and training communities; ensuring that proper implementation systems are in place; ensuring effective co-operative governance; operating proper monitoring and evaluation systems.

The report recommends that while most policies and laws are in place or about to be instituted, there should be a quantum shift in focus towards implementation of measures to further the right to environment for vulnerable groups in a more decentralised way. Provincial government and local government should be resourced to concentrate their energies on implementation, in association with community based organisations that have already developed innovations to further the right, sometimes in the face of extreme resource scarcity.

The State has made valuable contributions to promoting the right to environment through for example, the “Bontle ke Batho” or the clean schools, wards and towns campaign; however, organs of State could do more to ensure that their own internal operations reflect implementation of the right to environment. For example, the Council for Scientific and Industrial Research (CSIR) implemented International Standards Organisation 14001 standards for handling and disposing of its own hazardous waste. This initiative by an organ of State seems to have afforded the CSIR the opportunity to gain some capacity and

insight, which could be applied to other relevant contexts in the public or private sector within the South Africa.

The report also recommends that monitoring and evaluation systems need to be simplified where possible and improved. Annual progress reports in pursuit of targets and plans laid down in Environmental Implementation Plans and Environmental Management Plans should include a focus on the substantive aspects of the realisation of the right for vulnerable groups. The contents of the reports should also be widely communicated so as to avoid conflict and encourage effective participation. The Committee for Environmental Co-ordination could also be complemented by the National Environmental Advisory Forum (NEAF) envisaged in the National Environmental Management Act 107 of 1998. This provision to encourage participation should be effected without delay.

D) Protocols and the Report Production Process

The production process for this report began with the SAHRC sending questionnaires, which are called protocols, to various organs of State for their comment in May 2003. The Commission then took some time to revise the protocols, which were resent to all relevant organs of State for comment and suggestions in June 2003. The response from relevant organs of State was not satisfactory; with the Department of Housing (Gauteng Province), the Department of Land Affairs and the Department of Water Affairs and Forestry being the only organs of State to respond. However, the Commission acknowledges that further work is required, in the next reporting cycle, to ensure that the protocols are improved for all spheres of government and parastatals.

The final protocols were sent to various organs of state (national and provincial government, parastatals, metropolitan and local councils) in July 2003, as mandated by section 184(3) of the Constitution. In future, the Commission will pay more attention to smaller municipalities by focusing field research on the implementation of programmes and projects at a local level.

The first deadline for the release of this Report was in December 2003. However, the Commission had major problems in getting timeous responses from organs of State and as a result, the Commission took a decision to subpoena several departments and postpone the release of the Report until sufficient information had been received (see summarised list overleaf).

SPHERE	INSTITUTION	DATE RESPONSE RECEIVED
2 - Provinces	GAU Social Services and Population Development	21 August 2003
1 - National	NATIONAL Labour	29 August 2003
2 - Provinces	EC Health	29 August 2003
2 - Provinces	WC Agriculture	29 August 2003
2 - Provinces	LIMPOPO Agriculture and Environmental Affairs	31 August 2003
2 - Provinces	FS Health	1 September 2003
2 - Provinces	NW Health	1 September 2003
2 - Provinces	WC Social Services	1 September 2003
2 - Provinces	EC Education and Training	5 September 2003
2 - Provinces	GAU Health	5 September 2003
2 - Provinces	KZN Agriculture and Environmental Affairs	9 September 2003
4 -Parastatals	PARASTATAL Rand Water	9 September 2003
2 - Provinces	KZN Traditional and Local Government	10 September 2003
2 - Provinces	MP Local Govt and Traffic	10 September 2003
2 - Provinces	NW Education	10 September 2003
1 - National	NATIONAL Land Affairs	12 September 2003
2 - Provinces	FS Social Welfare	12 September 2003
2 - Provinces	GAU Housing	12 September 2003
2 - Provinces	NC Health	12 September 2003
2 - Provinces	NC Social Services and Population Development	12 September 2003
1 - National	NATIONAL Agriculture	15 September 2003
1 - National	NATIONAL Water Affairs and Forestry	15 September 2003
2 - Provinces	EC Agriculture and Land Affairs	15 September 2003
2 - Provinces	FS Education	15 September 2003
2 - Provinces	GAU Education	15 September 2003
2 - Provinces	MP Housing and Land Administration	15 September 2003
2 - Provinces	WC Education	15 September 2003
2 - Provinces	WC Environmental Affairs and Development Planning	15 September 2003
2 - Provinces	WC Health	15 September 2003
2 - Provinces	WC Housing	15 September 2003
2 - Provinces	NC Agriculture Conservation and Environment	15 September 2003
2 - Provinces	KZN Health	16 September 2003
1 - National	NATIONAL Education	18 September 2003
2 - Provinces	MP Health	18 September 2003
2 - Provinces	NW Agriculture, Conservation and Environment	23 September 2003
2 - Provinces	MP Social Services and Population Development	25 September 2003
3 -Metropolitan Councils	METRO Greater Tswane Metropolitan Council	2 October 2003
3 -Metropolitan Councils	METRO Nelson Mandela Metro Council	2 October 2003
1 - National	NATIONAL Correctional Services	3 October 2003
1 - National	NATIONAL Social Development	3 October 2003
2 - Provinces	LIMPOPO Health and Welfare	3 October 2003
2 - Provinces	EC Social Development	3 October 2003
1 - National	NATIONAL Health	10 October 2003
2 - Provinces	GAU Agriculture, Conservation, Environment and LandA	10 October 2003
4 -Parastatals	PARASTATAL Medicines Controls Council	10 October 2003
2 - Provinces	FS Local Govt and Housing	29 October 2003
1 - National	NATIONAL Housing	30 October 2003
1 - National	NATIONAL Provincial and Local Government	30 October 2003
1 - National	NATIONAL Environmental Affairs and Tourism	31 October 2003
4 -Parastatals	PARASTATAL Agriculture Research Council	31 October 2003
1 - National	NATIONAL Minerals and Energy Affairs	3 November 2003
2 - Provinces	KZN Education and Culture	3 November 2003
2 - Provinces	EC Housing, Local Government and Traditional Affairs	4 November 2003
2 - Provinces	GAU Development Planning and Local Government	4 November 2003
2 - Provinces	LIMPOPO Education	4 November 2003
2 - Provinces	MP Agriculture, Conservation and the Environment	4 November 2003
2 - Provinces	NC Local Govt and Housing	4 November 2003
2 - Provinces	WC Planning and Local Govt	4 November 2003
4 -Parastatals	PARASTATAL National Education Financial Aid Scheme	4 November 2003
2 - Provinces	NW Developmental Local Government and Housing	5 November 2003
3 -Metropolitan Councils	METRO Eastrand Metropolitan Council	5 November 2003
4 -Parastatals	PARASTATAL Umngeni Water	5 November 2003
3 -Metropolitan Councils	METRO Cape Town Metro Council	6 November 2003
4 -Parastatals	PARASTATAL Medical Research Council	6 November 2003
2 - Provinces	FS Agriculture	7 November 2003
2 - Provinces	KZN Welfare and Pensions	7 November 2003
2 - Provinces	LIMPOPO Local Govt and Housing	7 November 2003
2 - Provinces	MP Education	7 November 2003
2 - Provinces	NC Education	7 November 2003
4 -Parastatals	PARASTATAL National Housing Finance Corporation	7 November 2003
2 - Provinces	KZN Housing	14 November 2003
3 -Metropolitan Councils	METRO eThekweni Metropolitan Council	17 November 2003
4 -Parastatals	PARASTATAL Landbank*	17 November 2003
4 -Parastatals	PARASTATAL Council for Scientific and Industrial Council	18 November 2003
2 - Provinces	FS Environmental, Tourism and Economic Affairs	19 November 2003
3 -Metropolitan Councils	METRO Greater Johannesburg Metropolitan Council	17 December 2003
2 - Provinces	NW Social Services**	

_____ First deadline

_____ Extended deadline

_____ Subpoena hearings begin

_____ Subpoena hearings end

* Extension granted as a result of communication problems

** No subpoena served, a letter explains the breakdown in communication

Most organs of State submitted their reports before they were meant to appear at a subpoena hearing. However, the North West Department of Social Services, Arts, Culture and Sport did not provide a response to the Commission as a result of problems with network cabling and the resignation of the personal assistant to the Acting HoD. The Department submits that it was not out of irresponsibility and deliberate disregard of the law that the Commission did not receive a report from the Department.

In order to improve the quality of the information, analysis and recommendations in the reports and to forge closer and better working relationships with government and non-governmental entities, a set of draft reports were released for comment to government and civil society before a National Input Workshop on 27-28 January 2004. Comments made at the workshop, and in writing, have been considered by each report writer.

A set of second draft reports were then made available to the Director General of the relevant national department in February 2003 to correct any remaining problems with factual information. Responses were received from the following departments: Water Affairs and Forestry, Minerals and Energy, Provincial and Local Government, Health, Social Development, Education, Land Affairs, and Housing. The final reports were also reviewed intensively within the Commission before being published.

E) Conclusion

One of the concerns acknowledged by the Commission about the monitoring process so far is that it still relies heavily on reports from government.

Furthermore, even though the Bill of Rights applies vertically and horizontally and binds State entities and non-State entities, the Commission has some capacity problems in extending its mandate to non-State entities, especially big corporations.

In the next reporting cycle, the Commission will place more emphasis on conducting its own primary research in addition to improving on the existing protocols for each right and making better use of annual report information as soon as it becomes available.

ACRONYMS

ABET	Adult Basic Education and Training
CEPD	Centre for Education Policy Development, Evaluation and Management
CHE	Council on Higher Education
CTP	Committee for Technikon Principals
DoE	Department of Education
DoH	Department of Health
DoL	Department of Labour
ECD	Early Childhood Development
ECDE	Eastern Cape Department of Education
ELSEN	Education for Learners with Special Educational Needs
ERP	Education Rights Project
FET	Further Education and Training
FSDE	Free State Department of Education
GDE	Gauteng Department of Education
GET	General Education and Training
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
KZNDEC	KwaZulu-Natal Department of Education and Culture
LDE	Limpopo Department of Education
LSMs	Learner Support Materials
MDE	Mpumalanga Department of Education
MST	Maths, Science and Technology
MTEF	Medium Term Expenditure Framework
NCS	National Curriculum Statement
NER	Net Enrolment Ratio
NHEIAS	National Higher Education Information and Applications Service
NPHE	National Plan for Higher Education
NQF	National Qualifications Framework
NSFAS	National Student Financial Aid Scheme
NSNP	National School Nutrition Programme
NWDE	North West Department of Education
OBE	Outcomes-Based Education
PEDs	Provincial Education Departments
RNCS	Revised National Curriculum Statements
RPL	Recognition of Prior Learning
SAHRC	South African Human Rights Commission
SASA	South African Schools Act 84 of 1996
SCEs	Senior Certificate Examinations
SETAs	Sector Education and Training Authorities
SGBs	School Governing Bodies
UDHR	Universal Human Rights Declaration
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICESCR	United Nations International Covenant on Economic, Social and Cultural Rights
WCDE	Western Cape Department of Education

THE RIGHT TO GENERAL EDUCATION AND TRAINING - EXECUTIVE SUMMARY

Constitutional Obligations

The right to education is entrenched in the Constitution of the Republic of South Africa, Act 108 of 1996 as well as in the international and regional human rights instruments. The international human rights instruments in which the right to education is enshrined comprise the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights, the Convention on the Rights of the Child. The African Charter on Human and People's Rights is the regional instrument in which the right to education is also enshrined.

Section 29(1) of the Constitution guarantees everyone the right -

(a) to a basic education, including adult basic education; and

(b) to further education, which the State, through reasonable measures, must make progressively available and accessible.

Subsection 2 guarantees everyone the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. It goes further, adding that in order to ensure the effective access to, and implementation of, this right, the State must consider all reasonable educational alternatives, including single medium institutions, taking into account –

(a) equity;

(b) practicability; and

(c) the need to redress the results of past racially discriminatory laws and practices.

Subsection 3 guarantees everyone the right to establish and maintain, at their own expense, independent educational institutions. However, such independent institutions would have to ensure that they do not practise racial discrimination; are registered with the Department of Education (DoE); and that their standards are not inferior to those at comparable public educational institutions. It is important to note that subsection 4 states that independent educational institutions are not precluded from State subsidies.

Progress in the Realisation of the Right to Education

During the reporting period, the State introduced a number of policy and legislative measures in its quest to realise the right to education. Legislative developments in the General Education and Training sector were mainly in the form of amendments that were made to the South African Schools Act (SASA)

April 2002 – March 2003

84 of 1996, as well as an amendment made to the Employment of Educators Act 76 of 1998.

The following are some of the policy measures introduced during the reporting period. They comprise the following: National Policy on the Management of Drug Abuse by Learners in Public and Independent Schools and Further Education and Training Institutions, School Safety Programme, Regulations to Prohibit Initiation Practices in Schools and Teacher Development.

Respect

The National Policy on the Management of Drug Abuse by Learners in Public and Independent Schools and Further Education and Training Institutions meets the constitutional obligation to respect the right to education. By introducing a policy on drug abuse in learning institutions, the State is being proactive in ensuring that the right to education is not jeopardised owing to drug abuse by both learners and educators.

An amendment was made to section 5 of SASA. The amendment seeks to conform to the Constitutional Court's ruling in the *Harrison* case that the Minister of Education does not have the powers to limit admission age requirements of learners to public schools. This judgment led to a situation whereby underage learners could be registered in public schools if they were school-ready.

Protect

The introduction of the Schools Safety Programme and Regulations to Prohibit Initiation Practices in Schools contribute towards the protection of the right to education as these prevent the violation of the right by any third party.

An amendment was made to section 8 of SASA. New subsections (6, 7, 8 and 9) were inserted after subsection 5 of section 8 of SASA. The amendment provides due process in safeguarding the interests of the learner and any other party involved in disciplinary hearings.

Promote

It was found that some schools expel learners for not paying school fees. This is a violation of the learners' right to education since these learners miss classes as a result of the expulsion for the non-payment of school fees. It therefore, still stands that PEDs have to take active steps to ensure that parents are aware of the school fees exemption thereby promoting the right to education. While the State has introduced school fees exemption for parents who cannot afford to pay the school fees, some schools have not been willing to make parents aware of the exemption. In this case the problem lies with schools that are not passing the message on to parents. Some schools still do not inform parents about school fees exemption.

Fulfil

Despite the lack of classrooms and other related facilities in other schools (for instance, in the Free State province in 2002 30 schools were housed under unacceptable conditions), the provision of classrooms and related facilities to those schools that initially did not have these, is another positive development that also contributes towards the fulfillment of the right to education as it enables learners and educators to do their work better in improved conditions. The Teacher Development Programme could as well contribute to the realisation of the right to education if it indeed becomes a success, that is, if most under-qualified/unqualified educators receive training.

The amendment that was made to the Employment of Educators Act contributes towards the fulfillment of the right to education. The amendment makes it possible for PEDs to appoint educators who have had a break in service without a School Governing Body's recommendation. This move is helpful particularly to rural schools which in most instances do not have qualified educators since most of them prefer teaching in urban areas to rural areas.

Overall Assessment of the Right to Education

Given the fact that most of the policy and legislative measures the State introduced during the reporting period conform to the constitutional obligations as well as to the *Grootboom* judgment, a conclusion may be reached that the right to education was partially realised. The *Grootboom* judgment, which was on housing but also had implications for other socio-economic rights, has three key elements to it. These are: the reasonableness of the measures adopted by the State to realise socio-economic rights; the progressive realisation of socio-economic rights; and the realisation of socio-economic rights within available resources. None of the measures pertaining to the right to education adopted by the State during the reporting period were brought before a court as a result of it violating the Constitution or the spirit of the *Grootboom* judgment.

However, there are shortcomings in the implementation of some policy measures. One example is the school fees exemption. Whilst the introduction of the school fees exemption was a reasonable action by the State to ensure that no school-going child was prevented from attending school as a result of the school fees, some schools failed to make parents aware of the exemption. According to the *Grootboom* judgment, a programme that is reasonable in its conception but otherwise not reasonable in its implementation may not pass the test of reasonableness. Therefore, in conjunction with schools PEDs have to ensure that schools do make parents aware of the school fees exemption for the poor. According to an official from the Gauteng Department of Education the poverty line to be used is R450 per learner. However, the official emphasised the point that the issue was still being discussed.

Furthermore, the *Grootboom* judgment makes it clear that, in its quest to realise socio-economic rights, the State should examine legal, administrative, operational and financial hurdles and, where possible, lower these over time. By

introducing the school fees exemption, the State was making a reasonable attempt to progressively realise the right to education by ensuring that the poor were not excluded from enjoying the right to education.

As has already been pointed out above, the attempt is being failed by schools' failure to make parents aware of the exemption. As to the availability of resources in as far as the school fees exemption is concerned, there has not been any indication that the State lacks, in this case, the financial resources.

Also the lack of classrooms and related facilities in some schools is being addressed by the State through donor-funding mobilisation, amongst other things. Again, the right is being progressively realised. In this case, the State has made an indication that financial resources are a major challenge in ensuring that all schools have access to decent facilities required for their education. Some of the developments contained in the body of the report do point to a number of achievements that took place during the reporting period. For example, the fact that the DoE succeeded in ensuring that all the targeted Early Childhood Development sites were operating. The Department also increased the net enrolment ratio in the General Education and Training sector.

There were other problematic areas that also hindered progress in the realisation of the right to education. These include, amongst others, the conditions of farm schools whereby in some instances it was found that school-going children were not attending school because they were working on farms as a result of poverty and parents not being informed in some schools about the school fees exemption.

Recommendations

These are some of the main recommendations made in contributing to the realisation of the right to education:

- The DoE, Department of Labour (DoL) and the Department of Social Development need to work together to help address the situation in farming communities. Each of the departments has a role to play to alleviate the conditions in farming communities. Both the DoE and the DoL need to educate farming communities about their rights – workers' rights and the right to education. The Department of Social Development would have to address the poverty aspect of farming communities where possible.
- Better-published medium term strategies and improved spending on ABET are issues that need the State's immediate attention especially when about 4,5 million people aged 20 and older do not have an education, and about 4 million people have primary schooling only.
- The DoE should play a leading role in educator post-provisioning if equity of quality in education is to be achieved.

- ECD intake has to improve from the reported 13% to benefit other children who are currently not benefiting from the programme. This obviously has budgetary implications.
- The School Fees Exemption mechanism has to be transparent to benefit all the deserving. It is also equally important that the State augment the budget for those schools that exempt learners from paying the school fees.
- Other provinces should follow on the example of the Gauteng Department of Education (some taxis are used to advertise the policy) to make parents aware of the school fees exemption where fees are charged. Whilst PEDs can do much to advertise school fees exemption, the onus is on schools to actively make parents aware of the policy.
- It is the responsibility of each PED to inform schools what a section 21 status means to a school. There also has to be communication between section 21 applicants and PEDs since some PEDs do not respond to applicants on their section 21 applications.
- The State should strictly enforce section 3(5) of SASA to ensure that parents or guardians of those children that are of school-age but are not attending school do eventually attend school. Both parents and the State should work as partners in realising the right to education, especially with regards to compulsory schooling.
- All stakeholders in education, including the SAHRC need to explore and come up with a definition of quality basic education which could also be measurable and thus easier to monitor.
- There is a need to update the statistics for child and care dependency grants since the current statistics (captured in the Education Statistics in South Africa at a Glance in 2001 published by the DoE in June 2003) for this vulnerable group of learners is now outdated. This requires that relevant government departments such as the Department of Social Development exchange information with the DoE for consideration in its budgeting and planning for better provisioning of education.
- The issue of street-children has to be given some serious attention by all the relevant stakeholders such as the civil society, the DoE and the Department of Social Development to ensure that street-children attend school.

GENERAL EDUCATION AND TRAINING

1 INTRODUCTION

1.1 Meaning and Content of the Right

Education is entrenched in the Constitution¹, as well as in regional and international human rights instruments, as a socio-economic right. For example, education is enshrined in international instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR),² the Convention on the Rights of the Child (CRC).³ The African Charter on Human and People's Rights⁴ is one regional instrument in which the right to education is entrenched.

The United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) bases its definition of the right to primary education on the interpretation of the term "primary education" from the World Declaration on Education for All, and that is: "The main delivery system for the basic education of children outside the family is primary schooling. Primary education must be universal, ensure that the basic learning needs⁵ of all children are satisfied, and take into account the culture, needs, and opportunities of the community".

While primary education is not synonymous with basic education, there is a close correspondence between the two. In this regard, UNCESCR endorses the position taken by the United Nation's Children's Fund: "Primary education is the most important component of basic education." Primary education has two distinctive features: it is "compulsory" and "available free to all".⁶

In relation to secondary education, the UNCESCR expands on the term:

"While the content of secondary education will vary among State parties and over time, it includes completion of basic education and consolidation of the foundations for lifelong learning and human development. It prepares students for vocational and higher educational opportunities." Article 13, paragraph 2 [of General Comment No 13 of the UNCESCR on the right to education] applies to secondary education "in its different forms", thereby recognising that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings. The [UNCESCR] encourages "alternative" educational programmes that parallel regular secondary school systems.⁷

Regarding the right to higher education, the UNCESCR states that if the right to higher education is to respond to the needs of students in different social and cultural settings, it must have flexible curricula and varied delivery systems, such as distance learning. In practice, therefore, both secondary and higher education have to be available "in different forms".⁸ However, it is important to note that in South Africa higher education is not a right.

Article 26 of the UDHR states that technical and professional education shall be made generally available and higher education shall be made equally accessible to all on the basis of merit.⁹ Technical and vocational education shall form an integral component of all levels of education, including higher education.¹⁰ In simple terms, therefore, whereas secondary education “shall be made generally available and accessible to all by all appropriate means”, and “in particular by the progressive introduction of free education”, higher education is based on merit. This point is elaborated upon by the UNCESCR when it states that higher education is not to be “generally available”, but only available [on the basis of capacity]. The “capacity” of individuals should be assessed by reference to all their relevant expertise and experience.¹¹

The pervasiveness of the elements of availability, accessibility, acceptability and adaptability, which are common to education in all its forms and at all levels, should be borne in mind though in considering the right to education.

There have been some significant global initiatives that have sought to highlight the significance of the right to education as well as give effect to declarations and international human rights instruments on the right to education. At the April 2000 World Education Forum in Dakar, Senegal, 180 countries, including the United States, committed themselves to a simple yet profound goal: providing quality education for all the world’s children by 2015. The Dakar conference was aimed at assessing the steps taken since 1990, when most of the same participants met in Jomtien, Thailand, and committed themselves to ensure that all poor children would have access to quality primary education within a decade. So the Dakar declaration was simultaneously an admission of failure and a pledge to try again – a triumph, as Dr. Johnson once said about second marriages, of hope over experience.¹²

In June 1994, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) convened an international conference in collaboration with the Spanish Government on special educational needs (focusing on children with disabilities, children in difficulties). The theme was “ACCESS AND QUALITY”, and the aim of this conference was not only to look for a way of moving closer to the Jomtien objective of Education for All, by promoting the integration of children and adolescents with special educational needs.¹³

In May 2001 the Department of Education (DoE) published a White Paper on Inclusion of Children with Special Needs entitled removing barriers to learning. It may well be argued that the South African government took time to heed the call to include children with special education needs in mainstream education as well as address the needs of those children with special education needs. This development in the education arena, *inter alia*, shows the significance of global developments as well as their impact on the education systems of countries.

1.2 South African Constitutional Obligations

The South African Constitution upholds the right to education. Section 29(1) provides that everyone has the right to a basic education, including adult basic

education, and to further education, which the State, through reasonable measures, must make progressively available and accessible. Section 29(2) guarantees everyone the right to receive education in the official language or languages of choice in public educational institutions where that education is reasonably practicable.

Section 29(3) provides that everyone has the right to establish and maintain, at their own expense, independent educational institutions that do not discriminate on the basis of race; are registered with the State; and maintain standards that are not inferior to standards at comparable public educational institutions. Furthermore, section 29(4) states that independent educational institutions are not precluded from receiving State subsidies.

Socio-economic rights have limitations as well. The context in which the socio-economic rights may be limited is explained in detail in the Bill of Rights.¹⁴

1.3 Analysis

The analytical framework to be used in the assessment of the progressive realisation of the right to education includes, *inter alia*, the UDHR, ICESCR, CRC and the Constitution. The following are the main areas to be looked into:

- The State's duty to ensure guidance on educational decisions and ensure school attendance;
- The State's duty to ensure free basic education incrementally;
- The importance of supplementing secondary education with alternative education programmes in parallel to regular school-based learning;
- The policy intention to focus on children with special education needs; and
- The need to redress historic imbalances in access to basic, secondary and higher education and training as a matter of equality.

2 PROGRESS IN THE REALISATION OF THE RIGHT

2.1 New Policy and Programmatic Measures

2.1.1 National Sphere

The following are policy and programmatic measures instituted by the DoE during the year under review:

2.1.1.1 Curriculum Measures

The Revised National Curriculum Statement (RNCS) has to be implemented by all Provincial Education Departments (PEDs). The RNCS Grades R – 9 builds on the vision and values of the Constitution and Curriculum 2005. These principles include social justice, a healthy environment, human rights and inclusivity. This RNCS adopts an inclusive approach by specifying minimum requirements for all learners. The special educational, social, emotional and physical needs of learners will be addressed in the design and development of appropriate learning programmes.

2.1.1.2 School Nutrition Interventions

Owing to organisational, procurement and other problems in the National School Nutrition programme (NSNP), the Cabinet took a decision in September 2002 that the NSNP be transferred from the Department of Health (DoH) to the DoE from April 2004.¹⁵

2.1.1.3 School Safety Programme

Ikusasa Lethu - this is a self-defence programme for learners and educators launched by the DoE during the reporting period. It is aimed at teaching school communities basic techniques of avoiding and dealing with potential attackers. At the time of reporting, more than 2 500 learners and educators selected from 1000 schools had been through a master trainer's self-defence course. They in turn trained a further 70 000 learners in the nodal areas. According to the DoE, the impact of this course had to be evaluated during the latter half of 2003. The results would determine how the campaign would be rolled out further.¹⁶

The Management of Drug Abuse by Learners in Public and Independent Schools and Further Education and Training (FET) Institutions was published in *Government Gazette No 24172* on 13 December 2002.¹⁷ It seeks to contribute towards the prevention, management and treatment of drug use, misuse and dependency in public, independent and FET institutions. The policy is consistent with, and complements the National Drug Master Plan 1999 – 2004 (Department of [Social Development]).

In its Annual Report for 2002/2003, the DoE pointed out that the distribution of this policy needed to be supported by extensive training for school and district personnel, and that financial support has already been secured from the United Nations Office on Drugs and Crime for the purpose.

2.1.1.4 The Regulations to Prohibit Initiation Practices in Schools

These were published in *Government Gazette No 24165* of 13 December 2002 to be implemented in all schools as from 2003.¹⁸ It is clearly stated in the regulations that they are not aimed at prohibiting the induction process whereby

April 2002 – March 2003

learners are introduced to their new academic environment in a manner where dignity is enhanced as learners are advised, guided and mentored.

2.1.1.5 Teacher Development

Teacher development affects quality and is recognised as the key driver of improvements in learner performance in the education system. At the beginning of 2003, the DoE appointed three prominent academics from university education faculties to develop a National Framework for Teacher Education. The framework will cover initial, pre-service training, as well as in-service, continuing professional development with a view to building greater synergies between the work of the DoE, Higher Education Institutions and other agencies such as South African Council for Educators and Education, Training and Development Practices Sector Education and Training Authority (commonly referred to as “ETDP SETA”).

The following are some of the key areas that would be examined in the process: A scientific analysis of overall supply and demand of teachers in the country; through the recruitment, retention and attrition of teachers. This will include a macro-study of the impact of ill health such as HIV/AIDS, tuberculosis, and alcohol and drug abuse on teacher supply and utilisation (which will be based on a significant sample of teachers).

2.2 New Legislative Measures

2.2.1 National Sphere

We will consider here those legislative developments that have a direct bearing on the realisation of the right to education.

2.2.1.1 Education Laws Amendment Bill of 2002¹⁹

2.2.1.1.1 *The South African Schools Act No. 84 of 1996*

Amendment of section 5 of Act 84 of 1996 pursuant to Section 4 of SASA²⁰, the Minister of Education amended the Age Requirements for Admission to an Ordinary Public School. Section 4(a) states:

Despite paragraph 4, the Head of Department may allow a learner who wants to be admitted to Grade 1, but who will not be turning 7 during the year of such admission, to be admitted at a lower age. This deviation by the Head of Department may only occur if, in the opinion of the Head of Department, reasonable grounds exist to show that such a learner is, based on educational principles, school ready for Grade 1 and it is in the best interest of such a learner to be admitted as an underage learner to a public school. The parent of the learner must show that the refusal to be admitted to a school will have a detrimental effect on the child's development.

Amendment of section 8 of Act 84 of 1996 pursuant to subsection 5 of section 8 of SASA, the amendment by the addition of subsections 6,7,8 and 9 after subsection 5, provides due process in safeguarding the interests of the learner and any other party involved in disciplinary hearings.²¹

2.2.1.1.2 The Adult Basic Education Act 52 of 2000

The Adult Basic Education Act is amended by the insertion after section 18 of the following section:

Curriculum and assessment

Section 18A (1) provides that the Minister may/shall by notice in the Government Gazette determine –

- (a) a national curriculum statement indicating the minimum outcomes or standards;
- (b) a national process and procedures for the assessment contemplated in subsection (1) must be applicable to public and private centres.²²

The Education Laws Amendment Act 50 of 2002 was enacted and promulgated in *Government Gazette No 24113* of November 28, 2002.

2.2.1.1.3 Employment of Educators Act 76 of 1998

Section 6A is inserted into the act to enable a PED to make appointment of new recruits or applicants after a break in service without the recommendation of a School Governing Body (SGB). The reason for this is that the PED will be in a better position to distribute these educators, especially to schools which are in rural areas. These schools find it difficult to recruit educators since most educators prefer to teach in urban areas or as a last resort, to areas which are adjacent to urban areas. This process will ensure a fair distribution of well-qualified educators. It will also assist in the placement of students in suitable employment, who have been awarded bursaries or study loans either by the employer or the State.

Item 7 of Schedule 2 of the Act is amended to cover expenses as a consequence of providing an educator with a transcript of electronic recordings in cases of disciplinary hearings. Educators who demand such transcript will have to foot the bill for such transcripts. This is in accordance with section 22 of the Promotion of Access to Information Act 2 of 2000.

2.3 Budgetary Measures Affecting the Right to Education

2.3.1 National Sphere

Tables 1 and 2 present the DoE's budget for the financial year 2002/2003.

Table 1: National Department of Education Total Budgetary Allocation

<i>Year</i>	<i>Total Departmental Allocation in Rands²³</i>	<i>Allocation as a % of the National Budget²⁴</i>	<i>Total Conditional Grant Allocation in Rands</i>	<i>Total Donor Funding in Rands</i>	<i>Actual Expenditure</i>
2001/02	8 222 060 000	3,12	297 500 000	128 000	8 103 846 052
2002/03	8 876 498 000	3,08	425 925 000	181 003	8 793 091 154

Source: National Department of Education's response to the SAHRC's protocol, 2002/03.

Table 2: National Department of Education Budgetary Allocation Towards Programmes and/or Projects

<i>Programme</i>	<i>Year</i>	<i>Total Departmental Allocation in Rand(s)</i>	<i>Allocation as a % of the National Budget</i>	<i>Total Conditional Grant Allocation in Rand(s)</i>	<i>Total Donor Funding in Rand(s)</i>	<i>Actual Expenditure</i>
<i>Thuba Makote and Infrastructure Development</i>	2001/02	68 558 000	0,03	48 000 000	8 743	13 647 0789
	2002/03	69 085 000	0,02	47 086 000	6 179 875	33 956 921
<i>General Education (total) including Inclusive Education</i>	2001/02	180 411 000	0,07	120 032 000	66 940	133 726 846
	2002/03	318 142 000	0,11	197 605 000	87 053 000	284 470 297
<i>School Education</i>	2001/02	18 572 000	0,007	0	19 292	65 435 654
	2002/03	47 377 000	0,01	0	36 220 802	138 979 025
<i>HIV/AIDS</i>	2001/02	70 165 000	0,03	63 500 000	-	65 435 654
	2002/03	151 364 000	0,05	144 605 000	-	138 979 025
<i>Early Childhood Development</i>	2001/02	32 288 000	0,01	21 000 000	-	23 229 443
	2002/03	68 183 000	0,02	53 000 000	-	58 931 594
<i>Adult Basic Education and Training and Ikhwelo Project</i>	2001/02	28 683 000	0,01	25 000 000	-	8 815 272
	2002/03	17 746 000	0,01	13 158 000	-	5 516 497
<i>Teacher Development</i>	2001/02	17 610 000	0,007	-	404	12 107 947
	2002/03	19 613 000	0,007	-	5 841 126	17 944 367

Source: National Department of Education's response to the SAHRC's protocol, 2002/03.

Notes: - Figure not provided

2.3.1.1 *Thuba Makote* and Infrastructure Development

An underspending of about 51% of the allocated funds occurred in the *Thuba Makote* programme²⁵ in 2002/2003. The underspending was ascribed to a number of problems. These included unfavourable weather conditions that resulted in the postponement of building and construction in some provinces; small, medium and micro-enterprises failing to meet deadlines to deliver

building materials to schools on time in Mpumalanga; shortage of gravel in the Eastern Cape; water shortage in Limpopo, and so forth.

The underspending is just above half the allocated budget. Apart from the weather conditions, which also contributed to the underspending, an underspending of about 51% is serious. The programme did not reach all the intended beneficiaries, that is, learners in need of classrooms and other related buildings and/or facilities. Notwithstanding the causes of underspending, in his study conducted in 2002 Russell Wildeman found that four of the nine provinces had no designated capital spending, and those provinces that had their capital funds set aside forecast negative real average growth rates over the [Medium Term Expenditure Framework (MTEF)].

If capital expenditure is projected to grow by 23%²⁶ in terms of the MTEF, the issue of capital investment is to be fast-tracked, and provinces have to improve spending in capital investment programmes. More allocation of funds to capital investment would also mean that a recommendation made in the Review of the Financing, Resourcing and Costs of Education in Public Schools, released in March 2003²⁷, should be heeded. The recommendation is comprehensive, as it goes beyond just physical planning. The recommendation is as follows:

The DoE should:

Conclude the formulation of a school capital investment and physical planning policy, as well as the production of well-informed and open-ended planning tools that can be adapted to local contexts. International best practice in physical planning should inform the process. The result of this work should be better prioritisation of construction and maintenance projects, physical structures in schools that better reflect the requirements of the curriculum and, importantly, better learner performance. The overall framework should begin to inform infrastructure development in 2004.

On a positive note, a number of developments that involved PEDs and other government departments such as the Departments of Labour (DoL), Agriculture and Health, have taken place in the *Thuba Makote* programme (in all nine provinces) to date. These include the use of schools built through the programme used by the DoL for skills training for the unemployed in the communities, to enable them to participate in the construction of schools. The Department of Agriculture also participates in the programme by assisting the school and community members in establishing vegetable gardens at the schools to supplement the learners' nutrition. The DoH assists by providing HIV/AIDS training sub-programmes.²⁸

2.3.1.2 Early Childhood Development

The DoE experienced problems with the appointment of training providers for ECD provisioning. The appointed ECD training providers failed to adhere to all the requirements of the tender, such that the DoE had to re-advertise the tender, dividing its three components into three tenders: training of practitioners,

training of management structures, and advocacy and information campaign. Using the figures provided by the DoE on ECD budget allocation, underspending amounted to about 13,5%.

Underspending on the ECD conditional grant was ascribed to difficulties in transferring funds from PEDs to selected ECD community-based sites since the majority of these sites are located in poor communities, which lack access to banking accounts. Alternatively, banking accounts may have been closed as a result of no current balances, thus further exacerbating the task of transferring funds. This explains the deviation between the ideal per-head allocation and the actual cost (transfer) per head. In addition, although the majority of sites have been reached, not all the earmarked funds had been transferred at the end of January 2003.²⁹

Table 3: Number of Successful Targeted sites thus far and Per Head Spending on ECD Conditional Grant in 2002/2003 (spending at 31 January 2003)

<i>Province</i>	<i>Transfer (R million)</i>	<i>Total available budget in 2002/03 (include rollovers from 2001/02)</i>	<i>Number of sites targeted thus far</i>	<i>Targeted number of learners</i>	<i>Per head allocation (R)</i>	<i>Actual cost (transfer) per head</i>	<i>Difference between per head and actual cost (transfer) per head</i>
Eastern Cape	9,805	13,655	550	16 500	594	430	-27,6%
Free State	3,339	4,638	130	3 900	856	522	-39%
Gauteng	6,519	9,051	368	12 000	543	576	-6,0
KwaZulu-Natal	11,713	13,264	400	11 040	1 061	566	-46,7%
Limpopo	8,321	11,618	472	14 160	588	356	-39,4%
Mpumalanga	3,869	5,402	220	6 600	586	256	-56,3%
Northern Cape	1,007	1,162	50	1 500	671	319	-52,5%
North West	4,240	5,920	240	7 200	589	190	-67,7%
Western Cape	4,187	5,119	238	7 140	586	289	-50,7%
Total	53,000	69,829	2 668	80 040	662	411	-37,9%

Source: Russell Andrew Wildeman, Reviewing Provincial Education Budgets 2003, Budget Brief No 130, Budget Information Service, Idasa

2.3.1.3 HIV/AIDS Training

According to the DoE, the fact that the PEDs did not claim all their salaries for provincial co-ordinators and financial administrators caused under-spending in the programme. Other PEDs such as the GDE, WCDE, ECDE and LDE did not fill vacancies for posts the programme required. About 8,2% of the funds allocated to this programme were under-spent in 2002/2003.

The epidemic affects groups between the ages of 2 and 25, and this happens to be a group of people populating learning institutions. A study conducted by the Human Sciences Research Council for the Nelson Mandela Children's Fund found that the epidemic seriously affects children aged 2–14 years.

Furthermore, the study found that the prevalence among girls and boys was found to be 5,2% and 5,9% respectively. This figure increased to 9,3% for youths (15–24) and to 15,5% among adults over the age of 25. Among adults the figures are 17,7% and 12,8% for females and males respectively. Prevalence is far higher in urban informal areas (20,2%) than in all other areas, whereas the national average found in this survey was 9,3%.³⁰

The epidemic is threatening the Education for All goal first adopted by the international community in 1990. It calls for universal access to free, quality education by 2015, and an end to gender disparity in education by 2005. That goal could become impossible to achieve, as the Human Development Report (2003) found that the prevalence of HIV/AIDS among teacher populations is as high as 30% in some countries. The strategic approach proposed by the Report calls for more education about the disease to prevent decimation of the educational sector. It calls for a number of specific actions including teacher preparation to address sexual and health topics, HIV/AIDS prevention education through childhood and adolescence, and mass media awareness campaigns targeted at young people to reinforce the message.³¹

In its Annual Report for 2002/2003 the DoE agreed that HIV/AIDS poses the biggest threat to the education agenda. According to Professor Charles Simkins, whilst HIV prevalence among teenagers has dropped slightly from 16,5% in 1999 to 15,4% in 2001, school enrolment is projected to decline by 3,9% in the next decade as a result of declining fertility and rising AIDS-related infant mortality. The number of AIDS orphans is projected to grow from the current 200 000 to almost 2 million between 2010 and 2014. There would also be a significant rate of children leaving school either to raise money for their families or look after sick relatives.³²

The study to be commissioned by the DoE to grapple with the impact of HIV/AIDS on education will not only give the Government an idea of the impact of the pandemic on education, but would also go a long way in improving the education of learners about the pandemic. Moreover, such a study will also inform policy-making.

2.3.1.4 Teacher Development Programme

An underspending of 8,5% was experienced in this programme as a result of the late signing of a training agreement between South Africa and Cuban Tutors.

2.3.1.5 Adult Basic Education and *Ikhwelo* Project

A 10-month delay in the appointment of 240 educators and 9 project co-ordinators was one of the reasons for under-spending in this project. Inadequate capacity was also cited as another cause of delays in the implementation of the project that eventually led to under-spending in the project. About 68% of the funds were under-spent. It is not a good state of affairs that this sector of education is under-funded. More funding, however, would have to go hand in

hand with capacity-building to ensure that the funds are spent efficiently and effectively.

ABET spending continues its low share of PED budgets, and these budgets need to be supplemented by better-published medium-term strategies. The continuation of the national ABET grant appears necessary and should ideally be continued until PEDs develop medium- and long-term strategic plans for broader ABET provisioning.³³

According to Russell *et al.*, the weighted contribution of ABET to real change in 2003/2004 and between 2002/2003 and 2005/2006 is 2%, which is smaller than that of Special Needs Education and ECD, which is 2,7% and 2,6% respectively.³⁴ Russell *et al.* make an observation that the relative small size of ABET and ECD budgets means far larger real changes need to occur in these programmes before they sizeably affect the average growth rate of provincial education budgets.

2.3.2 Provincial Sphere

The following section presents various PEDs budgets for the financial year 2002/2003. Only the PEDs that responded to questions relating to this section will be considered in this section of the chapter.

The ECDE did not furnish the South African Human Rights Commission (SAHRC) with its budgetary information related to its programmes/projects undertaken during the reporting period, whilst the NWDE supplied the SAHRC with the budgetary information for 2003/2004.

However, the NWDE indicated that the budget was inadequate for ECD Learner Support Materials (LSMs) programmes in 2002/2003 despite the fact that it underspent an amount to the tune of R17 million, which was a conditional grant allocation (grant not specified). These funds have had to be rolled over to the 2003/2004 financial year as per the approval of the North West Treasury. The NWDE cited red tape as the cause of underspending of conditional grants.

2.3.2.1 Gauteng Department of Education

Table 4: Gauteng Department of Education Total Budgetary Allocation

<i>Year</i>	<i>Total Departmental Allocation in Rand(s)</i>	<i>Allocation as a % of the Provincial Budget</i>	<i>Total Conditional Grant Allocation in Rand(s)</i>	<i>Actual Expenditure</i>
2001/02	7 507 050 000	-	-	7 268 490 000
2002/03	8 158 253 000	-	573 402 000	8 065 919 000

Source: Gauteng Department of Education's response to the SAHRC's protocol, 2002/03.

Notes: - Figure not provided, Donor funding was indicated as "0" for both years.

Table 5: Gauteng Department of Education Budgetary Allocation Towards Programmes and/or Projects

<i>Programme</i>	<i>Year</i>	<i>Allocation for programmes/projects in Rand (s)</i>	<i>Allocation as a % of the Department's Budget</i>	<i>Actual Expenditure</i>
Public Ordinary Schools Education	2001/02	5 455 452 000	73	5 438 350 000
	2002/03	6 274 787 000	77	6 393 301 000
Independent School Education	2001/02	117 127 000	2	102 117 000
	2002/03	117 127 000	1,4	120 701 000
Public Special School Education	2001/02	414 341 000	6	413 063 000
	2002/03	374 712 000	5	378 131 000
Public Adult Basic Education and Training	2001/02	140 251 000	2	99 743 000
	2002/03	165 192 000	2	133 886 000

Source: Gauteng Department of Education's response to the SAHRC's protocol, 2002/03

Notes: The GDE did not supply the SAHRC with figures for "Total Conditional Grant Allocation".

Disaggregating the programmes, the GDE overspent in the following programmes in 2002/2003: Public Ordinary Schools Education, Independent Schools Education, and Education in Special Schools by 1%, 2,9% and 0,9% respectively. The amount of money overspent in all the three programmes was insignificant. The overspending in the Public Ordinary Schools and Education in Special Schools programmes was ascribed to personnel costs. The Independent Schools programme also overspent as a result of a sudden increase in learner enrolments, which required more subsidies from government. However, the public ABET programme underspent by 19% as a result of savings in personnel expenditure. The fact that part-time educators who do not qualify for the same benefits as full-time educators were used, and that there were some unsettled orders for Financial Management and Quality Enhancement Grant projects, created savings for the GDE.

April 2002 – March 2003

2.3.2.2 Western Cape Department of Education

Table 6: Western Cape Department of Education Total Budgetary Allocation

<i>Year</i>	<i>Total Departmental Allocation in Rands</i>	<i>Allocation as a % of the National Budget</i>	<i>Total Conditional Grant Allocation in Rands</i>	<i>Actual Expenditure</i>
2001/02	3 833 963 000	0,015	1 695 000	3 793 053 000
2002/03	4 127 781 000	0,014	4 187 000	4 101 148 000

Source: Western Cape Department of Education's response to the SAHRC's, 2002/03

Notes: Donor funding was indicated as "0" for both years.

Table 7: Western Cape Department of Education Budgetary Allocation Towards Programmes and/or Projects

<i>Programme</i>	<i>Year</i>	<i>Total Departmental Allocation in Rands</i>	<i>Allocation as a % of the National Budget</i>	<i>Total Conditional Grant Allocation in Rands</i>	<i>Actual Expenditure</i>
Public Ordinary School Education	2001/02	3 490 902 000	0,013	-	3 406 317 000
	2002/03	3 726 611 000	0,013	-	3 705 062 000
Independent School Education	2001/02	39 233 000	0,0001	-	22 112 000
	2002/03	23 850 000	0,0001	-	23 747 000
Schools for Learners with Special Educational Needs	2001/02	282 976 000	0,001	-	293 725 000
	2002/03	307 279 000	0,001	-	300 927 632
Early Childhood Development and Adult Basic Education and Training	2001/02	70 896 000	0,0003	1 659 000	70 899 000
	2002/03	70 041 000	0,0002	4 187 000	71 411 958

Source: Western Cape Department of Education's response to the SAHRC's, 2002/03

Notes: The WCDE did not supply the SAHRC with figures for "Total Conditional Grant Allocation".

The WCDE accepted that its proportion of the national budget declined as part of the reduction in the share of the budget. This placed pressure on the Department to ensure that the available funds were spent as effectively and as efficiently as possible.

2.4 Policies, Programmes and Projects

The DoE and some PEDs directly supplied the information contained in this section of the chapter. Other PEDs did not respond to some questions hence there is uneven reporting between the PEDs in the report. In other cases where

the DoE or a PED presented information that seems to be in contrast with an independent source other than a PED or the DoE, reference is made to the independent source to give the reader a different view on the issue.

Six years into democracy, the South African education system had already undergone transformation in the areas of policy-making and governance structures. By 2000 stability had already been achieved and the fundamentals had been put in place, namely enhanced basic school functionality, improved provincial capacity to manage human and financial resources, and ensured focus on delivery.³⁵

*In 2001, the Department shifted its attention from basic systemic functionality to institutional renewal, focusing on teaching, learning and whole-school development; increasing participation in further and higher education, maths, science and technology; and targeting those communities that are part of government-wide programmes for rural and urban development.*³⁶

The following have been priority areas for the DoE in 2002 over the medium term:

- Four projects focused on the 18 rural and urban nodal points identified in the Integrated Sustainable Rural Development. These are the implementation of the reception year in accordance with policy on early childhood development; an infrastructure programme to improve national and provincial planning, delivery, design and innovation capacity; a more compact school effectiveness and teacher professionalism programme focusing on education managers and educational institutions; and the development of adult literacy and skills.
- Inclusive education and training opportunities for the estimated 280 000 out-of-school children are being developed, in terms of the White Paper on Building an Inclusive Education and Training System.
- A review of resource allocation and management policies.
- In collaboration with the Ministry of Labour, the new Human Resource Development Strategy for South Africa was developed.³⁷

The DoE has developed a draft strategic plan for the implementation of the NSNP, which should also address the increasing participation rates in basic education and FET. Funding in the schooling sector is guided by the National Norms and Standards Funding model. The National Norms and Standards for Funding model ranks schools according to poverty. The budget is then divided among schools in such a way that the five quintiles, from poorest to least poor, receive from 35% to 5% respectively. Since 2002 the redress portion of the Post Provisioning Norms has required provinces to distribute 5% of the posts in targeted poverty areas to entrench access to quality education by the poor.

To further enhance rights to education, the Government has recently adopted a Plan of Action for Improving Access to Free and Quality Basic Education for All. The Plan of Action represents a victory for pro-poor funding where school allocations will be targeted in Rand terms towards poor learners. National instead of provincial poverty quintiles will be used to drive funding so that equally poor learners across the country will be subject to the same pro-poor targeting.³⁸

At provincial level, the ECDE underscored a number of achievements during the year under review, for instance the successful launch of the RNCS Grades R – 9 in the province. The WCDE has trained 5 810 Foundation Phase educators and 959 principals for the implementation of RNCS policy and developed LSMs for the effective implementation of the RNCS that underpins Outcomes-Based Education.

The WCDE launched the Cape Teaching Institute for In-service Teacher Training in September 2002 in order to improve the quality of education in the Western Cape. The Department also increased the number of teacher training bursaries available for pre-service teacher training as well as commissioned research on future teacher requirements. GDE's Mathew Goniwe Institute for Leadership was also established.

2.4.1 White Papers on Early Childhood Development and Inclusive Education

One of the highlights during the year under review was the implementation of the White Papers on ECD and Inclusive Education. There are about 825 sites in the Eastern Cape that offer Grade R as the first year of school (since January 2003) and 475 Grade R sites that were attached to schools in January 2003. Furthermore, there are 12 mainstream schools and two special schools implementing the White Paper on Inclusive Education.

The GDE introduced a Grade R Implementation Conditional Grant programme based on the White Paper on ECD. One of the aims of the programme was to establish 552 Grade R sites; provide them with basic learner and teacher resources; provide accredited training to the 552 Grade R practitioners; monitor and follow up support to sites and practitioners; transfer salary subsidies to the 552 Grade R practitioners; and build capacity of provincial officials in ECD provisioning. Through the programme 551 sites were established and are reported to be operational. 368 Grade R sites received a basic resource kit. Accreditation was to start in September 2003 for the 551 practitioners. The practitioners are already receiving their subsidised salaries.

Furthermore, according to information supplied by the GDE, approximately 20 000 children between the ages of 5 and 6 from historically disadvantaged communities are presently accessing a quality accredited Grade R programme. There are also two Grade R sites situated in Alexandra specifically for children with special needs (one site for blind children with a blind practitioner and the other site is for physically disabled children). A few other sites located around the province cater for various disabilities.

The WCDE has increased the number of posts from 308 to 400 for educators to teach learners who are experiencing barriers to education. As a move to improve access to ECD, particularly in disadvantaged areas, the WCDE has increased the number of subsidised ECD sites from 879 to 1 315.

2.4.2 Capacity-Building Programme for School Management Teams

It is also noteworthy that the ECDE ran a capacity-building programme for School Management Teams of section 20 schools³⁹ to help these schools obtain section 21 status. This culminated in about 1 500 schools being granted section 21 status. Like the ECDE, the WCDE ran a mentorship and curatorship programme primarily for principals, including School Management Teams to improve management capacity at school level. The initiative led to a draft policy that is implemented on an *ad hoc* basis as required. As a result of the capacity-building programme for School Management Teams, about 48% of public schools in the Western Cape are section 21.

2.4.3 Adult Basic Education and Training

The ECDE ran the *Ikhwelo* Poverty Alleviation project in the Presidential nodal points (Motherwell, Mdantsane and Lusikisiki), as part of the implementation of the Skills Development Act 97 of 1998. The implementation of this project has resulted in the full-time employment of 48 educators in 12 ABET Learning Centres that engaged in sewing programmes, crop production, poultry and piggery. The *Ikhwelo* Poverty Alleviation project was aimed at rural women, unemployed men and out-of-school youth.

The ECDE also contracted some ABET learnerships for levels 4 and 5 of the National Qualifications Framework, which were aimed at providing applied competence and practice in the workplace; upgrading ABET Learning Centres' skills; and to bring about synergy between structured learning and structured workplace experience. About 115 learner educators are engaged with the learnerships. Furthermore, about 65 ABET educators from 12 districts received training on poultry production at Fort Cox Training College. The training they received should enable them to offer the programme as part of ABET. The reported increase of ABET learners in some selected ABET Learning Centres in the Eastern Cape was ascribed to skills upgrading programmes offered to unqualified ABET educators in the province.

2.4.4 Whole School Evaluation Programme

The NWDE implemented the Whole School Evaluation Programme (Government Gazette Vol 433, No 22512 of July 2001) during the year under review. Only 30 schools were evaluated as a result of misunderstandings related to the policy between teacher unions and the NWDE.

2.4.5 Values in Education

The programme is aimed at advocating the values captured in the Constitution and Manifesto and to instill these values into the policies and practices of the DoE. The intention is to instill in the learners a positive frame of mind, the appreciation of dialogue and debate and a sense of pride in being a South African and an African, as well as a culture of ethics and respect for human rights.

Some progress has also been reported here by the directorate responsible for the Values in Education programme. Such progress includes some schools responding positively to the materials and suggestions sent to them by the DoE. However, there is one worrying aspect regarding the programme, 'there are schools that are still plagued by racial incidents, both overt and covert'. It is pleasing to note, however, that already in 2002 the DoE developed a monitoring system that would help the Department find out the areas that need to be attended to in order to improve the programme.⁴⁰

2.4.6 Education and Communication Technology

The WCDE's programme on Education and Communication Technology has ensured that about 99% of schools in the Western Cape are linked to the Internet (Telecommunication Project). There are about 3 800 computers installed in school computer-laboratories.

2.4.7 HIV/AIDS Training Programme

The NWDE offered "extensive" HIV/AIDS Training to the following educators and learners:

- 1 055 urban-based educators
- 3 038 rural-based educators
- 488 urban-based learners
- 1 646 rural-based educators

Apart from offering HIV/AIDS Education to these categories of learners, the ECDE identified AIDS orphans and other vulnerable groups for financial grants offered by the Department of Social Development. Based on the National Education Policy Act 27 of 1996, the WCDE has trained more than 8 000 primary school educators on HIV/AIDS Education and made related educational materials available in three languages to primary schools. The training programme has also been launched in high schools.

2.4.8 Advocacy Campaigns to Raise the Levels of Awareness of the Right to Apply for Exemption from Payment of School Fees

Financially challenged parents are said to have become aware of exemption from paying school fees in Gauteng. The GDE further indicated that learners are no longer victimised for not paying the school fees.

3 CHALLENGES FOR THE REALISATION OF THE RIGHT TO EDUCATION

3.1 Access to Schooling

According to the DoE, access to schooling for children aged 7 to 15 has improved noticeably since 1994. In 1991 the net enrolment ratio (NER)⁴¹ for primary schools was 92%. However, during the subsequent years there was even more improvement in the NER for primary schools. For instance, by 1999 and 2001 respectively the number had risen to 95% and 97%. The DoE also points out that the increase in the primary school NER did not necessarily mean budgetary decline for education; however, where there was some decline it was ascribed to salary pressures at the time.⁴²

It is important to note, nevertheless, that the situation in the FET proved the contrary. The overall NER for secondary schools dropped slightly, from 89% to 88%. The problem is said to be partly linked to the fact that those learners who seem to be struggling academically leave school even before they reach Grade 12.⁴³ Despite the reported improvement in the NER for primary schools, the DoE accepts the challenge to achieve 100% coverage in the compulsory ages, that is ages 7 to 15. The education system can now account for over 96% of children aged 7 to 15 in the population. With the development and full implementation of the reception year in the next decade, this will increase to accommodate all 6-year-olds.

The 2001 NER of 97% implies that some 300 000 children aged 7 to 15 are not in any institutions. (Whilst home schooling is allowed in South Africa, its extent is so small that we can ignore it for the purposes of this discussion.) Many of these 300 000 potential learners are outside the system because of a disability.⁴⁴

Once more, a key intervention in 2003 was the completion of the Review of Public School Financing in February 2003, which identified key interventions to reduce the pressures on poor households and poor parents in ensuring the attendance of children at schools.

The following are some of the important interventions arising from the abovementioned review in the implementation of a national poverty-targeting framework. Currently non-personnel recurrent allocations are distributed according to provincial poverty-targeting lists, the consequence of which is that the poorest 20% of learners in a particular province may not be at the same level

of poverty as the poorest 20% in another province. According to the DoE's Plan of Action, the application of the national quintiles will take place in 2004.⁴⁵

In the new national targeting framework each province will be allocated funds according to their share of poor learners nationally. The national poverty profile and shares per province will be based on an index of poverty based on official Statistics South Africa data. PEDs will then develop a provincial resource-targeting list by ranking schools according to the poverty of the communities around the school. Provinces will then allocate a "normed" per learner amount for non-personnel recurrent school expenditure according to the national poverty groupings. The "normed" amount per learner will decrease progressively towards the non-poor groupings. The index of poverty will no longer include the condition of the school, as was the case at the time of reporting. The implication of the changes to the poverty index, the national poverty-targeting framework and the phased norm of R450 per poorest learner is that the National Norms and Standards for School Funding (Notice 2362 of 1998) in terms of SASA will have to be amended. Redress, in the form of inter-provincial pro-poor funding, will be firmly established on the non-personnel recurrent side.

In order to relieve the pressure of compulsory school fees on the poor and the consequences of the fee-setting process, the regulations governing exemptions from school fees in terms of SASA will be amended. All recipients of child grants and dependency grants from the Department of Social Development will qualify for full exemption from school fees (where fees are charged). The procedures for applying for fee exemptions so that parents may declare any "hidden fees or charges" and additional financial obligations imposed by schools, such as non-standard school uniforms, additional school material and other costs, may be taken into account for exemption.

Households, whose income is below a threshold, will be able to pool school-imposed costs in respect of all their children in their application for school fees exemption. The DoE will amend the prescribed forms for the application for fee exemption to include these amendments. All schools that levy fees will be obliged to circulate the fee exemption application forms to all parents in the school.

3.2 School Fees Exemption

Among the challenges presented by the GDE in policy implementation, one that stands out starkly is fee exemption. The GDE refers to the application for school fees exemption as a "cumbersome process". The process that has to take place for financially challenged parents to be granted fees exemption is said to be "tantamount to requesting parents to parade their poverty – which is further demeaning, resulting in the reluctance [of parents] to apply for school fee exemption". The GDE also cites schools' reluctance to apply the policy, as it results in a loss of revenue that is not recovered from the DoE. The fact that it is only the GDE that reported on this issue does not mean that the challenge is peculiar to the GDE only.

3.3 Inequities in Post-Provisioning

In 2000 the National Norms and Standards for School Funding was targeted at the non-personnel recurrent expenditure only. However, starting from financial year 2003/2004, this redistribution model will target both the non-personnel recurrent and personnel areas to achieve equality of quality and equality of learning outcomes in the schooling system. The model aims to achieve this through increasing inequality in favour of the poor, and more financial resources will be channelled towards the poor.⁴⁶ Starting from 2003, the post-provisioning norms, which allocate educators to schools, will also be driven by pro-poor allocations.⁴⁷

Apart from this promising response by the DoE on the asymmetrical post-provisioning situation currently manifested in the schooling system, some of the stakeholders are still not pleased with the government proposal:

Turning to personnel spending (90[%]) little has been done to redress past inequalities since 1994, and here the [Review of Public School Financing] is downright misleading. The impression is conveyed that the progressive redistributive principles of the funding norms have now been transported into the post-provisioning system. The truth is less dramatic: for the first time this year [2003] provinces are required to budget 2[%] to 5[%] of posts for redress (most opted for the 2[%]). At best this cancels out the bias in the post-provisioning system towards well-resourced schools, which provide a wide curriculum offering, which attracts more resources in terms of the post-provisioning formula.⁴⁸

While policy choices served to equalise post-provisioning models better across schools, the policy choices did not progressively distribute educators through the system to address historic disadvantage. Put another way, there was no provision for the progressive distribution of personnel in the system. There were two ways in which the policy, in practice, privileged historically advantaged schools with reference to personnel spending. Firstly, several curricular areas were identified as enjoying a certain privilege whereby “weighted norms” were applied to “special fields” of study including agriculture, technology, etc (RSA 1998:3B–75). These curricular areas were primarily offered in historically advantaged schools. Secondly, historically advantaged schools enjoyed educators with higher qualifications. Thus, in practice historically advantaged schools would enjoy a higher-per-capita personnel expenditure than historically disadvantaged schools.⁴⁹

3.4 Translation of School Allocations into Goods and Services

Both schools and PEDs experienced problems in using financial resources to purchase goods and paying for services rendered to schools. For schools the problem was largely a lack of capacity in policy implementation, whilst PEDs struggled with management and governance issues to achieve intended policy objectives fully.⁵⁰

Non-section 21 schools are dependent upon PEDs for the bulk of their funding. Some of these schools cannot be exonerated from contributing to a number of problems that have been identified in most of them. The following are some of the problems already identified:

- School principals often lack the skills to lead the budgeting process. However, in terms of the School Funding Norms, PEDs should draw up budgets for non-section 21 schools.
- Schools often do not understand the overall pro-poor school-funding framework. This seriously jeopardises chances for poor schools to be allocated funds that match their socio-economic conditions.
- Schools often do not understand what a section 21 status entails, whether in terms of qualitative improvements in the schools or the acquisition of this very status by schools, etc.
- Schools often do not comprehend the instruction from PEDs that some portions of their allocation be spent on particular items to achieve optimal school resourcing. Comparatively, there are fewer restrictions placed on section 21 schools as opposed to non-section 21 schools regarding what funds should be spent on which items.
- Most PEDs fail to provide schools with running balances on their budgets such that schools end up not knowing how much they spend on utilities, for instance.

Non-section 21 schools are at an economic disadvantage, as they cannot purchase large equipment owing to the fact that they are forced to spend their allocation within one financial year. This compels these schools to do without large equipment such as a photocopier, which is relatively expensive.⁵¹

In the case of many non-section 21 schools, where the PED allocates and spends on behalf of the school, the conversion of monetary allocations to goods and services for the school has been fraught with problems. The Plan of Action refers to measures that can address this problem through the transfer of the school allocation into separate accounts, which the PEDs will control on behalf of the schools. It should be noted that section 21 schools already have the State funds transferred into their banking accounts.

The DoE promises that the translation of budgets into goods and services will be improved, firstly, through better administrative systems that can enhance, for instance, the procurement services offered by PEDs, and, secondly, through policy interventions and engagements with particular industrial sectors to explore the possibility of lower prices, particularly with respect to textbooks and school uniforms.

3.5 Infrastructure Development

Apart from the *Ithuba Makote* programme, the DoE has its own infrastructure development project designed to eliminate instances where learners are forced to receive education in the environments that are not conducive to teaching and learning, and/or that are unsafe. According to the DoE, additional to government funding, the European Union has funded 83 schools and the Japanese government has provided funds for 65 schools. However, despite all the efforts made to address infrastructure backlogs in schools, the Eastern Cape, KwaZulu-Natal and Mpumalanga still experienced high infrastructure backlogs.⁵² It can only be hoped that a Draft National Sanitation Strategy that has been produced, that aims to accelerate delivery of water and sanitation provision to schools will assist in improving sanitary conditions of schools.

3.6 Ineffective Procurement Strategies

The DoE referred to ineffective procurement strategies that hamper policy implementation, for example in the delivery of LSMs. To address these challenges, the Department plans to evaluate and review procurement models and arrange procurement training and management development for personnel charged with implementation. In addition, the DoE plans to strengthen its monitoring system and verification strategies on implementation of policies, since the monitoring and evaluation system was cited as “inadequate” and constrained by budget.

3.7 Textbook Pricing

The pricing of textbooks is another challenge the DoE is taking steps to address. At the time of reporting it was estimated that the DoE spent about R1 billion per annum on textbooks, which of course, is a relatively substantial amount of money. As part of the move to address this challenge, plans were afoot to try and remove pricing distortion in textbook production and supply, which occurred as a result of sole suppliers in most instances.⁵³

The fragmented fashion in which schools in all the nine provinces purchase their textbooks was cited as one of the contributory factors to the expensive pricing of textbooks. The pricing of textbooks impacted negatively on the right to education during the reporting period in 4 provinces. For instance, in its Annual Report for 2002/2003, the DoE reported that the 4 provinces were not able to deliver textbooks to schools on time as a result of 'lengthy negotiations with manufacturers to ensure consistency and uniformity in pricing.' However, it is pleasing to note that PEDs have consistently increased their budget allocations for LSMs over the past 5 financial years, that is, from 1998/1999 to 2002/2003.⁵⁴

3.8 Implementation of ECD Policy

The GDE cited the implementation of the ECD policy as a challenge. The response stated that both the DoE and PEDs underestimated the implementation

April 2002 – March 2003

of the ECD policy, which was evident in delays experienced in the implementation of the policy. Whilst it is generally accepted that most targeted ECD sites have been reached, the fact that only 13% of children have access to the ECD programme is a challenge that the Government has to address immediately if the Education for All goal of 2015 is to be met.

There is nothing in [the Financing Review of Public Schools] on the funding of [ECD] for ages 0 to 6. Currently only 13[%] of children have access to this crucial level of education, which, according to international research, is vital in preparing learners for subsequent success. [Ad hoc] pilot schemes and vague undertakings made by the DoE to comply with the Education for All targets are not enough.⁵⁵

3.9 HIV/AIDS and Life Skills

HIV/AIDS and Life Skills were challenges mentioned by both the ECDE and the WCDE. The former referred to understaffing in this learning area. National Norms and Standards for School Funding was another challenge the ECDE cited as a contested terrain by schools in the province.

The DoE has been engaged in a number of activities to address the HIV/AIDS pandemic during the reporting period. Such activities include a conference on HIV/AIDS that was attended by, amongst others, children, the youth, parents, traditional leaders and educators; a Traditional Leaders' Imbizo, in which the process of developing resource guides to assist parents and SGBs in developing school-based HIV responses was started. It is also important to underscore that as part of a response to the pandemic, the DoE developed an HIV/AIDS component for inclusion into the children's series Takalane Sesame as well as trained 50 000 educators to facilitate HIV/AIDS and Life Skills in the curriculum.⁵⁶

However, the lack of sufficient and reliable information on the extent of HIV/AIDS is a challenge that has to be addressed to ensure that all the effort put into dealing with the pandemic is strengthened.

3.10 Adult Basic Education and Training

Low provincial budgets for ABET is but another challenge facing the PEDs. The Education Rights Project (ERP)⁵⁷ cited a number of problems that contributed to the failure of ABET. *Inter alia*, the following were some of the problems cited in the implementation of ABET:

- The South African National Initiative (commonly referred to as SANLI), as an initiative that focused on adult basic education, showed only weak links to the deeper intentions of ABET or the NQF.

- The lack of wide consultation by the DoE within the field of ABET contributed to the exclusion of some practitioners with ability and experience from the board.⁵⁸

Despite the shortcomings the ERP pointed out in SANLI, the programme has achieved some good results. During the first year of the programme (2001/2002) focus was on policy development, programme design and setting up of systems for planning and monitoring. The programme is aimed at co-ordinating the establishment of a voluntary teaching service to reach South African adults who are illiterate. It also aims to build capacity in community organisations that are involved in literacy training, to facilitate access to funding and improve service delivery.⁵⁹

During the year under review, the programme was said to be a success as it not only reached its enrolment target but even surpassed it. A tender for literacy classes was awarded in two regions of KwaZulu-Natal, with financial assistance from the Danish Development Agency (commonly referred to as DANIDA). Other tenders for literacy classes were also awarded in the Western Cape, Northern Cape and the Free State. In conjunction with the UNISA ABET Institute, SANLI recruited 100 000 learners which far exceeded the expected number of 75 000 learners in a period of two years.⁶⁰

3.11 Farm Schools Conditions

In responding to the SAHRC's protocols on vulnerable groups, the DoE and PEDs do not elaborate upon conditions of farm schools. However, there are some important studies conducted by other organisations in this area such as the ERP. According to the ERP, there has been very little change in farm schools conditions since the apartheid era. The following are cited as the main obstacles to the provision of a quality education in farm schools:

- Farm schools' dependence on, and often their vulnerability to, the farmer on whose land they are built;
- Farm schools are often the most extreme examples of indigence in the South African education system, with relatively few schools enjoying access to a full range of services and resources; and
- Chronic levels of poverty in the communities served by farm schools and a deeply entrenched [...] culture of violence and oppression on farms.⁶¹
- Inadequate, and sometimes lacking, infrastructure that should be enhancing learning was also cited as cause for concern in farm schools. Additionally, it was reported that current legislation (SASA) has failed to provide most farm schools with security of land tenure. The State's scheme for ensuring security of land tenure for farm schools depends irrationally on the co-operation of

landowners who have no intention of signing agreements referred to in section 14⁶² of [SASA].⁶³

The report that was released by the SAHRC on the Inquiry into Human Rights Violations in Farming Communities concluded with findings regarding the conclusion of property agreements, or the lack thereof, between the DoE and farm owners:

The DoE is aware that some farm owners have resisted signing the agreements. Under the previous regime farm owners had agreements that were more favourable towards them. Some farmers now view the agreements as an opportunity to benefit and want to charge exorbitant amounts. Some farm owners object to concluding the agreements by pointing out that one farm school may service the education needs of three farms in the area.⁶⁴

3.12 Sexual Abuse and Violence in Schools

It is pleasing to note that during the reporting period, the DoE undertook a number of initiatives in the way of addressing gender and HIV/AIDS-related problems in the education sector, to an extent that already a first draft of Sexual Harassment Guidelines for Schools was being circulated to relevant stakeholders and necessary amendments were being effected on the draft. Some of the initiatives undertaken by the DoE in addressing gender and HIV/AIDS-related problems comprised the following: a “Train the Trainer” training course on Gender, Masculinity and HIV/AIDS the DoE presented to Student Organisations; a workshop on Gender Violence and HIV/AIDS held with learners, educators, SGB members, parents and traditional leaders in KwaZulu-Natal, *etcetera*. However, financial constraints have been cited as a challenge to most of these initiatives.⁶⁵

It is important that the initiatives referred to above are strengthened to counteract the scenario presented by a Human Rights Watch report. The report concluded that, amongst other things: sexual harassment and sexual violence had a profound destabilising effect on the education of girls in South Africa; rape survivors' school performance was suffering and that it was harder for rape survivors to concentrate on their work after their assaults; some of the girls reported losing interest in school altogether; some of the girls transferred to new schools; and other simply left school entirely.⁶⁶

It is equally important as well, that since South Africa ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women 1979 (commonly referred to as CEDAW), on 15 December 1995, it upholds the principles and spirit of this international instrument.

The non-existence of the domestic measures in the schooling system to back up the UN Convention is a drawback when there is compelling evidence that girls are on the receiving end of sexual violence in South African schools. The State needs to speed up the formulation of the Sexual Harassment Guidelines for

Schools to ensure that schools become safe teaching and learning environments.⁶⁷

According to Human Rights Watch, many South African girls have suffered great harm from male teachers and classmates. The remedies available to them are usually inadequate or non-existent. Sexual violence is a form of gender discrimination, and South Africa is obligated to take all appropriate measures to eliminate violence against girls as against women more generally. The Government has an obligation to take meaningful steps to prevent teachers from committing acts of violence against learners, and to investigate and prosecute teachers who commit acts of violence against school children. Schools, as public institutions, are responsible for reporting crimes committed against learners. Furthermore, the systematic failure of the State to hold learners accountable for acts of violence against their classmates is itself a violation of human rights law.⁶⁸

Other challenges, which the WCDE was acting on, include:

- ensuring quality basic education for all children of school-going age in the province;
- equipping educators in their efforts to provide effective education; and
- ensuring a safe school environment.

The RNCS and MST were some of the mechanisms cited by the WCDE to ensure the provision of quality basic education in schools. In as far as safety is concerned in schools, the WCDE introduced a Safe Schools programme, which currently benefits 900 schools in the province.

4 CRITIQUE

As far as primary education is concerned, article 28 of the Convention on the Rights of the Child 1989, provides that State parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular make primary education compulsory and available for free to all.⁶⁹

It appears that whilst the State, through the School Funding Norms, attempts to provide free primary education to poor learners, the fact that primary education is compulsory is not being enforced. Parents are obliged in terms of SASA to ensure that they send their children to school within the appropriate age limits set out in the Act.⁷⁰

According to the Review of Public School Financing, there are 300 000 children aged 7 to 15 who are not in any institutions. If the compulsory aspect of the General Education and Training could be enforced, the UN Millennium Goal of

achieving 100% enrolment by 2015 could be a step closer than it is at the moment.

Since 1990, Sub-Saharan Africa has had the second largest population of primary school-age children of all the regions in the world. This region recorded a substantial rise in this age group from over 82 million in 1990 and rising to 106 million in 2000. In spite of the deceleration of the rate of increase in the population of children of primary school-age the projection for 2015 is 139 million.⁷¹

Table 8 shows that about 4,5 million people aged between 5 and 24 do not have an education, followed by about 4 million people with some form of primary schooling. Out of the 4 million people who are without an education, about 1,6 million of them completed their primary school education. A similar problem may be observed in the secondary education sector. About 7,8 million people have some form of secondary education, but only about 5,2 million people completed matric. This scenario obviously results in fewer people who gain access to tertiary institutions of learning since not every learner pass matric with endorsement.

Table 8: Highest Level of Education of Over 20-year-olds

<i>Highest level of education</i>	<i>Persons</i>
No schooling	4 567 497
Some primary	4 083 742
Complete primary	1 623 467
Some secondary	7 846 125
Grade 12/Standard 10	5 200 602
Higher/Tertiary Education	2 151 336

Source: Census 2001, Atlas, Statistics South Africa, 2003

Table 9: Education Institution Attended by 5- to 24-year-olds

<i>Institution Being Attended</i>	<i>Persons</i>
None	5 463 873
Pre-school	575 936
School	12 584 825
College	191 230
Technikon	145 977
University	169 604
Adult Education Centre	26 480
Other	33 791

Source: Census 2001, Atlas, Statistics South Africa, 2003

The issue of street-children needs attention too, if the 2015 Millennium Goal of universal access to education is to be achieved. Inasmuch as one does not have the statistics for children living in the streets, there needs to be a concerted effort by civil society and the Departments of Education and Social Development in particular, to address the plight of this category of vulnerable groups. By the same token, the Government should be commended for the intervention it has made in which all the recipients of child grants and dependency grants from the

Department of Social Development will qualify for fee exemptions from school fees (where school fees are charged).⁷² This intervention may contribute immensely to the progressive realisation of the right to education. It further conforms to the spirit of the *Grootboom* judgement, which was based on the right of access to adequate housing. The *Grootboom* judgement ruled that:

*Legal, administrative, operational and financial hurdles should be examined and where possible lowered over time.*⁷³

The DoE should be commended for introducing the Teacher Development and Training programme in the reporting period. This is one of the important aspects of the right to education.

Apart from spending less than 50% of the budget in the *Thuba Makote* programme, the collection of statistical information on infrastructure still needed in schools is a positive action on the side of the DoE; it shows that the DoE is serious about improving the physical condition of schools. The *Thuba Makote* programme seems to have the potential to address the physical conditions of some schools.

*The poverty alleviation programme, Thuba Makote, is making a substantial contribution to community development. Currently there are 11 facilities under development in the nine provinces. These are located at: Reaipela School near Kuruman, Northern Cape; Zinyosi School near Mount Frere, Eastern Cape; Jacob Mdhuli School in Makoko, Mpumalanga; Thulani Primary School in Mkhuhlu, Limpopo; Mogale City High School near Magaliesberg, Gauteng; Boitumelo Secondary School near Ficksburg, Free State; Dirang ka Natla School near Klerksdorp, North West; Bloekombos Secondary School near Cape Town, Western Cape; and Machibisa Primary School in Edendale, KwaZulu-Natal.*⁷⁴

While programmes such as *Thuba Makote* can go a long way in addressing infrastructure backlogs in schools, there is still a huge shortage of classrooms in some provinces. For instance, 213 schools in Mpumalanga experienced overcrowding in 2002. The Mpumalanga Department of Education reported to the Minister of Education that at 60 of the 213 schools there was a total shortage of 404 classrooms and that the remaining 153 of these schools with 1 157 classrooms were housed in unacceptable structures.⁷⁵

In 2002, the Free State province reported to the Minister of Education that there was one school where learners were receiving education under trees, namely Caledonpark in Ficksburg. The Free State Department of Education (FSDE) solved this problem by erecting two pre-fabricated classrooms. In the Free State 30 schools were reportedly housed in unacceptable structures. A total estimated cost of R4 925 521 would be required to upgrade the 30 schools to acceptable standards. The infrastructure challenges facing the schooling system are enormous such that the FSDE indicated that the proposed 23 new schools and additional facilities at 21 schools planned for the current [MTEF] cycle 2002–

April 2002 – March 2003

2005 will not receive attention during the financial year owing to budgetary constraints.⁷⁶

Table 10: Number of Classrooms Per Province Where Learners are Accommodated in Structures other than Classrooms

<i>Province</i>	<i>Hall</i>	<i>Offices</i>	<i>Staff Room</i>	<i>Store Rooms</i>	<i>Passages</i>	<i>Outside / Under Trees</i>	<i>Shelters</i>	<i>Other</i>	<i>Total</i>
Eastern Cape	270	82	153	106	20	73	3110	130	3 944
Free State	165	75	46	76	10	19	319	111	821
Gauteng	289	134	103	175	37	57	392	185	1 372
KwaZulu-Natal	1 107	277	218	179	20	195	1 226	215	3 437
Limpopo	392	153	152	156	25	250	2 572	122	3 822
Mpumalanga	282	173	100	121	138	93	0	0	907
Northern Cape	54	60	23	53	7	12	51	34	294
North West	339	106	87	96	21	41	402	131	1 223
Western Cape	157	38	37	53	20	15	141	69	530
Total	3 055	1 098	919	1 015	298	755	8 213	997	16 350

Source: Seventh Report to the President from the Minister of Education, 12 December 2002

Several problems have been identified in the implementation of the School Funding Norms. One of the key problems with the School Funding Norms mentioned in the Review of Public School Financing is the lack of consistency between provinces and schools regarding what inputs are covered by the allocations. Another problem is that schools do not have an equal stock of assets to begin with. To exacerbate this problem, it is not clear which inputs should be covered by the school allocations. It is also a problem that the equally poor across the country are not treated the same.⁷⁷

However, after the release of the Review of Public School Financing on June 14 2003, the DoE released its Plan of Action to implement some of the recommendations of the review of Public School Financing:

Informing the entire plan is the need for free and quality education for all, and the implications are listed:

- Public funding of schools, especially where learners are poor, must be sufficient to cover the cost of all the basic inputs required for a quality education.
- Schooling must provide all learners with meaningful knowledge and skills that will empower them to take part fully in the economic, political and cultural life of the country.
- No learners, especially those of compulsory school-going age, should experience any economic, physical or other barriers to attending school.⁷⁸

4.1 Is the Right to Education Being Realised?

The assessment of some of the policy measures instituted during the reporting period has some inherent limitations as a result of being new, such that the assessment of such policy measures becomes limited to policy formulation only. Be that as it may, assessing policy measures that have not been implemented is equally important. Such policy measures include the RNCS and Religious Education, which are applicable to both the GET and the FET bands. The novelty of these measures manifests itself through the ongoing amendments and refinements that are being proposed to them. Of course, the amendments and refinements to be made to these measures are also part of the quest to realise the right to education progressively, which is referred to in the right to education embodied in the various international human rights instruments, the *Grootboom* judgement and the Constitution. Despite the novelty of the measures, some pointers can be given as to whether the right to education is being realised.

Starting off with the RNCS, it can be said that this policy measure inculcates the country's constitutional values in the curriculum. This policy measure is also in line with article 13 (1) of the ICESCR, which reads as follows:

State parties agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship, among all nations and all racial, ethnic or religious groups, and further the activities of the UN for the maintenance of peace. State parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13(1). They are also obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13, paragraph 1.⁷⁹

Regarding the School Funding Norms, which has been a subject of refinement for the past few months, a general conclusion can be drawn that this measure has not been able to achieve one of its main objectives, that is, to ensure that the poorest of the poor receive funding that is in line with a minimum package that a South African learner needs. A number of problems have been identified in the School Funding Norms, and as such the DoE introduced its "Plan of Action" to close the loopholes in this redistribution model. A problem was identified that funding for learners' education was unequal, and an attempt was made to address the problem but proved ineffective. It may be concluded that the attempt, in the form of the School Funding Norms, has failed the *Grootboom* judgement test of reasonableness in realising the right to education.

April 2002 – March 2003

The intended beneficiaries are not enjoying the benefits of the School Funding Norms. Instead the policy is fraught with inconsistencies and hence dismally fails to address the problem, that is, to provide a minimum package of funding to the poor learners.

Reasonableness meant that the State was obliged to act to achieve the intended result, and the legislative measures would invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive.⁸⁰

According to the *Grootboom* judgement, “within available resources” conveyed that the content of the obligation in relation to the rate at which the desired result was achieved as well as the reasonableness of the measures employed to achieve were governed by the availability of resources. This element of the *Grootboom* judgement or legal obligation will not be entertained in as far as this measure is concerned since it has not been established what would constitute a minimum package for an average learner. The measure needs to realise the right to education progressively. This means that the policy has to ensure that participation in education is progressively facilitated.

Legal, administrative, operational and financial hurdles should be examined and, where possible, lowered over time. It imposed an obligation to move as expeditiously and effectively as possible towards the goal.⁸¹

It can be said that the ECD programme is progressively realising the right to education. Firstly, the programme nationally has successfully covered most of the sites it set to cover when it was implemented, despite the reported challenges, including less funding per capita allocation in most provinces as a result of allegedly closed bank accounts of some ECD providers. However, one of the main challenges facing the ECD provisioning is the extension of the programme. Currently, the coverage is limited to 13% of children who should be on the programme. It appears that the programme will have to cover more children in the financial year 2003/04 progressively realising the right to education, and ensure that beneficiaries are funded according to specifically set allocations.

On the one hand, it is not possible to establish whether or not some measures do contribute to the realisation of the right to education, as a result of insufficient information either supplied by PEDs or available in the State official documents. The ABET programme is one such policy measure. However, Russell *et al.* point out that provincial ABET spending continues its low share of budgets. Most PEDs do not have medium- and long-term strategic plans for broader ABET provisioning, yet according to Census 2001 statistics about 4,5 million people aged between 5 and 24 do not have an education, followed by about 4 million people with some form of primary schooling only.

On the other hand, an underspending of 68% of the funds allocated for ABET and *Ikhwelo* project (applicable to two provinces only), owing to a 10-month delay in the appointment of 240 educators and 9 project co-ordinators seriously

compromised the right to fundamental education, which corresponds to basic education. This incident manifests the lack of proper planning to a greater extent in as far as ABET is concerned. The lack of proper planning could lead to the right to fundamental education not being respected. This automatically becomes a violation of the constitutional obligations by the State.

Infrastructure backlogs and maintenance have proved to be a daunting challenge amidst budgetary constraints faced by the State. Despite the underspending incurred in the *Thuba Makote* programme in the reporting period, the programme has proved to be progressive, as it has not only helped make available some community facilities, but has also benefited schools in the process.

Russell *et al.* found that four provinces had no designated capital spending plans and those that do set aside capital funds forecast negative real average growth rates over the MTEF. Even though infrastructure backlogs in schools in most provinces far outweigh the financial resources available, capital spending plans are a prerequisite to better use and management of resources in addressing the problem. As shown in this report, the availability of statistics on infrastructure backlogs in schools makes it easier for the PEDs to produce capital spending plans for each MTEF cycle since the infrastructure backlogs in schools far exceed the available financial resources.⁸²

Availability of resources does not only refer to the availability of financial resources but to the availability of human resources too. In most of the programmes reported upon for the period under review, it appears that human resources were not a hindrance to the realisation of the right. However, there were some instances in which the realisation of the right was compromised because the financial resources available were not being spent properly; in other words, the allocated financial resources were underspent. For example, in the *Thuba Makote* programme about 51% of the allocated funds for the financial year were underspent. Underspending on ECD is understandable given the fact that some of the providers in the rural areas have had their accounts closed owing to the lack of funds in these accounts.

It is concerning, nevertheless, that some PEDs did not fill the vacancies for HIV/AIDS programmes. Using the *Grootboom* judgement, it may be concluded that the programme fails the test as a result of the shortage of human resources to implement the programme – when the problem could have been avoided. The drop in the coverage of poor learners in the NSNP as a result of “organisational failures” in the Eastern Cape and KwaZulu-Natal is unacceptable. The programme could fail the *Grootboom* test on these grounds.⁸³

4.2 Constitutional Obligations

Generally, most policy measures do conform to the constitutional obligations.

The National Policy on the Management of Drug Abuse by Learners in Public and Independent Schools and Further Education and Training Institutions respect the right to education. The introduction of the policy measure by the State is an

attempt to address drug abuse in schools and FET institutions, which may prevent a learner from exercising his/her right to education. In this case, therefore, the State is being proactive in addressing a situation whereby the right to education could be in jeopardy as a result of drug abuse. However, a study would have to be conducted to measure the impact of the policy measure on the illegal use of drugs in schools and public FET colleges.

The Regulations to Prohibit Initiation Practices in Schools conform to the constitutional obligation to protect the right of individual learners from being ill-treated by others by subjecting them to initiation practices that may jeopardise their right to education.

PEDs must know that sending learners away from school or barring them from writing their examinations because of unpaid fees is in violation of the right to education, as the action does not respect the right to education. PEDs must ensure that instructional staff and principals know and understand the rights of learners and parents. This can be done by incorporating the human rights education into the teacher training curricula. The same applies to the awareness about school fees exemptions; if parents do not know that they can apply for school fees exemption, it means that the State is not making parents aware of this opportunity. This is also in violation of the constitutional obligations to fulfil and promote the right to education.

The ERP research findings concluded that poverty was the main reason why many children on farms get involved in farm work and consequently miss school. Section 3(1) of SASA on “compulsory attendance” makes it the parents’ responsibility to cause a child to attend school. It appears that some parents allow their children to engage in work on farms, and it seems that no authority has taken steps to challenge the behaviour of these parents. Section 3(5) of SASA⁸⁴ is therefore not being applied. In light of the failure of the State to apply section 3(5) of SASA, as the circumstances warrant in this case, the constitutional obligations to respect, protect and fulfil the right to education are violated. Furthermore, the State has also failed to promote the right to education since it is the responsibility of the State to make parents and learners aware of the right to education.

Violations of article 13 may occur through the direct action of State parties (acts of commission) or through their failure to take steps required by the Covenant [ICESCR] (acts of omission).⁸⁵

It is worth noting though that for the first time in South Africa, a farmer has been convicted for using child labour. The Department of Labour brought the case against the farm after Waronice van Wyk, who was working on the farm, lost a leg when she fell off a trailer. The incident happened two years ago. Co-owner and managing director of the farm, Mike Barnard, pleaded guilty to three charges – under South Africa’s Basic Conditions of Employment Act.

Besides admitting to employing Van Wyk, he also pleaded guilty to not notifying the Department of an accident on the farm within the required seven days, and not having a safety representative for workers.⁸⁶

The statistics of child labour in the country is also shocking.

According to a survey released last year [2002], out of 13,4 million children in the country, 1,4% [about 182 000] were engaged in commercial agriculture; 0,4% [about 52 000] were engaged in manufacturing and 0,5% [about 65 000] were engaged in construction and mining.⁸⁷

It is a significant development, however, that South Africa is in the process of developing measures to combat child labour. For instance, a Draft White Paper on a National Labour Action Programme has already been formulated (July 29 2003).⁸⁸

4.3 General Conclusion on the Realisation of the Right to Education

It may be concluded that the right to education has been partially realised since, generally, most of the policy measures do conform to the international human rights instruments and the constitutional obligations enshrined in section 7(2) of the Constitution where necessary, including those policy measures whose assessment was limited to policy formulation only. Take the RNCS Grades R – 9 and the Religious Education policy as an example. Of course, if the measures fail to achieve intended objectives in implementation, such measures will not be contributing to the realisation of the right to education. The weaknesses noted in some policy measures, which were discussed in detail in the chapter, must be addressed accordingly such that in future, a conclusion may be drawn that the right to education is being realised, that is, in full.

It is an achievement for the country if participation rates in education are improving. For instance, the DoE reported that the NER for children aged 7 to 15 has improved noticeably since 1994 such that the enrolment ratio in 1991 was 92% for primary schools and is currently standing at 97%. However, the assessment of the right to education should not be limited to participation rates only, which is quantifiable. The quality of policy measures instituted is as important as the outcomes of the policy measures adopted for the realisation of the right to education. The following excerpt elucidates the point:

There is no question but that information other than statistics is used in monitoring whether or not a government is complying with its human rights obligations. The UN Committees charged with overseeing the various rights treaties routinely request information of all sorts: from enjoyment of the right by persons within the jurisdiction of the [S]tate. It is also clear that there is a solid tradition in the human rights field of using the word “indicator” itself to refer to information beyond statistics. The International Labour Organisation (ILO), discussing the question of whether human rights indicators go beyond statistical information, states: [The ILO’s supervisory bodies use a variety of indicators of the degree of implementation of the instruments they supervise ... Many of these indicators include a “numerical” aspect, many do not.]⁸⁹

It is therefore important to note that indicators in the field of human rights mean more than just statistical information. Thus the assessment of any measure introduced by a government should transcend statistical data analysis to include other indicators such as the quality aspect of measures introduced. The foregoing assessment of the right to education has, as such, been informed by this approach to assessment.

5 RECOMMENDATIONS

The situation on farm schools needs co-operation between Government departments, particularly the DoE, DoL and the Department of Social Development. Each of these government departments has a role to play in as far as the problems experienced by farming communities are concerned. The DoE needs to review section 14 of SASA to ensure that it produces the desired results. Both the DoE and DoL need to educate farming communities about their rights – workers' rights and the right to education. The Department of Social Development would have to address the poverty aspect of the farming communities where possible. The following excerpt is an attempt to illustrate the situation in most farming communities:

In many of the farming communities where the ERP conducted research, child labour was routinely practised. It soon became clear that the issue was more complex than just a farmer whisking off children from the classroom to the potato field – that it was a complex issue of poverty and survival. Learners' and parents' rights in many communities are routinely violated. A few common instances include schools not informing parents about fee exemptions; preventing learners from writing exams because of unpaid fees; withholding reports and refusing registration for the following year without prepaid fees. Some schools also used debt collectors to terrorise parents into paying. These violations exist because national and provincial departments of education have done very little in educating parents and learners about their rights and because of the pressure schools face to generate revenue from parents.⁹⁰

The lack of better-published medium-term strategies from provinces and low provincial spending in this sector of education may jeopardise the right to adult basic education. Better-published medium-term strategies and improved spending on ABET are issues that need to be attended to immediately given that about 4,5 million people aged between 5 and 24 do not have an education, and about 4 million people have primary schooling only.⁹¹

It is commendable as well that the State has sought donor funding to address this challenge.⁹² However, PEDs need to have audits to plan capital spending better. Russell Wildeman *et al.* found that four PEDs did not have capital spending plans. PEDs must always have statistics on important areas, including infrastructure backlogs. Such statistics must be accompanied by spending plans or business plans. These should not be prepared only when the Minister of Education needs them; they should be available for the PEDs themselves for better planning each financial year. Concrete steps have to be taken by the PEDs

to ensure that the planned numbers of classrooms to be built during the current MTEF cycle (2001/02 – 2004/05) per province are met.

At the end of 2001/02 financial year: 42 933 classrooms; 7 848 schools needed water; 174 439 toilets; 10 276 administration blocks; 7 680 laboratories; 21 912 libraries; 12 232 schools needed minor repairs and renovations; 7 477 schools needed electricity; and, 10 963 schools needed telephones. The total estimated cost to address all these backlogs is R30 billion.⁹³

Table 11: Numbers of Actual and Planned Delivery on Priorities: 1999/2000 to 2004/2005 Financial Year

<i>Facility</i>	<i>1999/00</i>	<i>2000/01</i>	<i>2001/02</i>	<i>2002/03</i>	<i>2003/04</i>	<i>2004/05</i>
Classrooms	1 936	2 267	2 660	3 750	4 330	4 748
Toilets	1 345	1 211	4 173	6 562	6 909	7 473
Water	252	253	181	202	171	182

Source: Seventh Report to the President From the Minister of Education 12, December 2002

There has to be equity of quality in post-provisioning to achieve better education outcomes across schools. Post-provisioning should be informed by a proper educator and subject/learning area audits. These audits must consider subject offerings in each school. The DoE should take a lead in addressing this issue; PEDs should not have a margin of discretion in post-provisioning, as the impression is created currently. Currently, PEDs use their discretion to decide on the budget for post-provisioning. PEDs use between 2% and 5% of their budgets to address the past imbalances in post-provisioning.⁹⁴

A way has to be found to ensure that schools enjoy balanced subject offerings that do not work against some schools as a result of a limited package of subject offerings. Educator qualifications is another crucial issue in which the PEDs have to take a leading role to achieve an almost balanced spread of better-qualified educators across schools to attain better education outcomes. This warrants that PEDs work closely with SGBs in cases whereby an SGB is an employer.

ECD intake has to improve, which would obviously necessitate budget increase for the programme. Regardless of the raw figure – 13% – that is the current percentage intake of ECD learners; it is insufficient. Of course, it is commendable that most PEDs achieved their targets of ECD sites during the reporting period.

Generally, there is a need for Government to ensure that its policies are understood from national office of the DoE right down to the districts. The issue of exemptions for poor learners who cannot afford school fees needs to be re-examined. Some parents do not even know that they should be exempted from paying the fees. And if they are aware, do they know how the process of exemption is determined? Whilst a PED such as the Gauteng Department of Education has advertised the school fees exemption policy in a much more visible way (for example on taxis), it appears that the onus is now on schools,

April 2002 – March 2003

not only in Gauteng but in other provinces as well, to ensure that parents are informed about the school fees exemption policy for those families who cannot afford school fees.

The School Fees Exemption mechanism needs to be reviewed if beneficiaries are to enjoy the exemption from paying the school fees. It is also equally important for the State to augment the budget for those schools that do exempt learners from paying school fees in order not to violate the constitutional obligation to respect the right to education.

PEDs have to explain to schools what it entails to be a section 21 school as well as how this status is obtained. PEDs should also inform applicants of their outcomes on their application for obtaining section 21 status timeously so that they know whether they qualify for the section 21 status, and if not, how they could maximise their chances to qualify in future.

The State should use section 3(5) of SASA to ensure that parents or guardians of those children that are of school-age but are not attending school do eventually attend school. Both parents and the State should work as partners in realising the right to education, especially with regards to compulsory schooling.

There is a need for greater focus on what quality basic education means for South Africa. All stakeholders in education, including the SAHRC need to explore and come up with a definition of quality basic education which could also be measurable and thus easier to monitor.

Given that the Government has made a decision to exempt the recipients of child grants support and dependency grants from paying the school fees, it is important to ensure that these grants recipients attend school.

There is a need to update the statistics for child support and dependency grants since the current education statistics (captured in the Education Statistics in South Africa at a Glance in 2001, published by the DoE in June 2003) for this vulnerable group of learners is now outdated. This requires that relevant government departments such as the Department of Social Welfare exchange information with the DoE for consideration in its budgeting and planning for better provisioning of education.

There needs to be a concerted effort by civil society, the DoE and Social Development and other stakeholders to ensure that street-children attend school.

THE RIGHT TO FURTHER EDUCATION AND TRAINING – EXECUTIVE SUMMARY

Progress in the Realisation of the Right to Further Education

Unlike in the General Education and Training band, there were not as many policy measures instituted in the Further Education and Training (FET) band. FET refers to Grades 10 to 12 and technical colleges). The only policy measure that was introduced in this band was the National Curriculum Statement. Draft Subject Statements and a Draft Qualification and Assessment Policy Framework were also developed. The Draft Subject Statements reflect 35 subject offerings that replaced 264 subject offerings that were once in place as a result of the grading of matriculation examinations into standard, lower and higher grades.

Some amendments were made to the Further Education and Training Act 98 of 1998.

Respect

Provincial Education Departments (PEDs) issued instructions to principals of FET institutions where educators/principals had expelled learners for outstanding school fees. This was ensured that learners' right to FET was not violated. The reduction of the FET Colleges from 150 to 52 was successfully implemented as the right to further education and training was not in any way violated, instead it could potentially help the DoE manage its resources better.

Section 16A was inserted in the Act to ban corporal punishment in any FET institution and to make it a criminal offence to administer corporal punishment to a student. Corporal punishment may have adverse effects on learners such that they may end up not going to these institutions to receive education. The result would obviously be that affected students would have their right to education jeopardized and consequently the State would be in violation of the right.

Protect

An amendment was made to section 24 of the FET Act. The amendment made the registration of private FET institutions compulsory. This amendment is important as it prevents the operation of illegal FET institutions, which may not have been accredited by the Department of Education.

Promote

It was found that some schools expel learners for not paying school fees. This is a violation of the learners' right to education. It therefore, still stands that PEDs have to take more active steps to ensure that parents are aware of the school fees exemption thereby promoting the right to education. While the State has introduced school fees exemption for parents who cannot afford to pay the school fees, some schools have not been willing to make parents aware of the

April 2002 – March 2003

exemption. PEDs, principals and educators must communicate the message about school fee exemptions to parents in an appropriate manner.

Fulfil

The development of the new curriculum for the FET band contributes to the fulfillment of the right to FET as it provides a variety of opportunities to students to pursue either academic education provided by universities or technical education provided by technical colleges. The commissioning of the study into distance education by the DoE in the FET band is a good move that could make FET even more accessible to a number of people who would like to further their studies in the FET band. The introduction of *Dinaledi* as a programme that seeks to improve participation and performance of learners from historically disadvantaged backgrounds in Mathematics, Science and Technology (MST), is another development by the DoE that with time, will contribute immensely to the fulfillment of the right to further education and training.

Apart from actions that violated the right to education such as the expulsion of learners for not paying school fees, the inadequate provision and/or late distribution of Learner Support Materials (LSMs) to schools was said to be a recurring problem especially in the rural provinces. At the start of 2002, for example, only 25% of textbooks had been delivered in Limpopo. Poor retrieval rates also contributed to the shortage of textbooks in schools.

Infrastructure backlogs impact negatively in the realisation of the right to education. According to a situation analysis study undertaken by the Center for Education Policy Development, Evaluation and Management (CEPD) for UNICEF's Girls Education Project, it was found that the Eastern Cape, Limpopo, and KwaZulu-Natal were the most affected by the lack of libraries, telephones, electricity and water.

Overall Assessment

Despite the many challenges that faced the FET band, there were some achievements during the reporting period, including, amongst others: *Dinaledi*, which reportedly surpassed its target of 10% of students enrolling for MST in its first two years of implementation; the registration of learnerships for learners as part of skills development; and the registration of private providers of FET. As already demonstrated in the section above, most of the developments in the FET band met the constitutional obligations as espoused in section 7(2) of the Constitution. They also conformed to the spirit of the *Grootboom* judgment.

Whilst the introduction of the school fees exemption was a positive development was intended to ensure that no learner was excluded from participating in education as a result of his/her poor financial background, the implementation of the measure fell short in its implementation. In the language of the *Grootboom* judgment, any measure taken by the State should be well-considered both in its conception as well as in its implementation. The implementation part

of the measure needs to be revisited to ensure that every parent knows about the school fees exemption and that the State augments the budget for those schools that offer school fees exemption to poor learners.

Although PEDs spent almost all their budget allocations for LSMs, the late distribution and delivery of insufficient LSMs to some schools must be addressed. The delivery of insufficient LSMs as well as their late distribution impact the right to FET is not being fulfilled. A study undertaken by the CEPD found that girl learners' participation rates in education were being negatively affected by their involvement in income-generating activities owing to poverty.

Considering the challenges the State has in the FET band - *vis-à-vis* its achievements, a conclusion may be drawn that the State is partially realising the right to FET. It must be taken into account that the right to education cannot be fully realised immediately given the scope of the socio-economic challenges South Africa is facing as a country.

Recommendations

- Late distribution and delivery of insufficient LSMs in some cases and the infrastructure backlogs experienced at some schools should be some of the main issues that are addressed in the financial year 2004/2005, if the right to education is to be fully realised.
- While the creation of *Dinaledi* is a commendable move, more effort still needs to be devoted to increasing potential girl-learners' participation in education. The involvement of girl-learners in income-generating activities as a result of poverty, and the time they spent on domestic chores were cited as barriers to girl-learners' education.
- Related to the causes of the high-drop-out rates in the FET sector, ways have to be found to address this situation in this sector of education.

THE RIGHT TO FURTHER EDUCATION AND TRAINING

6 POLICY AND PROGRAMMATIC MEASURES

6.1 National Policy and Programmatic Measures

6.1.1 National Curriculum Statements for Grades 10 to 12

The phasing in of Outcomes-Based Education (OBE)⁹⁵ in the FET grades involved the development of the National Curriculum Statement Grades 10 to 12 (NCS)⁹⁶, which took place from May 2002 to March 2003. 35 Draft Subject Statements⁹⁷ were developed including the Draft Qualification and Assessment Policy Framework.

6.2 National Legislative Measures

6.2.1 Education Laws Amendment Bill of 2002⁹⁸

6.2.1.1 Further Education and Training Act No. 98 of 1998

Amendment of item 7 of Schedule 2 to Act 76 of 1998

The Education and Training Act is amended by the insertion after section 16 of the following section:

“Prohibition of corporal punishment and initiation practices”

16A(1) A person may not administer corporal punishment to a student at a further education and training institution.⁹⁹

Substitution of section 24 of Act 98 of 1998

The following section is substituted for section 24 of the Education and Training Act:

“Registration of private further education and training institution

24(1) A person other than a public further education and training institution or an organ of state may not provide further education and training unless that person is –

(a) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act No. 61 of 1973); and

(b) registered or provisionally registered as a private further education and training institution in terms of this Act”

Amendment of section 47 of Act 98 of 1998

This section of the Education and Training Act is amended by the substitution for section 47 of the following section:

“Regulations

47. [(1)] The Minister may make regulations consistent with this Act on

–

(a) safety measures at public and private further education and training institutions;

(b) a national process and procedures for the assessment of student achievement for public and private further education and training institutions;

(c) a national process for the assessment, monitoring and evaluation of education in public and private further education and training institutions;

(d) initiation practices at public and private further education and training institutions;

any matter which the Minister is empowered or required to prescribed by regulation in terms of this Act; **[and]** or

[(b)] any matter in respect of which regulations are necessary or expedient in order to achieve the purpose of this Act.”¹⁰⁰

The Education Laws Amendment Act of 2002 (Act No 50 of 2002) was enacted and promulgated in *Government Gazette No 24113* of November 28, 2002.

6.3 Provincial Policy and Programmatic Measures

Apart from the NCS Grades 10 to 12 that all the Provincial Education Departments (PEDs) have to implement, the Eastern Cape Department of Education (ECDE) formulated the Recognition of Prior Learning (RPL) policy during the reporting period. It is aimed at promoting the National Qualifications Framework (commonly referred to as NQF) principles of articulation and portability. The RPL policy provides for the recognition of skills and knowledge learned outside the academic environment.

The KwaZulu-Natal Department of Education and Culture (KZNDEC) completed the merger process of FET colleges. The Mpumalanga Department of Education (MDE) institutionalised the Provincial Further Education and Training Act with former Technical Colleges rationalised to three FET colleges in the province. At the time of reporting, the MDE was still working on the

development of a learner support programme. Furthermore, the MDE formulated and circulated Guidelines on Conducting Memorial Services at all educational institutions to prevent memorial services from taking place during working hours. The MDE also issued a directive to minimise lawlessness during the matric dance functions in the province.

The MDE trained Grade 10 educators and FET college lecturers on the OBE to ensure that these educators are able to implement the FET curriculum. The MDE was also engaged in learnerships in the three FET colleges as part of the nationwide skills development initiative.

6.4 Budgetary Measures

Only the KZNDEC presented total budgets for each programme. Other PEDs presented consolidated budgets only, which does not make disaggregation of programmes possible.

Table 12: National Department of Education Total Budget Allocation

Year	Total Departmental Allocation in Rands	Allocation as a % of the National Budget	Total Donor Funding in Rands	Actual Expenditure
2001/02	93 427 000	0,04	1 439	85 213 418,06
2002/03	111 596 000	0,04	11 637 000	99 893 174,60

Source: National Department of Education's response to the SAHRC's protocol, 2002/03

During the year under review the DoE underspent by 10,4% in the FET programme. The reasons given for underspending range from delays in the implementation of the *Thuba Makote* project¹⁰¹ as a result of extensive stakeholder consultation and rainy weather conditions; small, medium and micro-enterprises failing to supply builders with materials on time; delays in the provision of some services to support the implementation of the *Ikhwelo* project; to some PEDs not claiming salaries for HIV/AIDS co-ordinators and finance administrators.

Table 13: Gauteng Total Budget Allocation for FET

Year	Total Departmental Allocation in Rands	Allocation as a % of the National Budget	Actual Expenditure
2001/02	276 314 000	-	275 948 000
2002/03	271 458 000	-	274 490 000

Source: Gauteng Department of Education's response to the SAHRC's protocol, 2002/03

Notes: Donor funding was indicated as "0" for both years, - Figure not given

The GDE overspent by 1,1% in this programme during the year under review. The incurred overspending was ascribed to personnel costs, as more educators were needed to keep up with growing learner enrolment in the FET band.

Table 14: KwaZulu-Natal Total Budget Allocation for FET

<i>Year</i>	<i>Total Departmental Allocation in Rands</i>	<i>Total Donor Funding in Rands</i>	<i>Actual Expenditure</i>
2001/02	9 346 610 000	145 934 000	9 264 055 000
2002/03	10 140 719 000	226 445 000	10 403 458 000

Source: KwaZulu-Natal Department of Education and Culture's response to the SAHRC's protocol, 2002/03

Notes: The KZNDEC did not supply the SAHRC with the "Allocation as a % of the National Budget" figure

Table 15: KwaZulu-Natal Budgetary Allocation Towards Programmes and/or Projects

<i>Programmes</i>	<i>Total Appropriation 2002/03</i>	<i>Actual</i>	<i>Variance over/ (under)</i>
1. Administration	196 351 000	190 377 000	5 974 000
2. Public Ordinary Schools	9 083 162 000	9 361 395 000	(278 233 000)
3. Independent Schools	22 655 000	23 285 000	(630 000)
4. Special Schools	217 722 000	214 898 000	(2 824 000)
5. Teacher Training	26 075 000	14 387 000	11 688 000
6. Technical Colleges ¹⁰²	152 755 000	146 405 000	6 350 000
7. Non-Formal Education (ECD)	58 766 000	52 598 000	6 168 000
8. Sports and Recreation	16 030 000	15 160 000	870 000
9. Arts and Culture	19 889 000	20 312 000	(423 000)
10. Auxiliary Services	347 314 000	349 092 000	(1 778 000)
11. Auxiliary Functions	Figure not given	3 001 000	(3 001 000)
Total	10 140 719 000	10 390 910 000	(250 191 000)

Source: KwaZulu-Natal Department of Education and Culture's response to the SAHRC's protocol, 2002/03

The KZNDEC expressed dissatisfaction with the financial resources allocated to it for FET activities during the reporting period. It felt that the financial resources were under-allocated. Consequently, not all the activities planned for the financial year could be undertaken. The KZNDEC overspent the consolidated departmental budget by 3%. The Department ascribed this principally to the hiring of additional educators.

Table 16: KwaZulu-Natal School Building and Maintenance Programme

<i>Year</i>	<i>Allocation for programmes and projects in Rand (s)</i>	<i>Allocation as a % of the Department's budget</i>	<i>Total Conditional Grants Allocation in Rand(s)</i>	<i>Total Donor Funding in Rand(s)</i>	<i>Actual Expenditure</i>
2001/02	Given directly to the Department of Public Works		68 179 000	Nil	222 348 000 ¹⁰³
2002/03	238 506 000	2,4	132 449 000	50 000 000	262 056 00

Source: KwaZulu-Natal Department of Education and Culture's response to the SAHRC's protocol, 2002/03

The programme experienced overspending as a result of more toilets and classrooms being built than originally planned. The Department felt that the budget allocation for this programme was insufficient, as it could not address the current infrastructure backlogs in the province. However, in the financial years 2003/04 and 2004/05 the financial resources will be increased for this programme to R421 824 000 and R543 671 000 respectively.

Table 17: Mpumalanga Total Budgetary Allocation

<i>Year</i>	<i>Allocation for programmes and projects in Rands</i>	<i>Allocation as a % of the Department's budget</i>	<i>Total Conditional Grants Allocation in Rands</i>	<i>Actual Expenditure</i>
2001/02	86 343 000	-	7 320 000	86 170 314
2002/03	148 962 000	-	14 276 000	148 947 104

Source: Mpumalanga Department of Education's response to the SAHRC's protocol, 2002/03

Notes: The MDE did not supply the SAHRC with "Allocation as a % for the Department's Budget" as well as "Total Donor Funding"

Table 18: Mpumalanga Budgetary Allocation Towards Programmes and/or Projects

<i>Year</i>	<i>Allocation for programmes and projects in Rands</i>	<i>Allocation as a % of the Department's budget</i>	<i>Total Conditional Grants Allocation in Rands</i>	<i>Actual Expenditure</i>
2001/02	29 465 000	-	7 320 000	27 894 250
2002/03	44 773 000	-	14 276 000	44 892 025

Source: Mpumalanga Department of Education's response to the SAHRC's protocol, 2002/03

Notes: The MDE did not supply the SAHRC with "Allocation as a % for the Department's Budget" as well as "Total Donor Funding"

The MDE expressed satisfaction with its budget allocation, which it underspent by 1% only.

Table 19: Western Cape Total Budget Allocation for FET

<i>Year</i>	<i>Total Departmental Allocation in Rands</i>	<i>Allocation as a % of the National Budget</i>	<i>Actual Expenditure</i>
2001/02	125 166 000	0,0005	125 859 000
2002/03	136 347 000	0,0005	132 707 087

Source: Western Cape Department of Education's response to the SAHRC's protocol, 2002/03

Notes: Donor funding was indicated as "0" for both financial years

The WCDE overspent by 2,6% in the programme during the financial year 2002/03. Nevertheless, there were not any particular reasons given for the incurred over-expenditure.

7 PROGRESS IN THE REALISATION OF THE RIGHT TO FET

The DoE has hailed the development of a new curriculum as an important step and an achievement for senior secondary schools. The DoE hopes that the new curriculum will “produce [life-long learners] who are creative, reflective, ready either to pursue their learning careers in higher education or to enter the labour market”. The DoE has also hailed the reduction of technical colleges through mergers and incorporation from about 152 to 50 as a major achievement. The DoE hopes that the newly formed colleges “will provide a set of vocational programmes to learners of varied potential, interest, need and age grouping without unnecessary duplication and inefficiencies that characterised the old system”.

In 2000, the DoE commissioned a study into open learning in both the General Education and Training and FET bands in an attempt to broaden participation in education. Since then, the Department has been developing a national strategy for open learning and distance education in public FET colleges.

The DoE was involved in some of the following projects during the reporting period:

The abolition of the differentiation of the matric subjects into standard, lower and higher grades.

- *Dinaledi* is a project aimed at improving participation and performance of learners from historically disadvantaged backgrounds in MST. The project is said to have already surpassed its target of 10% in its first two years of implementation.
- Establishment of a new funding regime for FET colleges: a funding framework has been developed with proposals on formula-funding of programmes, funding for special purposes, student funding and private funding.

April 2002 – March 2003

- Registration of private providers: proposals were sent out to the public for comment such that a policy proposal on registration of private providers was in the process of being finalised.

It is noteworthy that almost all the PEDs which submitted their responses to the SAHRC protocols referred to a number of common areas that sought to meet at least three constitutional obligations¹⁰⁴ of the right to education, which are to respect, promote and fulfil the right to education.

The existence of learnerships does not only further the objectives of the Skills Development Act 97 of 1998, but also benefits the out-of-school youth (who are otherwise unemployable as a result of lack of skills and requisite experience) and unemployed adults. The GDE indicated its satisfaction with the links it has established with various Sector Education and Training Authorities (SETAs). A Safe Schools programme was another initiative referred to by at least two provinces. The WCDE, for instance, instituted this programme, which culminated in the development of a provincial Schools Safety policy.

As part of addressing skills shortage in MST, the NWDE increased the number of schools participating in *Dinaledi* to 15. There were several categories of vulnerable groups that the NWDE considered in its quest to realise the right to FET. For instance, the NWDE encouraged girl-children to take part in MST; and offered fee exemptions to learners from low-income and poverty-stricken groups as per the South African Schools Act (SASA) 84 of 1996.

In order to improve learner performance (especially in disadvantaged areas) and girl-children's participation in MST, the WCDE launched the following projects/programmes: MST, Integrated Teacher Training, Development of Learner Support Materials, and Special Interventions and Diagnostic Testing programme. In March 2003, the WCDE launched the MST Academy to improve the matric pass rate in MST, especially among learners from disadvantaged backgrounds. Resources had already been invested and facilities put in place for first intake in 2004. During the reporting period the WCDE implemented a Multi-Grade Schools programme to support educators and learners in MST teaching and learning in rural schools.

The WCDE's programme on Education and Communication Technology ensured that about 99% of schools in the Western Cape were linked to the Internet (Telecommunication Project). There were about 3 800 computers installed in school computer laboratories. The DoE also referred to a similar programme taking place in the Northern Cape and Mpumalanga in which about 80% of schools were participating. The WCDE provided a learner support transport scheme to ensure access to schooling in poor communities. Youth from the Western Cape province benefited from the WCDE, as it provided support to Youth at Risk as part of its services for Learners with Special Education Needs (LSEN).

8 CHALLENGES FOR THE REALISATION OF THE RIGHT TO FET

According to the DoE, the new curriculum caters for learners and youth aged between 16 and 18 years old in schools, and youth and adults aged 18 and over in technical colleges. The intention of the new curriculum is to address imbalances of the past and benefit learners in rural areas and historically disadvantaged racial groups. Issues of inclusivity (learners with barriers to learning) and increasing the number of girls offering Mathematics and Science are being addressed.

Groups targeted by the FET colleges initiatives are females, persons without formal qualifications (through the RPL policy), persons living in rural areas, persons living with and/or affected by HIV/AIDS, unemployed persons, low-income or poverty-stricken groups and historically disadvantaged racial groups.

The ECDE experienced a shortage of both human and financial resources, especially for FET Secondary. However, in addressing the problems the ECDE transferred personnel from districts and funds from other programmes to FET Secondary.

According to its report to the SAHRC, the GDE focuses on strategies that affirm the status of African learners (especially girls) across the education system and the curriculum. A large number of programmes, including curriculum redress activities, were introduced in 2002 under the Girl-Learner Project. The GDE has a budget programme aimed at addressing the needs of LSEN. In the Education of Learners with Special Education Needs (ELSEN) sector, the GDE has an equitable school funding system based on the needs of the sector. The Department has, however, established a redress fund to address the needs of ex-DET schools that have a backlog in education resources required to meet the needs of LSEN.

Some PEDs still experienced cases of learners being turned away from writing examinations or even expelled from school for non-payment of fees. In June 2003 some learners in Gauteng were refused to sit for their national FET examinations as a result of unpaid fees. However, the issue was resolved as the GDE had to send a memorandum, making heads of FET institutions aware that such an act was in violation of the right to education.

The KZNDEC pointed to the poverty (decile) rating that was in use during the reporting period to allocate funding to schools as the main difficulty in the schooling sector.¹⁰⁵ Poverty rating was partially determined by the location of the school. One salient problem cited by the KZNDEC regarding this instrument, however, was that some schools are located in relatively wealthy areas (and thus received lower funding) yet some of their learners came from poor surrounding areas. As a result of this, an imbalance was created in the school funding policy. The KZNDEC is working with the DoE to correct this anomaly.

Reporting to the SAHRC on the administrative actions it took during the reporting period, the KZNDEC mentioned that it received between 40 and 60

complaints that pertained to the School Admissions policy. There was also an instance whereby some SGBs and headmasters attempted to prevent learners from sitting for examinations (owing to unpaid school fees) and from being admitted to some schools simply because they were not resident in areas around the schools.

In another separate incident, an application was brought against the KZNDEC and DoE in which an applicant, an SGB, demanded decent facilities in the form of proper classrooms for learners at a school near Eston. Whilst it was correct that the facilities at the school were inadequate and unsuitable, the problem experienced by the KZNDEC was that the school was situated on private land and the KZNDEC did not have a lease agreement with the owner of the land. Consequently, infrastructural developments to the school could not be effected easily. Eventually, the KZNDEC entered into a lease agreement with the owner of the land. The court case against the respondents, the KZNDEC and the DoE was avoided, as the KZNDEC had the opportunity to improve the quality of the facilities at the school within a period of seven months.

The following were the infrastructural developments that took place at the school:

- Five classrooms were constructed.
- An administration block was erected.
- Latrines were erected.
- Sportsfields were constructed and grassed.

One of the ABET learners reported that she had sat for examination, but when the results were announced the learner's results were not available. In other words, it appeared as though the learner had not sat for the examination. Internal enquiries to find out what had happened and requests to check registers were eventually unsuccessful.

The KZNDEC received about 62 complaints pertaining to pension benefit payouts during the reporting period. Briefly, the complaints revolved around time delay in the processing of applications for pension benefit payouts. In addressing the problem, the KZNDEC designed a *pro forma* response to deal with former employees' enquiries regarding pension benefit payouts. The KZNDEC intervened such that both the regional and district offices have improved the time they take to process the pension benefit payouts applications and related matters.

The MDE demonstrated in a number of ways that it catered for various categories of vulnerable groups through its policy measures. For example, in the Mpumalanga province educators have been trained on how to deal with people living with and/or affected by HIV/AIDS. Ongoing training and awareness campaigns have been conducted for SGBs and parents in different communities.

The MDE is also collaborating with the Department of Correctional Services to provide the ABET programme to prisoners.

The WCDE reported that it managed 75 schools with specialised education needs during the reporting period, and was in a process of developing policy for inclusive education, which would expand support for these learners in public ordinary schools. The WCDE also reported that it provided ongoing support for ABET in prisons. Regarding AIDS orphans, the WCDE has formed partnerships with other government agencies and civil society groupings to provide appropriate support. In addition, the WCDE was engaged in the development of a Human Resources Strategy in conjunction with the provincial Department of Economic Affairs to strengthen the skills development of FET colleges and ABET centres to benefit both their learners and unemployed persons. Girl-children are encouraged to take part in MST, as this was previously a male-dominated area. The expansion of ECD sites benefited female-headed households. It was a commendable move for the WCDE to establish an FET college to serve the West Coast area, with sites in Atlantis, Citrusdal, Vredendal and Vredenburg. Particular attention was given to the promotion of access to FET colleges among previously disadvantaged persons. Another campus was established in Caledon.

9 GENERAL INDICATORS¹⁰⁶

Table 20: Eastern Cape Secondary Schools (Infrastructure)

	<i>Total</i>	<i>Urban</i>	<i>Rural</i>
Total number of schools	6 331	2 498	3 833
Number of schools with buildings in a state of disrepair	1 039	316	723
Number of schools that have a shortage of classrooms	*	1 277	1 937
Number of schools with inadequate textbooks	*	*	*
Number of learners residing beyond 5 km radius	*	*	*
Number of schools with no water within walking distance	*	*	*
Number of schools with no electricity	*	766	2 096
Number of schools with no telephones	*	1 390	2 800
Number of schools with inadequate toilet facilities	*	241	845
Number of schools with lack of access to computers	*	2 056	3 385
Number of schools with lack of access to laboratories	*	2 206	3 442
Number of schools with lack of access to library facilities	*	2 043	3 391
Number of schools with lack of access to recreational and sporting facilities	*	*	*

Source: Eastern Cape Department of Education's response to the SAHRC's protocol, 2002/03.

Note: The asterisk () in all the tables indicates that the information required was not made available to the SAHRC.*

Table 21: Western Cape Further Education And Training (Secondary)

	<i>Total</i>	<i>Female</i>	<i>Rural</i>	<i>Learners with Special Needs</i>	<i>African Coloured Indian White</i>
Learner/Educator Ratio	26:1				
Total number of learners in Public Ordinary Schools in the FET band	173 128*	95 041	57 353	Statistics not available	Statistics not available
Total number of learners in FET colleges	45 000	Statistics not available			
Number of learner refugees and asylum seekers	Statistics not available				
Net Enrolment Ratio (NER)	48% of learners leave high school before completing Grade 12				
Number of learners who enrol and leave school early during the year	48% of learners leave high school before completing Grade 12				
Number of children aged 15–18 years excluded from secondary school for failure to pay fees	None				
Number of persons over normal ending age of 18 years who complete secondary school	7 111 learners registered in Grade 12; statistics not available on the pass rate of this particular group				
Number of children of school-going age who are not able to attend school without just cause	Statistics not available				
Number of children from families of permanent residents that attend secondary school	Statistics not available				

Source: Western Cape Department of Education's response to the SAHRC's protocol, 2002/03

Table 22: Western Cape Matric Pass Rate

	<i>Year</i>	<i>Total</i>	<i>Urban</i>	<i>Rural</i>	<i>Female</i>	<i>African</i>	<i>Coloured</i>	<i>Indian</i>	<i>White</i>
Number of matriculants	1999	37 199	22 949	14 250	-	-	-	-	-
	2000	38 318	23 761	14 557	-	-	-	-	-
	2001	37 606	23 079	14 527	20 905	-	-	-	-
	2002	39 373	24 073	15 300	21 696	8 436	20 817	530	9 590
Number of learners who have passed matriculation examination	1999	29 304	17 545	11 759	-	-	-	-	-
	2000	30 447	18 258	12 189	-	-	-	-	-
	2001	31 074	18 846	12 228	17 141	-	-	-	-
	2002	33 008	20 079	12 929	18 027	5 570	17 447	507	9 484
Number of disabled learners who have passed matriculation examination	1999	119	-	-	-	-	-	-	-
	2000	120	-	-	-	-	-	-	-
	2001	129	-	-	-	-	-	-	-
	2002	3	-	-	1	-	-	-	-
Number of disabled learners who obtained matriculation exemptions	1999	10	-	-	-	Same figures	-	-	-
	2000	15	-	-	-	-	-	-	-
	2001	5	-	-	-	-	-	-	-
	2002	1	-	-	-	-	-	-	-
Number of learners who pass with endorsements	1999	9 090	5 800	3 290	-	-	-	-	-
	2000	9 169	5 760	3 409	-	-	-	-	-
	2001	9 381	6 068	3 313	5 354	-	-	-	-
	2002	10 084	6 395	3 689	5 649	692	3 585	332	5 475
Number of learners who wrote at higher-grade level	1999	118 008	75 107	42 901	-	-	-	-	-
	2000	113 863	71 489	42 374	-	-	-	-	-
	2001	115 045	73 074	41 971	64 157	-	-	-	-
	2002	116 681	73 185	43 496	64 484	20 409	54 538	2 366	39 368

Source: Western Cape Department of Education's response to the SAHRC's protocol, 2002/03.

Notes: The dash (-) in the table denotes that the information was not available to the WCDE itself.

Table 23: Western Cape Literacy Rates

	<i>Total</i>	<i>Rural</i>	<i>Urban</i>	<i>Female</i>	<i>Learners with special needs</i>	<i>African</i>	<i>Coloured</i>	<i>Indian</i>	<i>White</i>
Literacy Rate for persons aged 15–24 years	72%	Statistics not available							
Literacy Rate for persons aged 24 years +	79%	Statistics not available							

Source: Western Cape Department of Education's response to the SAHRC's protocol, 2002/03

April 2002 – March 2003

Table 24: Western Cape Secondary Education (Infrastructure)

	<i>Total</i>	<i>Rural</i>	<i>Urban</i>
Total number of schools	300	102	198
Number of schools with buildings in a state of disrepair	2	0	2
Number of schools that have a shortage of classrooms	85	15	70
Number of schools with inadequate textbooks	31%	*	*
Number of learners residing beyond 5 km radius	Not available		
Number of schools with no water within walking distance	0	0	0
Number of schools with no electricity	33	33	0
Number of schools with no telephones	6	6	0
Number of schools with inadequate toilet facilities	Not available		
Number of schools with lack of access to computers	49	16	33
Number of schools with lack of access to laboratories	21	6	15
Number of schools with lack of access to library facilities	48	15	33
Number of schools with lack of access to recreational and sporting facilities	Not available		

Source: Western Cape Department of Education's response to the SAHRC's protocol, 2002/03

Table 25: Western Cape Number of Platoon Schools

<i>Province</i>	<i>Number of learners/schools</i>		
	<i>Total</i>	<i>Rural</i>	<i>Urban</i>
Western Cape	9	1	8

Source: Western Cape Department of Education's response to the SAHRC's protocol, 2002/03

Table 26: Gauteng Matric Pass Rate

	<i>Total</i>	<i>Female</i>	<i>African</i>	<i>Coloured</i>	<i>Indian</i>	<i>White</i>
Number of matriculants	65 912	35 910	41 529	3 219	2 477	18 229
Number of learners who have passed matriculation examination	37 186	19 854	24 698	2 042	974	9 273
Number of disabled learners who have passed the matriculation examination	5	2	5	0	0	0
Number of learners who obtained matriculation examination	14 282	8 089	3 801	457	1 261	8 619
Number of learners who pass with endorsements						
Number of learners who write at higher-grade level	206 121	113 133	120 392	7 842	9 961	65 947
Number of learners who write at standard-grade level	208 976	112 494	142 139	11 935	5 084	46 847

Source: Gauteng Department of Education's response to the SAHRC's protocol, 2002/03

Table 27: Gauteng Secondary Education (Infrastructure)

	<i>Total</i>	<i>Urban</i>	<i>Rural</i>
Total number of schools	775	61	714
Number of schools with buildings in a state of disrepair	70	8	62
Number of schools that have a shortage of classrooms	272	36	236
Number of schools with inadequate textbooks	0	-	-
Number of learners residing beyond 5 km radius	244 594	20 306	224 288
Number of schools with no water within walking distance	0	0	0
Number of schools with no electricity	8	3	5
Number of schools with no telephones	23	22	1
Number of schools with inadequate toilet facilities	7	4	3
Number of schools with lack of access to computers	236	38	198
Number of schools with lack of access to laboratories	200	27	173
Number of schools with lack of access to library facilities	224	28	196
Number of schools with lack of access to recreational and sporting facilities	292	28	264

Source: Gauteng Department of Education's response to the SAHRC's protocol, 2002/03

Notes: The dash (-) in the table denotes that the information was not available to the GDE itself.

10 CRITIQUE

Whilst the bulk of the analysis on programmatic and policy measures applicable to both the GET and FET bands are covered in the GET section of the chapter, this section of the chapter will address mainly those issues that are more specifically applicable to the FET band. These comprise skills development and education, and the academic performance of learners in FET Secondary in learning areas such as mathematics and physical science. The reason for this bias is that these are learning areas with which most learners are struggling and that they have been dominated by male learners over the years. Therefore, analysing performance by gender in these learning areas would be helpful. The analysis of the academic performance of FET Secondary learners will be based mainly on other sources of information since most PEDs did not make such information available.

However, it is worth mentioning upfront that inconsistencies in reporting on programmatic and policy measures by various PEDs affect the quality of this report adversely. For instance, only three PEDs referred to the programme on Education and Communication Technology; it is not known what the other

provinces are doing regarding education and technology, and yet technology is an important part of the right to education and relates to the right to work.

An introduction to technology and to the world of work should not be confined to specific technical and vocational education programmes but should be understood as a component of general education. According to the Convention on Technical and Vocational Education adopted by the General Conference of UNESCO in November 1989, technical and vocational education consists of “all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life”. This view is also reflected in certain International Labour Organisation (ILO) Conventions.¹⁰⁷

Again, not all the PEDs reported on the General Indicators and National Action Plan for Human Rights. This section is crucial to the assessment of programmatic and policy measures adopted by the State in a reporting period. Providing information on the General Indicators and the National Action Plan for Human Rights assists in determining whether or not the right is being progressively realised.

The development of NCS Grades 10 to 12 was a progressive development in as far as the inculcation of the constitutional values in the South African education system was concerned. This means that the impact of this curriculum cannot be assessed since it is in the early stages of implementation. However, Samiera Zafar warns that the well-intentioned goals of the subject statements lie in their implementation, which has to make a qualitative difference to the lives of learners. Moreover, Zafar makes the point that the contribution to the development of learners as envisaged in the NCS policy requires efficiency in the educational system; strategic and well-planned implementation; mobilisation of the requisite human and financial resources; and quality assurance within the system.¹⁰⁸

From a human rights’ point of view, the availability of different forms of education in the FET sector offered in senior secondary schools and in technical colleges is desirable, and the DoE must be commended for bringing about such a transformation in the FET sector. This is also in line with the interpretation of the United Nations Committee on the Economic, Social and Cultural Rights (UNCESCR) of article 13, paragraph 2 (b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The UNCESCR interprets article 13, paragraph 2 (b) as follows:

Secondary education includes the elements of availability, accessibility, acceptability and adaptability, which are common to education in all its forms and at all levels.

While the content of secondary education will vary among State parties and over time, it includes completion of basic education and consolidation of foundations for lifelong learning and human development. It prepares learners

for vocational and higher educational opportunities. Article 13, paragraph 2 (b) applies to secondary education “in its different forms”, thereby recognising that secondary education demands flexible curricula and varied delivery systems to respond to the needs of learners in different social and curricula settings. The Committee encourages “alternative” educational programmes that parallel regular secondary school systems.¹⁰⁹

The incident in which an SGB in KwaZulu-Natal brought an application against the KZNDEC and DoE points to the inherent problem within SASA section 14 on public schools on private property. It is becoming common course that access-related problems are experienced with schools on privately owned land. It is unfortunate that in most instances the right to education is violated when these problems are encountered.¹¹⁰

10.1 Constitutional Obligations

It may be concluded that South Africa is meeting the legal obligation to fulfil (provide and facilitate) the right to secondary education. It is a positive development that the DoE is in the process of developing a national strategy for open learning in both the GET and FET bands and distance education in public FET colleges. Should the development be successful, it would further contribute to the fulfillment of the right to FET. This move would also make education available in a form different from contact education; it would be more accessible to people who may not be able to attend contact classes, including vulnerable groups in our communities, thereby progressively realising the right to FET. In addition, the provision of education in a distance mode is important too, as it forms part of the four features or elements that education must “exhibit in all its forms and at all levels”, that is, availability, accessibility, acceptability and adaptability.

The development of RPL is another development that contributes to the realisation of the right to education. RPL recognises non-formal and/or non-academic education, thereby broadly encompassing education of all kinds other than the usual academic or formal education. This also maximises learning opportunities for those without formal and/or academic qualifications to acquire academic qualifications in the FET institutions.

10.2 Learner Performance in Mathematics and Physical Science FET Secondary

The State must be commended for the introduction of a project such as *Dinaledi*, which encourages the participation and improvement of performance of the historically disadvantaged learners in MST, especially girl-children. According to a report on a situation assessment and analysis of girls’ education in the Eastern Cape, Limpopo and KwaZulu-Natal prepared by the Centre for Education Policy Development, Evaluation and Management (CEPD) for UNICEF’s Girls’ Education Project, female performance in mathematics has improved substantially since 1996. The report elaborates that in 2002 more girls than boys wrote mathematics but did not perform as well, and 37% and 30% of

male and female candidates passed mathematics respectively. In 2002 the number of girls participating has grown at a faster rate than boys, and the gender gap decreased in pass rates.¹¹¹

However, the CEPD's study found that there was a relatively greater decrease in the number of girls enrolling in higher-grade mathematics when compared to their male counterparts. The study suggests that it is possible that girl-learners are being discouraged from enrolling in higher-grade mathematics.¹¹² This is obviously a negative development that has to be abated if participation rates of girl-learners in MST have to improve to bring about gender balance.

As far as physical science is concerned, the CEPD's study found that the number of girls enrolled and passing has increased more rapidly compared with boys, but the gap between pass rates is wider than in mathematics; the pass rate among boys was 31% and among girls 23%. Also, Indian and white girls perform markedly better than African and Coloured girls at the higher-grade level.¹¹³

The poor performance in mathematics and science could be ascribed to a number of factors. These include poorly trained educators and poor learning conditions at many schools, especially in townships and rural schools. The differences in pass rates between provinces may be attributed largely to the amount of resources available at various schools in the provinces. The revision of the School Funding Norms policy has to address the unequal allocation of financial resources to schools to ensure that the right to education is enjoyed by all the schools as opposed to the current scenario in which other schools receive more financial resources. Better-resourced provinces tend to outperform the rural provinces, which are more disadvantaged. In 2002, the Eastern Cape had the lowest overall pass rate (52%), whereas in KwaZulu-Natal and Limpopo the pass rate was 71% and 70% respectively.¹¹⁴

The inadequate provision and/or late distribution of LSMs are also a recurring problem, especially in the more rural and disadvantaged provinces. At the start of 2002, for example, only 25% of textbooks had been delivered in Limpopo. Textbook shortages are aggravated by poor retrieval rates.

The Eastern Cape, Limpopo and KwaZulu-Natal provinces are the most affected by backlogs in infrastructure and facilities, including a lack of telephones, electricity and water. Very few schools have libraries, despite the importance of libraries for learning and cognitive development. The number of learners per classroom was also higher than in other provinces (43 in the Eastern Cape and 40 in KwaZulu-Natal and Limpopo respectively).¹¹⁵

The lack of infrastructure at many schools, the inadequate provision and/or late distribution of LSMs to schools, and poor textbook retrieval rates adversely affect the realisation of the right to education, as they deprive learners of resources needed to engage fully in the learning process. One of the elements of the right to education is the 'availability' of resources.

The UNCESCR interprets article 13, paragraph 2 of the ICESCR on the availability of education in the following manner:

Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends on numerous factors, including the developmental context in which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained [educators] receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology.¹¹⁶

This quotation shows the significance of resources to ensure that the right to education is progressively realised.

Table 28 shows the number of facilities available in schools in the Eastern Cape, KwaZulu-Natal and Limpopo.

Table 28: School Facilities and Services

<i>Province</i>	<i>Telephones</i>	<i>Water</i>	<i>Electricity</i>	<i>Toilets</i>	<i>Computers</i>	<i>Libraries</i>
Eastern Cape	59	59	40	81	5	10
KwaZulu-Natal	68	68	43	94	10	20
Limpopo	49	63	51	93	5	7
National	65	71	55	91	12	20

Source: Monica Bot, School Register of Needs 2000: An update. Edusource Data News No 35/December 2001

It is also important to look into achievement levels by gender in Senior Certificate Examinations (SCEs). Generally, boys perform better than girls in SCEs. However, in 2002 the gap was closing; 71% of boys passed in 2002 compared with 67% of girls. In KwaZulu-Natal, boys and girls had the same pass rate, and a higher proportion of girls obtained endorsements. Limpopo showed the biggest gender differences, with 73% of boys and 66% of girls passing, whereas the Eastern Cape performed worst of all provinces.¹¹⁷

However, disaggregating the SCEs results, Helen Perry found that girls do better than boys. The analysis revealed that a higher percentage of girls pass with merit and with distinction in almost all provinces. In addition, the proportion of girls who pass the examination as a proportion of the female cohort is larger than that for boys.¹¹⁸

Table 29 provides more information on SCEs results for 2002 by gender.

Table 29: 2002 SCEs Results by Gender

Province		Candidates	Passes		Endorsements		Failures	
Eastern Cape	M	27 820	15 026	54%	2 452	9%	12 793	46%
	F	36 437	18 260	50%	2 737	8%	18 175	50%
KwaZulu-Natal	M	45 862	32 485	71%	7 873	17%	13 376	29%
	F	51 627	36 488	71%	9 763	19%	15 138	29%
Limpopo	M	32 924	24 106	73%	6 829	21%	8 818	27%
	F	38 520	25 538	66%	5 688	15%	12 982	34%
National	M	202 730	143 289	71%	35 392	18%	59 413	29%
	F	241 091	162 485	67%	39 656	17%	78 578	33%

Source: Edusource Data News No 39/May 2003

11 RECOMMENDATIONS

In light of the fact that in most instances PEDs do not have information on the General and National Action Plan Indicators, it is advisable that the provincial Education Management Information Systems Units work closely with the SAHRC to avoid omissions in the SAHRC's social and economic rights monitoring report. Currently, the only available education statistics report is, in a way, outdated, as *Education Statistics in South Africa at a Glance in 2001* was published in June 2003.

A concerted effort by all stakeholders in the promotion of girl-children education needs to be made to ensure that barriers to education of girl-children are removed. These include poverty, involvement in income-generating activities and domestic chores. These barriers prevent girl-learners from participating in quality education. The following statistics attests to these barriers to participating in quality education:

Within each population group, a larger percentage of female than male individuals live in households with zero pay income and a smaller percentage of female than male individuals live in the top 25[%] of households having the highest incomes. Overall, women and girls are more likely than men and boys to be living in households in which there are no wage earners.¹¹⁹

The problems of late distribution of LSMs and the lack of infrastructure at many schools in South Africa have to be addressed as matter of urgency in this financial year, i.e. 2004/05.

Related to the causes of the high-drop-out rates in the FET sector, ways have to be found to address this situation in this sector of education.

HIGHER EDUCATION - EXECUTIVE SUMMARY

Key Developments in Higher Education and Training

Notwithstanding the fact that the South African Constitution does not explicitly recognise Higher Education and Training (HET) as a right, it is important to create a link between HET and the other two bands (i.e. General Education and Training and Further Education and Training). This link is necessary because:

- The three bands of education are related as they make up one right, the right to education. Therefore continuity in the monitoring and evaluation of the three bands is essential.
- The State invests large amounts of public funds in HET.
- There are provisions in the Constitution that speak to human rights issues in HET. For instance, section 29(2) refers to use of the official language/languages in public educational institutions, whilst section 3 refers to the establishment of independent educational institutions.

Amidst the on-going transformation and restructuring process in the HET band, the following are the measures that were adopted during the reporting period:

Language Policy for Higher Education

After the release of this policy paper in November 2002, the Minister of Education appointed a Ministerial Committee in 2003 to advise on a framework for the development of indigenous languages for use as languages of instruction in higher education. In a broader view, the policy paper attempts to ensure the simultaneous development of a multilingual environment in which all languages are developed as academic/scientific/legal languages, while at the same time ensuring that the existing languages of instruction in the higher education institutions do not serve as a barrier to access and success.

Higher Education Act 101 of 1997: Government Gazette No. 22 138, Notice Number 230

The aim of the notice was to invite representations regarding the proposal to merge certain public higher education institutions or subdivisions of public higher education institutions. In this case the Minister of Education gave notice in terms of the Higher Education Act of his proposal to establish a single higher education institution, providing both university and technikon programmes through the merger of Port Elizabeth Technikon, the University of Port Elizabeth and the Port Elizabeth Campus of Vista University.

April 2002 – March 2003

National Higher Education Information and Applications Service

The establishment of the National Higher Education Information and Applications Service (NHEIAS) is provided for in the National Plan for Higher Education (NPHE) of 2001. It was in this context, that in October of the same year, the Minister of Education appointed a Working Group to advise the Ministry on the establishment of a NHEIAS. Basically, the aim of this measure is to provide information, enable a single application to higher education institutions and therefore reduce the costs associated with applying to different tertiary institutions.

The central service will have to ensure that:

- students are aware of the courses offered and institutions available;
- access to higher education, particularly for rural pupils, is promoted;
- the processing of students' applications and the provision of accurate statistics are managed better, and;
- the costs of applying for tertiary education [are] lower.

At the time of reporting, the policy was still under discussion between the Ministry of Education and the South African Universities Vice-Chancellors' Association (SAUVCA) and the Committee of Technikon Principals (CTP).

Funding of Public Higher Education: A New Framework

This is one important development the Ministry began working on in 1998. Briefly, the new funding framework gives the Minister a direct control over government only grants to the public higher education. This makes the new funding framework an ideal steering mechanism to be used to achieve national goals and objectives of higher education transformation. Moreover, the new funding framework was achieved through a wide consultation process between the Ministry and other stakeholders in higher education including SAUVCA and CTP.

Progress and Challenges in Higher Education and Training

The following issues were found to be rather worth discussing:

Access to Higher Education

Apart from relatively few numbers of matriculants who gain entry into higher learning institutions, the high cost of tertiary education has often been cited as a barrier to accessing higher learning for most students.

Representation of Black Staff in some Higher Learning Institutions

The representation of black and female staff in higher education institutions is cause for concern. For example, a national working group appointed by the Minister of Education found that black representation on staff was unsatisfactory at the following universities: Pretoria, Rand Afrikaans and Wits.

Graduation Trends

According to the South African Institute of Race Relations' South Africa Survey 2002/2003, the average graduation rate for university and technikon students is 15%; less than half the ideal average of 33%. About one in five students drop out every year, resulting in R1,3 billion in government subsidies being spent on students who do not complete their studies. On a positive note, the gender gap among graduates is beginning to close. The South African Qualifications Authority figures show that in 1998, 30 461 women and 27 592 men graduated.

Recommendations

- Admission policies to higher education have to be transparent. Without compromising “quality education and high standards”, both the State and higher learning institutions need to work together to ensure that admissions requirements and processes (e.g. teach test teach) do not discriminate against students with potential. Gender disparities in staff and participation rate of particularly African, Coloured and students with disabilities, in particular, in higher education necessitate this kind of co-operation between higher education institutions and the State.
- Whilst the solution to this problem may not lie in the admissions requirements being relaxed, it is necessary that appropriate mechanisms are put in place to address the problem. For example, bridging courses and academic development programmes. Bridging courses on their own are expensive; students need funding for these. Unfortunately, most patrons are not keen on investing in students who do bridging courses or a foundation phase, as some institutions would call this programme. Together with the institutions of higher learning, the State should mobilise funds, not only for the academic development programmes but for bridging courses as well. This is one way that would see the participation of African students, in particular, increasing in higher education.
- The National Student Financial Aid Scheme has to look into the funding of mature and post-graduate students including part-time students, if access to higher education is to improve.

April 2002 – March 2003

- There is a need for the State to provide structures that will help learners and potential higher learning students with subject selection choices as well career guidance at both school and university levels. This is part of the State's constitutional obligation to fulfil, that is, to facilitate access to higher education.

HIGHER EDUCATION

12 INTRODUCTION

This section of the report looks at policy/programmatic developments that took place between 01 April 2002 and 31 March 2003. However, to ensure continuity between developments, the scope of the issues discussed may transcend the 2002/03 reporting period where necessary.

13 POLICY, PROGRAMMATIC AND LEGISLATIVE MEASURES

13.1 Policies and programmatic measures

13.1.1 Language Policy

After the release of the Language Policy for Higher Education in November 2002, the Minister of Education appointed a Ministerial Committee in 2003 to advise on a framework for the development of indigenous languages for use as languages of instruction in higher education.¹²⁰

Such a framework should, amongst [other things], address the following:

- criteria for the selection of languages to be developed for use in higher education. (This may require an assessment of the current usage of indigenous languages in higher education);
- the number of languages that should be earmarked for development, [as well as the relevant] academic disciplines or fields of study;
- an identification of the key areas which will require attention, such as the development of dictionaries, teaching and learning materials, staff development, *etcetera*, and;
- the institutional arrangements required for implementation, including the respective responsibilities of higher education institutions and the Government.¹²¹

In a broader view, the policy paper (the Language Policy for Higher Education) attempts to ensure the simultaneous development of a multilingual environment in which all languages are developed as academic/scientific languages, while at the same time ensuring that the existing languages of instruction in the higher education institutions do not serve as a barrier to access and success.¹²²

Limited as this right may be, section 29(2) of the Constitution provides that everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. As a secondary legislative piece, the Higher Education Act 101, 1997 specifically reinforces this right as it accords the Minister of Education the powers to determine language policy for higher education.¹²³

13.1.2 Higher Education Act 101 of 1997: Government Gazette No 22 138, Notice Number 230

The aim of the notice was to invite representations regarding the proposal to merge certain public higher education institutions or subdivisions of public higher education institutions. In this specific case, the Minister of Education gave notice in terms of the Higher Education Act, of his proposal to establish a single higher education institution providing both university and technikon programmes through the merger of Port Elizabeth Technikon, the University of Port Elizabeth and the Port Elizabeth Campus of Vista University.

Interested parties had until Friday 4 October 2002 to make representations to the national Department of Education (DoE).¹²⁴

13.1.3 National Higher Education Information and Applications Service for South Africa

The establishment of the National Higher Education Information and Applications Service (NHEIAS) is provided for in the National Plan for Higher Education (NPHE) of 2001.¹²⁵ It was in this context, that in October of the same year, the Minister of Education appointed a Working Group to advise the Ministry on the establishment of a NHEIAS.

*The Working Group examined the structures and processes of four existing national applications services in other countries, those of the United Kingdom, Ireland, Kenya and Turkey. In addition, it looked closely at the more recently established local regional office in KwaZulu-Natal (the esATI [Central Applications Office]). In its research into ways in which these services function, the Working Group took note of the size of the systems (i.e., the number of member institutions served), funding of the service, governance structures, legal constitution, and, most critically, the operating processes. The latter involved the handling of applications, selection, the construction of handbooks, fees, communication with institutions and applicants, the administration of admissions criteria, and the ICT platform to support the service.*¹²⁶

Basically, the aim of this new development is to provide information, enable a single application to higher education institutions and therefore reduce the costs associated with applying to different tertiary institutions.

The central service will have to ensure that:

- students are aware of the courses offered and institutions available;
- access to higher education, particularly for rural pupils, is promoted;
- the processing of students' applications and the provision of accurate statistics are managed better, and;
- the costs of applying for tertiary education [are] lower.¹²⁷

However, at the time of reporting this measure was still under discussion between the Ministry of Education and the South African Universities Vice-Chancellors' Association (SAUVCA) and the Committee of Technikon Principals (CTP).

13.1.4 Funding of Public Higher Education: A New Framework

This is one important development the Ministry began working on in 1998. Briefly, the new funding framework gives the Minister a direct control over government only grants to the public higher education. This makes the new funding framework an ideal steering mechanism to be used to achieve national goals and objectives of higher education transformation. Moreover, the new funding framework was achieved through a wide consultation process between the Ministry and other stakeholders in higher education including SAUVCA and CTP.

A basic feature of the new framework is that it links the awarding of government higher education grants to national and institutional planning. This funding/planning link makes the new framework essentially a goal-oriented mechanism for the distribution of government grants to individual institutions, in accordance (a) with national planning and policy priorities, (b) with the quantum of funds made available in the national higher education budget, and (c) the approved plans of individual institutions.¹²⁸

However, it has taken the Ministry rather a long time to eventually produce a complete and comprehensive funding framework for higher education. The rationale for the long gap between the initiation of the developmental work and the release of the framework is largely due to the fact that, although the Education White Paper 3: A Programme for the Transformation of Higher Education (July 1997) outlined the principles that should guide the development of a new funding framework, key policy issues relating to the restructuring of the higher education system remained unresolved. These issues have been addressed in the NPHE, thus enabling the finalisation of the new funding framework.¹²⁹

The new funding framework is informed by funding principles and framework outlined in the Education White. It replaces the old the funding framework introduced in 1982, which proved to be unsuitable as 'a steering mechanism to achieve the policy objectives and goals for the transformation of higher education system.'

Apart from its origins in the apartheid past, it is based on a market-driven model, which precludes its use as a steering mechanism to address national goals and objectives. The role of the Government in this model is limited to funding student demand and to correcting market failures that may occur. However, under apartheid the market model was itself distorted by ideological factors, which restricted and constrained institutional and student choices and decisions.¹³⁰

13.2 Legislative developments

There were not any legislative developments in the Higher Education sector during the period under review.

13.3 BUDGETARY MEASURES

Table 30: Total State Finance and Spending on Education as a % of GDP (R'000)

	<i>GDP</i>	<i>Total State Finance</i>	<i>Education System</i>	<i>Department of Education</i>	<i>Higher Education</i>	<i>College/School Education</i>
January 2000						
Actual outcome	910 500	233 942	50 769	500	7 014*	43 255
% of GDP		25.7	5.58	0.05	0.77	4.75
% of total state finance			21.7	0.21	3	18.49
February 2001						
Preliminary outcome	990 000	262 590	55 186	575	7 532**	47 079
% of GDP		26.5	5.57	0.06	0.76	4.76
% of total state finance			21.02	0.22	2.87	17.93
March 2002						
Budget estimates	1 082 800	287 909	59 669	834	7 969	50 865
% of GDP		26.59	5.51	0.08	0.74	4.7
% of total state finance			20.72	0.29	2.77	17.67

* Excludes a once-off expenditure of R58, 3m from the Adjustments Estimates for 2000/01 specifically for January 2001 student fee difference between each higher education institution's fees (tuition as well as hostel fees) and that of incorporated colleges of education.

** Includes the incorporation of 28 colleges of education into universities and technikons.

Source: Department of Education. Information on the state budget for higher education, July 2002 as reproduced in Edusource Data News No. 38/January 2003

The allocation for universities for 2002/03 amounted to R5, 7 billion (up from R5, 4 billion in 2001) and R1, 9 billion for technikons. This meant that the universities allocation was increased by R300 million and this amount was mainly to be used for university subsidies and the National Student Financial Aid Scheme (NSFAS). It should be noted that the allocated funds for universities did not include the transformation and restructuring taking place in higher education.¹³¹

...Director-General of Education Thami Mseleku told parliamentary portfolio committee on education that implementing the [NPHE] was one of the Department's priorities for the year ahead [that is, 2003/04].¹³²

Table 30 above shows a declining trend in higher education allocation over the last three years – 2000/01 to 2002/03 both as a percentage of Gross Domestic Product (from 0.77 % in 2000/01 to 0.74% in 2002/03) and as a proportion of total state finance (from 3.0% to 2.77%).

Table 31: Summary of State Budgets for the University and Technikon Sectors, 1995/96 – 2002/03

	Universities		Technikons		Other*		Total
	R'million	Nominal Increase	R'million	Nominal Increase	R'million	R'million	Nominal Increase
1995/96	3 066,5	19.6%	1 006,3	34.2%		4 072,8	22.0%
1996/97	3 850,8	25.6%	1 356,5	34.8%		5 207,3	27.9%
1997/98	3 975,9	3.2%	1 455,5	7.3%		5 431,4	4.3%
1998/99	4 336,7	9.1%	1 663,1	14.3%	3.6	6 003,4	10.5%
1999/00	4 648,2	7.2%	1 896,9	14.1%	65.1	6 610,2	10.1%
2000/01	5 001,2	7.6%	1 976,7	4.2%	36.1**	7 014,0	6.1%
2001/02	5 398,8***	8.0%	2 122,8***	7.4%	10.0	7 531,6	7.4%
2002/03	5 707,8	5.7%	2 215,9	4.4%	45.7	7 969,4	5.8%

*Includes funds for redress purposes, NSFAS administration, [ad hoc] needs during the incorporation of colleges of education and NSFAS funds earmarked for teacher training.

** Excludes a once-off expenditure of R58 million from Adjustments Estimate for 2000/01 specifically for January 2001 student fee differences between each higher education institution's fees (tuition as well as hostel fees) and that of the incorporated college(s) of education.

*** Includes the incorporation of 28 colleges of education from seven provincial education departments.

Source: Department of Education. Information on the state budget for higher education, July 2002 as reproduced in *Edusource Data News No.38/January 2003*.

Table 31 above shows that between 1995/96 and 2002/03 State spending on universities increased by 86%, with yearly nominal increases ranging from a low of 3 % to a high of almost 26%. State spending on technikons increased by 120% over this period, with yearly nominal increases ranging from 4% to 35%.¹³³

14 PROGRESS AND CHALLENGES IN HIGHER EDUCATION

Assessing progress made by the State in higher education, may at this stage, prove to be a limited exercise given that at least most higher education institutions in the country were occupied with transformation and restructuring – an ongoing process up-to-date. Ironically, mergers and incorporations that have already taken place in most higher learning institutions can be hailed as successful. However, the conclusion of the mergers and incorporations process only spells more challenges for the higher education sector. These comprise access to higher education, improvement of participation rates, representation of black and female staff, graduation trends, *etcetera*.

It is worthwhile discussing briefly each of the challenges facing the higher education sector.

14.1 Access to Higher Education

Apart from relatively few numbers of matriculants who gain entry into higher learning institutions, the high cost of tertiary education has often been cited as a barrier to accessing higher learning for most students.

A Human Sciences Research Council survey found that almost three-quarters of grade 12 learners would like to proceed to higher education. The high cost of tertiary study was the biggest barrier to entering a tertiary institution. Most learners (55%) intended to study at technikons and 35% intended to go to university.¹³⁴

14.2 Improvement of Participation Rates

It is encouraging, however, that South Africa has more than three times the number of students than its closest competitor in sub-Saharan Africa.

In 2001 South Africa had 633 918 students enrolled in tertiary education, with the runner up being Sudan with 200 538 students. However, participation rates are still too low, with only 15 percent of youths aged between 18 and 24 years enrolled in higher education.¹³⁵

Ironically, in most institutions of higher learning African students were in majority in 2000. African students made about 55% at universities whilst technikons had about 72%. Enrolment rates also increased at universities especially because colleges of education were incorporated into universities. The following two tables on student enrolments contain preliminary figures at institutions of higher learning in 2002.

Programmes such as the Carnegie Scholarship¹³⁶ are desirable as they have the potential to increase numbers of especially women students in scarce skills fields such as science and technology, engineering and economics. During the reporting period, the first cohort of 41 female students was in their first year of undergraduate study at eight South African universities and were selected from public schools across all nine provinces.¹³⁷

Another progressive development, used as vehicle to achieve the NPHE goals, namely, enhancing access and retention in higher education, capacity development of historically disadvantaged institutions and co-operation between institutions in SADC is the South Africa-Norway Tertiary Education Development programme launched in 2000. Two major access and retention projects have been fully implemented during the year under review at the University of Durban-Westville and the University of the Western Cape.¹³⁸

Table 32: Preliminary Enrolment at Universities, 2002

	<i>African</i>	%	<i>Coloured</i>	%	<i>Indian</i>	%	<i>White</i>	%	<i>Un- Known</i>	%	<i>Total</i>	<i>Incr/dec r over '01</i>
Cape Town	5222	27	2750	14	1362	7	10120	52	36	0	19490	12%
Durban- Westville	5612	60	121	1	3410	37	198	2	0	0	9341	25%
Fort Hare	7405	99	20	0	2	0	19	0	0	0	7446	67%
Free State	8464	48	745	4	387	2	7914	45	0	0	17510	53%
Medunsa	3473	86	31	1	361	9	168	4	0	0	4033	7%
Natal	13304	47	895	3	8339	30	5685	20	0	0	28223	73%
North	10455	99	8	0	15	0	34	0	1	0	10513	49%
North West	6663	99	15	0	27	0	31	0	0	0	6736	7%
Port Elizabeth	14951	77	926	5	272	1	3083	16	186	1	19418	177%
Potchefstroom	18182	57	885	3	258	1	10479	33	2292	7	32096	80%
Pretoria	35582	56	2323	4	1742	3	23822	38	1	0	63470	116%
Rand Afrikaans	8415	38	655	3	1349	6	11569	53	53	0	21988	15%
Rhodes	3117	43	323	5	468	7	3262	45	0	0	7170	35%
Stellenbosch	3216	15	2304	11	430	2	15305	72	0	0	21300	18%
Transkei	4457	97	11	0	106	2	16	0	0	0	4590	3%
Unisa	64564	47	7320	5	16658	12	48819	36	0	0	137361	36%
Venda	7820	10	1	0	1	0	3	0	0	0	7825	38%
Vista	20346	0	424	2	141	1	485	2	12	0	21408	14%
Western Cape	5638	95	5825	46	925	7	281	2	91	1	12760	30%
Witwatersrand	10063	44	526	2	3250	15	8254	37	33	0	22126	20%
Zululand	6289	45	37	1	99	1	362	5	0	0	6787	49%
Total	263283	93	26145	5	39602	8	149909	31	2652	1	481591	40%

* Racial breakdown based on 2001 percentages.

NB Percentages may not add up due to rounding off

Source: Personal communication, Department of Education, December 2002

Some Comments:

According to preliminary figures, university enrolment increased substantially between 2001 and 2002, by some 40% or approximately 137 500 students. This is in part due to the inclusion of colleges of education. Exact figures could not be obtained at the time of writing, unfortunately. In 2002, there were also 11 230 teachers upgrading their qualifications at higher education institutions. (Beeld 27/8/02)

The majority of students were African (55%), just under a third (31%) were white, 8% were Indian and 5% coloured.

Rough calculations show that African enrolment increased by some 53% between 2001 and 2002, coloured enrolment by 45%, Indian enrolment by 27% and white enrolment by 19%

While most former coloured, Indian and white universities are fully racially integrated, the historically African universities are still predominantly African (at Fort Hare, Medunsa, the North, North West, Transkei, Venda, Vista and Zululand between 85-100% of Students were African). The only other universities where there was a majority of students of one race were Port Elizabeth (77% African), Cape Town (52% white), Rand Afrikaans (53% white) and Stellenbosch (72% white).

The majority of students are female (56.5%) and 72% of students study at the undergraduate level. Relatively more male than female students are studying at the postgraduate level (25% of men compared with 21% of women).

Of all higher education students, 69% study at universities (up from 63% in 2001) and at technikons.

Source: Edusource Data News No.38/January 2003.

Table 33: Preliminary Enrolment at Technikon, 2002

	<i>African</i>	%	<i>Coloured</i>	%	<i>Indian</i>	%	<i>White</i>	%	<i>Unknown</i>	%	<i>Total</i>	<i>Incr/decr over '00</i>
Border	4774	99	19	0	5	0	48	1	0	0	4846	0.17
Cape	4280	30	4026	29	276	2	5507	39	0	0	14089	0.2
Eastern Cape	7158	98	12	0	3	0	12	0	110	2	7295	0.52
Free State	5203	66	434	6	30	0	2189	28	0	0	7856	0.13
M L Sultan	6553	67	116	1	2953	30	130	1	0	0	9752	0.14
Mangosuthu	7054	100	1	0	4	0	6	0	0	0	7070	0.25
N Gauteng	10912	94	22	0	4	0	14	0	0	0	10952	0.15
Natal	5553	52	230	2	1555	15	1353	13	1975	19	10666	0.01
North West*	4477	100	2	0	2	0	3	0	0	0	4484	-
Peninsula	5736	63	3125	34	42	0	238	3	1	0	9142	0.15
Port Elizabeth	5503	58	1237	13	165	2	2637	28	0	0	9542	0.17
Pretoria	24528	74	492	1	598	2	7584	23	0	0	33202	0.3
South Africa	37252	70	4131	8	2182	4	9311	18	278	1	53154	-0.13
Vaal Triangle	14522	88	218	1	102	1	1634	10	0	0	16476	0.15
Witwatersrand	11375	82	295	2	556	4	1725	12	0	0	13951	0.18
Total	154880	72	14360	7	8477	4	32391	16	2369	1	212477	0.07

Some Comments

Technikon enrolment increased by 7% or just over 17 400 students between 2001 and 2002. Especially African enrolment increased (by 15 699 students or 11%), while coloured and Indian enrolment increased by 1 867 students (15%) and 587 students (7%) respectively. White enrolment decreased by 5% however, or by 1559 students

The majority of students at Technikons are Africans (72%, slightly up from 71% in 2001), followed by whites (16%), coloureds (7%) and Indians (4%).

All but one Technikon (Cape Technikon) now have a majority of African students

Female students comprise 47% enrolment, the same as in 2001

Most students study at the pre-diplomate or undergraduate level (96.6%)

**Information for 2001*

Source: Personal Communication, Department of Education, December 2002 reproduced from Edusource Data News No.38/January 2003.

The Council on Higher Education (CHE) made a recommendation to the Ministry that participation rate in higher education must be increased from 15% to 20% within a ten to fifteen year time-frame and that it must be driven primarily by equity concerns. The CHE's recommendation went further to say that the increase in participation rate should be made up principally of African and Coloured students so that their current under-representation is eroded. Adding its weight behind the CHE's recommendation, the Ministry indicated that the "increase in the participation rate must also target disabled students."¹³⁹

A concern has also been raised regarding the enrolment of medical students at higher learning institutions. The DoE asserts that there are more than enough students who qualify in mathematical and science subjects. The DoE cites the highly competitive nature of entrance and admission to medical schools as the factor that bars potential medical students from enrolling. According to the dean of Medical School at the University of Pretoria, enrolment of black students at medical schools was declining. For instance, the pool of black students who qualified with science and mathematics to enter university was only about 5000 in the year 2000 and the majority chose to enter fields such as engineering and information technology.¹⁴⁰

So, admissions requirements of medical schools are said not to be promoting access to students who are not the brightest but show academic potential.

... the admissions requirements of most South African medical schools are targeted, in the main, at the academically brightest applicants rather than at attracting those who have the potential, but have not had the opportunity to develop their potential to the full because of the poor state of schooling in black areas. Moreover, the evidence suggests that a large majority of the students currently receiving training in medical schools leave the country soon after graduating. This suggests that the values and practices of some medical schools may be at variance with the values and principles and the broader objectives that underpin the transformation agenda in higher education and the needs of the country.¹⁴¹

It stands to reason that some innovative ways have to be found to attract more students to enrol for a course in medicine. The Wits University Medical School is one such innovative institution. It has developed non-traditional criteria to help students who would not have otherwise qualified to take up a course in medicine. In 2002 the Minister warned higher learning institutions that Government might resort to a quota system if higher learning institutions do not meet their own targets for admission of black students. Government intentions were also made clear that it wanted to increase access to workers, mature students, women, the disabled and other non-traditional students.¹⁴²

14.3 Representation of Black Staff in some Higher Learning Institutions

The representation of black and female staff in higher education is cause for concern.

A national working group appointed by Minister Asmal reported that black representation on staff was unsatisfactory at the University of Pretoria, [Rand Afrikaans University – as a result of transformation and restructuring in higher education. RAU has had a name change to “University of Johannesburg”] and Wits University. While 57% of students at Wits in 2000 were black, only 20% of all permanent academic staff and 22% of permanent professional staff were black. Wits said that its target was to have 20.4% black academic staff by June 2003 and that half of the permanent academics appointed in 2001 were black. At the [University of Johannesburg], 70 students were white and 7% of its permanent academic and 8% of its permanent professional staff were black in

April 2002 – March 2003

2000. At the University of Pretoria, 6% of permanent academic and professional staff were black in 2000.

A survey conducted by the Mail & Guardian on gender equity at tertiary institutions revealed that (at the ten universities polled) women account for 30% to 40% of all full-time academic staff, with the majority of them employed in junior positions. The percentage of women in senior ranks such as professor, head of department or dean is much lower, and only about 10% of senate members are women.¹⁴³

The situation at the above-mentioned institutions might have improved given that the statistics on black staff representation given above dates back to 2000 and 2001. However, it is still important that trends in staff and student composition in higher learning institutions are monitored to ensure that the past imbalances are addressed as a matter of equity.

14.4 Graduation Trends

It has been mentioned on a number of occasions that the school system fails to prepare learners for tertiary education.¹⁴⁴ As a result of this disjuncture between tertiary and school education, most students do not complete their studies in higher education. According to the South African Institute of Race Relations' South Africa Survey 2002/2003, the average graduation rate for university and technikon students is 15%; less than half the ideal average of 33%. About one in five students drop out every year, resulting in R1, 3 billion in government subsidies being spent on students who do not complete their studies.¹⁴⁵

It is a positive development, however, that generally, the gender gap among graduates is beginning to close. The [South African Qualifications Authority] figures show that in 1998, 30 461 women and 27 592 men graduated, and [the 2003] analysis of data trends attest to this fact.

15 CRITIQUE

The Ministry of Education must be commended for the broader transformation and restructuring it has introduced into the higher education system during the reporting period. The process has not been without challenges and resistance from some quarters located both in the academia and the public at large. However, it is important to understand that the mergers and incorporations that have taken place in higher education (some are yet to take place in 2005) are meant to ensure that all deserving South Africans benefit from the public higher education system – that is funded by the State. The State has a duty to ensure that all deserving individuals and communities benefit from the higher education.

The new funding framework, which gives the Minister an opportunity to study and analyse the trends in higher education and on these bases, allocate funding to institutions of higher learning, is another positive development in higher education. It gives the Minister an opportunity to use the funding framework as a

tool to further transform the higher education sector. The transformation of higher education cannot and should not be left to institutions of higher learning. The regulation of the sector is the responsibility of the State; the sector cannot regulate itself. The State has to ensure that institutions of higher learning benefit the country by meeting the country's social, economic and political goals.

It is increasingly becoming difficult to distinguish between the higher learning institutions' autonomy and the State's obligations to ensure that higher education is enjoyed by those who qualify to do so. The institutions of higher learning are accountable to the public, which invests its resources in these institutions. The State has to ensure that these institutions are governed in line with its broader objectives that embody principles such as equity and equality. The following excerpt help clarify the point:

The enjoyment of academic freedom requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance that is necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities. Self-governance, however, must be consistent with systems of public accountability, especially in respect of funding provided by the State. Given the substantial public investments made in higher education, an appropriate balance has to be struck between institutional autonomy and accountability. While there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.¹⁴⁶

The fact that higher education is a qualified right further complicates issues of access and equality in higher education. This fact also contributes to the much-fought about concept of the "autonomy" of higher learning institutions. Access to higher education is not automatic like the basic and further education. Section 29(1) of the Constitution is clear on the right to basic education. It reads as follows:

Everyone has the right –

- a) to a basic education, including adult basic education; and
- b) to further education, which the [S]tate, through reasonable measures, must make progressively available and accessible.¹⁴⁷

The following excerpt draws a distinction between secondary and higher education. It emphasises the capacity or the ability of an individual to enrol at an institution of higher learning.

According to article 13, paragraph 2 (b) [of General Comment No. 13 of the United Nations Covenant on Economic, Social and Cultural Rights], secondary education "shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education". The phrase "generally available" signifies, firstly, that secondary education is not dependent on a student's apparent capacity or ability and,

April 2002 – March 2003

secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all.

... higher education is not to be “generally available”, but only available “on the basis of capacity”. The “capacity” of individuals should be assessed by reference to all their relevant expertise and experience.¹⁴⁸

Having said that higher education is not an entitlement, it is equally important to bear in mind that in South Africa education has not been distributed equally across the various sectors of the population. The unequal distribution of education in this country therefore makes the intervention of the State necessary to address the imbalances of the past. One general finding of the report is that more work still needs to be done in this sector of education to bring about equality in all the areas. These include access, recruitment of African lecturers in historically white institutions, promotion of women lecturers, *etcetera*.

Looking at the few problem areas briefly discussed in the report, it would seem that more work is yet to be done in transforming the higher education sector. This does not in any way seek to ignore the many gains already achieved in higher education. The mergers and incorporations that have taken place in higher education will present, in a much more pronounced manner, issues of equity, equality and quality.

The A4 scheme will be used to determine whether higher education has been progressively realised or not. It is important to note that according to the A4 scheme higher education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms at all levels.

The first element, “availability”, refers to functioning educational institutions and programmes being available in sufficient quantity within the jurisdiction of the State party. What they require to function depends on numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities and information technology.¹⁴⁹

Mergers and incorporations that have taken place in higher education precisely attempt to address the availability element of an education, particularly the availability of programmes ‘in sufficient quantity’ and the availability of relevant facilities to assist in teaching programmes on offer in institutions of higher learning. A conclusion can be drawn that this aspect of education has been met. Some of the programmes have had to be scrapped in some higher learning institutions. In August 2003 the DoE released a document entitled “Approved Academic Programmes for Universities and Technikons: 2003 to 2006”.

Only programmes approved by the Ministry would qualify for State funding. Criteria for the removal of programmes include graduation rates, qualified academic supervisors, whether a neighbouring institution offers the same qualification, whether programmes are appropriate to the mission of the institution and programmes for which no enrolments were recorded from 2002. Post-graduate programmes would be removed from the universities of the North (19), Venda (20), Fort Hare (15), the North West (18), Port Elizabeth (6), Wits, [KwaZulu-Natal University] and [University of Johannesburg] (3 each), and one from Rhodes. Technikon Pretoria and Technikon Witwatersrand would have 13 and 17 programmes removed respectively.¹⁵⁰

Accessibility refers to educational institutions and programmes being accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimension:

- i) Non-discrimination: education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;
- ii) Physical accessibility: educational has to be within safe physical reach, either by attendance at some reasonable convenient geographic location (e.g., a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programmes);
- iii) Economic accessibility: education has to be affordable to all. This dimension of accessibility... primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education.¹⁵¹

In the South African case it cannot be certainly concluded that accessibility to higher education has been achieved. Most of the factors that limit access to higher education have already been alluded to in this report. They comprise cost of higher education, lack of information about financial assistance available for higher education and lack of career guidance for learners, poor academic performance at school level, *etcetera*. So, economic accessibility to higher education in South Africa is an issue – more especially when ‘almost three quarters of grade 12 learners cannot access higher education owing to high cost of tertiary study.’

The same was said about mature students; they are not receiving appropriate support, with cost of tertiary study acting as a deterrent and the inflexibility of programmes on offer at the institutions of higher learning contributing to the inaccessibility of higher education. Programmes on offer fail to take into account the mature students conditions such as home and work commitments. With the exception of private tertiary institutions, the choice of institutions available to address mature students’ needs is, at most, limited to the University of South Africa (commonly known as UNISA) and Technikon South Africa.

Furthermore, it can also be concluded that our higher education system, in general, is not in congruence with the social aspect of the element of adaptability of education since it fails to sufficiently accommodate the needs of mature students. “Adaptability” as an element of the right to education means that education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.¹⁵²

The fact that the DoE has scrapped some of the programmes in some institutions of higher learning, does give an indication that the DoE is committed to ensuring that the programmes on offer are relevant, that is responsive to the social and economic needs of the country. It is important that the country’s limited resources are invested where the rate on return is high, that is, in programmes that will in turn produce an educated workforce that benefits the country’s economy.

Acceptability refers to the form and substance of education, including curricula and teaching methods that have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13, paragraph 1 of the United Nations Covenant on Economic, Social and Cultural Rights), and such minimum educational standards as may be approved by the State.¹⁵³

16 RECOMMENDATIONS

Admission policies to higher education have to be transparent. Without compromising “quality education and high standards”, both the State and higher learning institutions need to work together to ensure that admissions requirements do not discriminate against students with potential. Gender disparities in staff and participation rate of African, Coloured and students with disabilities, in particular, in higher education necessitate this kind of co-operation between higher education institutions and the State.

Whilst the solution to this problem may not lie in the admissions requirements being relaxed, it is necessary that appropriate mechanisms are put in place to address the problem. For example, bridging courses and academic development programmes. Bridging courses on their own are expensive; students need funding for these. Unfortunately, most patrons are not keen on investing in students who do bridging courses or a foundation phase, as some institutions would call this programme. Together with the institutions of higher learning, the State should mobilise funds, not only for the academic development programmes but for bridging courses as well. This is one way that would see the participation of, African students, in particular, increasing in higher education.

The NSFAS has to look into the funding of mature and post-graduate students including part-time students, if access to higher education is to improve.

Regarding the enrolment of African students at medical schools, Wits University serves as a good example to other medical schools as it has already started opening its doors to potential students who otherwise do not meet the traditional admission requirements in place in medical schools.

There is a need for the State to provide structures that will help learners and potential higher learning students with subject selection choices as well career guidance at both school and university levels. This is part of the State's constitutional obligation to fulfil, that is, to facilitate access higher education.

¹ Constitution of the Republic of South Africa Act 108 of 1996.

2 South Africa has not yet ratified the covenant.

3 Article 28 (1) of the Convention on the Rights of the Child provides that State parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular:

- a) Make primary education compulsory and available for free to all;
- b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- d) Make educational and vocational information and guidance available and accessible to all children;

Take measures to encourage regular attendance at schools and the reduction of dropout rates.

4 Article 17(1) of the African Charter on Human and People's Rights provides that every individual shall have the right to education. Unlike other international human rights instruments, the African Charter on Human and People's Rights does not provide an elaborate definition of "education". It appears that all it does is demonstrate the significance of education as a right.

5 The World Declaration defines "basic learning needs" as: "essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning."

6 *United Nations Committee on Economic, Social and Cultural Rights: Report on the Twentieth and Twenty-First Sessions* (April 26 – May 14 1999, November 15 – December 3 1999), Economic and Social Council, Official Records, 2000, Supplement No 2.

7 *Ibid.* 115

8 *Op cit.*, 117

9 *Universal Declaration of Human Rights, Adopted by the General Assembly of the United Nations, resolution 217 (III) of December 10 1948*, in "The Raoul Wallenberg Compilation of Human Rights Instruments", 1997, Martinus Nijhoff Publishers.

10 *Ibid.* 31

11 See footnote 8

12 Gene Sperling in *Foreign Affairs*, Providing Universal Education, September/October 2001. (No longer available on www.foreignaffairs.org)

13 The conference adopted the Salamanca Declaration and Framework of Action for special educational needs, which is inspired by United Nations recommendations, resolutions and publications, notably United Nations Rules for the Equalisation of chances in favour of Disabled People (resolution A/RES/48/96).

14 Section 36 (1) of the Constitution states that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –

(a) the nature of the right;

- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

15 See the chapter on the right to have access to sufficient food for more details on this subject.

16 Department of Education, Annual Report for 2002/2003.

17 The policy is also applicable to the Further Education and Training band.

18 This stance is also supported by the SAHRC, which investigated initiation practices in education institutions and subsequently made a recommendation that the only way of prohibiting such practices is by means of Regulations.

19 The Education Laws Amendment Bill, 2002 provides for the amendment of the South African Schools Act, 1996, so as to provide for a national curriculum and instrument for the assessment of learner achievement in public and independent schools; to make provision for an intermediary; to provide for admission age requirements for public and independent schools; to amend the Employment of Educators Act, 1998, so as to make provision for an intermediary and for certain consequential definitions; to amend the Adult Basic Education and Training Act, 2000, so as to effect textual corrections; to provide for safety measures at public and private centres; to provide for a national curriculum and instrument for the assessment of learner achievement for public and private centres.

20 This section of SASA states that the Minister by notice in the Government Gazette, after consultation with the Council of Education Ministers, determine age requirements for the admission of learners to a school or different grades at a school.

21 The added subsections read as follow:

(6) A learner must be accompanied by his or her parent or person designated by the parent at disciplinary proceedings, unless a good cause is shown by the governing body in the absence of the parent or the person designated by the parent.

(7) Whenever disciplinary hearings are pending before any governing body, and it appears to such governing body that it would expose a witness under the age of 18 years to undue mental stress or suffering if she testifies at such proceedings, the governing body may, if practicable, appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.

(8) (a) An examination, cross examination or re-examination of a witness in respect of whom a governing body has appointed an intermediary under subsection (7), except examination by the governing body, must not take place in any manner other than through that intermediary.

(b) Such intermediary may, unless the governing body directs otherwise, convey the general purport of any question to the relevant witness.

(9) If a governing body appoints an intermediary under subsection (7), the governing body may direct that the relevant witness must give his or her evidence at any place, which –

(a) is informally arranged to put that witness at ease;

(b) is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and

(c) enables the governing body and any person whose presence is necessary at the relevant proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.

22 The amendment is also applicable to SASA. A section on “curriculum and assessment” was inserted after section 6 of SASA.

23 This amount excludes grants, donor funding, personnel and related monies.

24 As per the vertical division of revenue.

25 This is a labour-intensive infrastructure development programme aimed at stimulating local economic development in the provinces.

26 Russell Andrew Wildeman, Budget Information Service, Idasa, April 29 2003.

27 For short this document will be referred to as the “Review of Public School Financing”.

28 Kader Asmal, *Seventh Report to the President From the Minister of Education*, December 12 2002.

29 See footnote 25

30 A Situation Assessment and Analysis of Girls’ Education in the Eastern Cape, Limpopo & KwaZulu-Natal prepared for UNICEF Girls’ Education Project by the Centre for Policy Development, Evaluation and Management, October 2003.

31 Joint World Bank, UNAIDS, UNESCO Press Release. Full text available on
. pdf

32 See footnote 31

33 Russell Andrew Wildeman, *Reviewing Provincial Education Budgets*, Budget Brief No 130, April 29 2003, Budget Information Service, Idasa.

34 Note that 2002/03 has been used as the base year to calculate these proportions.

35 National Treasury, *Estimates of National Expenditure*, February 2002.

36 Ibid.318

37 Op cit., 318

38 Currently provinces are using various provincial quintiles which have created inequalities both between schools in the same provinces as well as between schools in different provinces.

39 These are schools whose budgets are managed directly by Provincial Departments of Education as opposed to section 21 schools that manage their budgets themselves.

40 Opcit., 25

41 The NER measures the extent of participation of the official primary age cohort (7–13 years of age) in primary schooling, and therefore excludes those learners who are formally too young or too old to sit in primary school classrooms – but who do. However, it should be noted that the age cohort used in defining “NER” can only be an estimate since the Minister’s of Educations Notice on age 7 as a requirement for admission into Grade 1 was overturned by the Constitutional Court.

42 Kader Asmal, MP: Minister of Education, *Report to the Minister: A Review of the Financing, Resourcing and Costs of Education in Public Schools*, March 3 2003.

43 Ibid, 13

44 Op cit., 13

45 Through personal contact with some officials from the GDE on February 9 2004, it was revealed that a draft document on the NDE’s National Action Plan containing strategies and implementation dates was being prepared.

46 Ibid, 15

47 Op cit., 16

48 *SADTU'S Response to the Department of Education's School Financing Proposals* by Thulas Nxesi in Edusource Data News, No 40/August 2003: *Review of the Financing, Resourcing and Costs of Education in Public Schools: A Summary*.

49 *Education Financing: Framing Inclusion or Exclusion?* by Kimberley Porteus in *Quarterly Review of Education and Training in South Africa*, December 15 2002, Volume 9, Number 4.

50 See footnote 43

51 See footnote 46

52 See footnote 40

53 See footnote 47

54 See footnote 51

55 See footnote 44

56 See footnote 29

57 The ERP is a project established as a partnership between the Centre for Applied Legal Studies (commonly known as CALS) and the Education Policy Unit (commonly known as Wits EPU) at Wits.

58 Education Rights Project, *Farm Schools*, September 2002. <http://www.erp.org.za/htm>. Website accessed August 25 2003.

59 See footnote 16

60 Ibid. 17

61 Wilson Stuart, Education Rights Project. *Transforming Farm Schools*, Issue Paper 3, September 2002. <http://www.erp.org.za/htm/issues3-2.htm>. Website accessed August 25 2003.

62 In brief, section 14(1) of the South African Schools Act [SASA] No. 84 of 1996 states that, subject to the Constitution and this Act, a public school may be provided on private property only in terms of an agreement between the Member of the Executive Council and the owner of the private property.

Subsection 2 of the Act states that an agreement contemplated in subsection 1 must be consistent with this Act and in particular must provide for –

- a) the provision of education and the performance of the normal functions of a public school;
- b) governance of the school, including the relationship between the governing body of the school and the owner;
- c) access by all interested parties to the property on which the school stands;
- d) security of occupation and use of the property by the school;

- e) maintenance and improvement of the school buildings and the property on which the school stands and the supply of necessary services;

protection of the owner's rights in respect of the property occupied, affected or used by the school.

63 See Stuart Wilson, p1

64 South African Human Rights Commission, *Final Report on the Inquiry into Human Rights Violations in Farming Communities*, August 2003.

65 See footnote 59

66 Education Rights Project, *Sexual Harassment in School*. <http://www.erp.org.za/htm/htm/harass.htm>. Website accessed on August 25 2003.

67 See the UNICEF Report prepared by the CEPD: Situational Assessment and Analysis of Girls' Education in the Eastern Cape, Limpopo & KwaZulu-Natal, October 2003.

68 Human Rights Watch. <http://www.hrw.org/reports/2001/safrica/ZA-FINAL-09.HTM>. Website accessed on August 25 2003.

69 South Africa ratified the Convention on July 16 1995.

70 Section 3(1) of SASA states that -

Subject to this Act [SASA] and any applicable provincial law, every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which such learner reaches the age of seven years until the last school day of the year in which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first.

However, it is important that section 3(1) of SASA is read with section 4 of the same Act. Section 4 of SASA provides that:

- 1) A Head of Department may exempt a learner entirely, partially or conditionally from compulsory school attendance if it is in the best interest of the learner.

Every Head of Department must maintain a register of all learners exempted from compulsory school attendance.

71 World Education Forum, Dakar, Senegal: April 26 – 28 2000, *Education for All, Year 2000 Assessment, Statistical Document*, UNESCO.

72 *Response from the national Department of Education to the SAHRC's protocol*, September 2003.

73 *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC).

74 *Seventh Report to the President from the Minister of Education*, December 12 2002.

75 Ibid.13

76 Op. cit, 13

77 See footnote 42

78 Ibid.10

79 See footnote 11

80 See footnote 62

81 Ibid. 23

82 See the Minister of Education's Report to the President, December 12 2002.

83 See footnote 77

84 This section provides that –

If a learner who is subject to compulsory attendance in terms of subsection (1) is not enrolled at or fails to attend a school, the Head of Department may-

(a) investigate the circumstances of the learner's absence from school;

(b) take appropriate measures to remedy the situation; and

(c) failing such a remedy, issue a written notice to the parent of the learner requiring compliance with subsection (1).

85 See footnote 8

86 <http://www.warmafrika.com/index/geo/5/cat/5/a/a/artid/65>. Crackdown on employers using child labour. Website accessed on November 26 2003.

87 Ibid. 2

88 http://www.gov.za/docs/legislation/bcea/child_labour/index.html. Department of Labour. Website accessed on November 26 2003.

89 *Human Rights Quarterly: A Comparative and International Journal of the Social Sciences, Human, and Law*, The John Hopkins University, Volume 23, Number 4, November 2001.

90 *Testimonies from the Education Rights Project* by Brian Ramadiro and Salim Vally in *Quarterly Review of Education and Training in South Africa*, December 15 2002, Volume 9, Number 4.

91 See Table 3

92 Ibid. 10

93 See footnote 28

94 See footnote 45

95 The following policy documents inform the curriculum development process: the White Paper on Further Education and Training; Further Education and Training Act 96 of 1996; National Education Policy Act 27 of 1996; and the South African Qualifications Authority Act 58 of 1995.

96 National Curriculum Statement represents a policy statement for learning and teaching in schools. The NCS is aimed at replacing "A Resumé of Instructional Programmes in Schools, Report 550 (2001/08)."

97 These reflect 35 subject offerings, which have replaced 264 subject offerings that once existed as a result of the grading of matriculation examinations into higher, lower and standard grades.

98 The Education Laws Amendment Bill of 2002 provides for the amendment of the Further Education and Training Act, 1998, so as to provide for safety measures at public and private further education and training institutions; to effect textual corrections relating to the registration of private further education and training institutions

99 See also the amendment by insertion after section 20 of the Adult Basic Education Act, which reads as follows:

“Prohibition of corporal punishment and initiation practices

20A (1) A person may not administer corporal punishment to a learner at any adult basic education and training centre.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which may be imposed for assault.

(3) A person may not conduct or participate in initiation practices at public and private centres.

(4) Any person who contravenes subsection 3 is guilty of misconduct and disciplinary action must be instituted against such a person.

(5) In addition to subsection (4), a person may institute civil action against a person or a group who manipulated and forced that person to conduct or participate in any initiation practices.”

100 See also the amendment of section 61 of SASA.

101 This is a project funded from the Poverty Relief, Infrastructure Investment and Jobs Summit Projects Fund. It is targeted at poor communities.

102 The budget allocation for Technical Colleges includes the Adult Basic Education and Training (ABET). However, the KZNDEC has since established directorates to specifically focus on ABET and Early Childhood Development.

103 Conditional grant allocations are included in the main allocation for the programme.

104 Section 7(2) of the Constitution provides that the State must respect, protect, promote and fulfil the rights in the Bill of Rights.

105 This subject was discussed in more detail in the GET section of the report.

106 Most provinces did not provide most of the information required in the section for General Indicators and the National Action Plan for Human Rights. There were six tables requiring information on the General Indicators and the National Action Plan for Human Rights. The tables were on the following indicators:

- Further Education and Training (Secondary)
- Matric Pass Rate
- Literacy Rates
- Secondary Education (Infrastructure)
- Availability of LSM per Subject
- Number of Platoon Schools

Therefore, the tables that are shown in this section are only those that seem to be containing information that can assist in assessing the realisation, or the lack thereof, the right to FET. The most cited reason for information not supplied to the SAHRC is the ‘unavailability’ of it.

107 See footnote 6

108 *National Curriculum Statement (NCS) Grades 10 – 12 (Schools) in Quarterly Review of Education and Training in South Africa*, December 15 2002, Volume 9, Number 4.

109 See footnote 10

110 See the GET section of the chapter as well as the SAHRC’s Final Report on the Inquiry into Human Rights Violations in Farming Communities Education Rights Project article on <http://www.erp.org.za/htm>

111 A Situation Assessment and Analysis of Girls' Education in the Eastern Cape, Limpopo and KwaZulu-Natal prepared for UNICEF Girls' Education Project by the Centre for Education Policy Development, Evaluation and Management, October 2003.

112 Ibid. 24

113 *Op cit.*, 24

114 See footnote 111

115 Ibid. 20

116 See footnote 107

117 See footnote 111

118 Ibid. 22–23

119 See footnote 115

120 Personal communication with an official from the national Department of Education. The said official revealed that starting from February 2004, the Ministerial Committee was given about six months to investigate and report back to the Minister on the use of indigenous languages as languages of instruction in higher education.

121 Ibid.

122 Language Policy for Higher Education, Ministry of Education, November 2002.

123 Section 27(2) states that subject to the policy determined by the Minister, the council, with the concurrence of the senate, must determine the language policy of a public higher education institution and must publish and make it available on request.

124 Ministry of Education, Government Notice. http://education.pwv.gov.za/Legislation/Call%20Comment/government_notice. Website accessed 24 February 2004.

125 Report of the Working Group to the Minister of Education: *The Establishment of a National Higher Education Information and Applications Service for South Africa*, June 2002.

126 Ibid, 1

127 Moshoeshoe Monare, *Government to Choose Varsity Students: Education Department Wants Central Agency to Administer Admissions*. Sunday Times, August 17, 2003.

128 Ministry of Education, *A New Funding Framework: How Government Grants Are Allocated To Public Higher Education Institutions*, February 2004.

129 Government Notice, Ministry of Education, Higher Education Act 101, 1997: *Funding of Public Higher Education*, 2003.

130 Ibid.2

131 George Subotzky, *Addressing Equity and Excellence in Relation to Employment in Higher Education*, *Edusource Data News* No.38/January 2003.

132 Ibid.17

133 *Op cit.*, 17

134 See footnote 11

135 See footnote 15

136 The Carnegie-South Africa Undergraduate Scholarship programme was set up in September 2002. Its aim is to increase the numbers of women entering and graduating in the science and technology, engineering, health sciences, economics and education fields of study by providing scholarship funding for three cohorts of women students entering higher education in 2003, 2004 and 2005.

137 See footnote 131

138 Ibid.24

139 Ministry of Education, National Plan for Higher Education, February 2001.
http://education.pwv.gov.za/DoE_Sites/Higher_Education/HE_Plan/national_plan_for_higher_education. Website accessed 27 February 2004

140 See footnote 138

141 See footnote 139

142 See footnote 140

143 Ibid. 27

144 See SAUVCA-CTP Joint Response to the Ministry of Education on the establishment of NHEIAS.

145 Thandile Ntshwaki-Khumalo, Edusource Data News, No. 42/December 2003: A Tertiary Update: October 2002-September 2003.

146 See footnote 116

147 *Constitution of the Republic of South Africa*, Act 108 of 1996.

148 See footnote 146

149 Ibid.113

150 See footnote 142

151 See footnote 148

152 Ibid.114

153 Op cit., 114