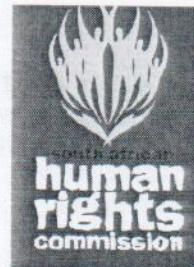


SOUTH AFRICAN HUMAN RIGHTS COMMISSION

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11 February 2019

MPUMALANGA DEPARTMENT OF BASIC EDUCATION

Attention: Mrs MOC Mhlabane

Head of Department: Department of Basic Education, Mpumalanga

Per electronic mail: P.Moosa@education.mpu.gov.za; C.Maebela@education.mpu.gov.za

Our ref: MP/1819/0413 (Kindly quote our reference number in all correspondence with the SAHRC)

Dear Madam

RE: COMPLAINT RELATING TO THE VIOLATION OF THE BASIC RIGHT TO EDUCATION IN MPUMALANGA (LTSM)

1. The above matter has reference.
2. The South African Human Rights Commission ("**Commission**") is a state institution established to support constitutional democracy. The Commission is mandated to protect and assess the observance of human rights in South Africa. The Commission is obliged and empowered by the South African Human Rights Commission Act, 40 of 2013 ("**SAHRC Act**") to, *inter alia*, investigate allegations of human rights violations, mediate or conciliate where appropriate, and litigate.
3. We wish to advise you that the Commission received the attached complaint from Ms Jane Sithole of the Democratic Alliance, regarding shortages in Learner Teacher Support Material ("**LTSM**") in schools across the province in the 2017/2018 financial year.
4. Having considered the Department's 2017/2018 annual report, the Commission noted that on page 24 of the report, the Department admitted to not being able to meet its target relating to the provision of LTSM (which should be at 100%) in the 2017/2018 financial year. Moreover, on page 201 of the report, the Auditor General indicates the audited value of the percentage of

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Chief Executive Officer: T Thipanyane

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learners provided with the required textbooks in all grades and in all subjects as being 31.26%, as opposed to the reported 63%, which is in any event below the target.

5. At the start of the 2019 academic year, the Commission also conducted surveys in various schools across the province to assess, amongst others, the extent to which shortages in LTSM may still persist in the 2019 academic year. The indication received in some schools is that indeed, shortages in LTSM still persist in the 2019 academic year.
6. In view of the above, the Commission has determined that there is a *prima facie* violation of children's right to basic education in Mpumalanga (section 29 of the Constitution).
7. Public interest in the matter and the need to test the veracity of these allegations, oblige the Commission on the basis of its Constitutional mandate, to invite your response to the above allegations. In your response, you are specifically requested to address the Commission on the following:
 - 7.1 The impact that the shortages in LTSM has had on teaching and learning across public schools in the province;
 - 7.2 The steps taken by the Department to address shortages in LTSM material in the 2019 academic year; and
 - 7.3 Whether there are shortages in the supply of LTSM in public schools in the province for the 2019 academic year and if so, the extent of the shortages in the supply of LTSM.
8. Please let us have your response at your earliest convenience and in any event by no later than **Tuesday, 12 March 2019**.
9. We look forward to hearing from you shortly.

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Yours faithfully,

A handwritten signature in black ink, appearing to read "Eric Mokonyama". The signature is written over a horizontal line that serves as a baseline.

Mr Eric Mokonyama
Provincial Manager
Mpumalanga Provincial Office

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Chief Executive Officer: T Thipanyane



JANE SITHOLE MPL

Chief Whip of the Official Opposition
Mpumalanga Provincial Legislature

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24 October 2018



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Mpumalanga Province

The South African Human Rights Commission

32 Bell Street

Nelspruit

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In re: Violation of the Basic Right to Education in Mpumalanga

Dear Commissioner

Introduction:

I trust that you are well. My name is Jane Sithole and I am the provincial leader for the Democratic Alliance in Mpumalanga.

I am requesting you to conduct an investigation into the decisions taken by officials involved in the distribution of textbooks in Mpumalanga and compel the provincial education department to issue more text books and learner teacher supply materials (LTSM) to the learners in the Province.

In the 2017/18 annual report of the department (Annexure A), the Auditor General revealed that the achievements stated did not correlate with the supporting evidence: the department reported that 63% of learners in Mpumalanga schools are provided with the required textbooks in all grades and all subjects, whereas the supporting evidence proved that only 31.26% have been provided with textbooks.

Commissioner, the fact that you have 68.7% of learners in the province who are not provided with the requisite textbooks and learning material highlights the failure of the department in creating a conducive learning environment and also that the department is setting these learners up for failure.

As the majority is without textbooks, it is conceivable that only a portion of the learners would complete their curriculum and as revealed by the auditor general only 33.45% completed.

The correlation between a lack of learning material and results could not be more evident and given that there are a majority of learners who are without adequate learning material in order to prepare for exams, it is unacceptable that during the 2014/15 financial year, officials made a decision to reduce the budget for learner teacher supply materials by 46%.

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LEADER: Mmusi Maimane

CHAIRPERSON: Athol Trollip

**JANE SITHOLE MPL**

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Legal prescripts:

(a) Commissioner, **section 29 (1) (a) of the Constitution** states that everyone has the right to basic education and in recent times the courts have ruled that this right goes hand in hand with the provision of textbooks and other material.

In 2012, there was a case which was brought against the Department of Education in Limpopo concerning the supply of learning material after the introduction of curriculum and assessment policy statements (CAPS). In this case Judge Jody Kollapen made the following statement:

"The provision of learner supply materials in the form of textbooks, as may be prescribed is an essential component of the right to basic education, and its provision is inextricably linked to the fulfilment of the right. In fact, it is difficult to conceive, even with the best of intentions, how the right to basic education can be given effect to in the absence of textbooks".

And as such he concluded that by not supplying learners with the requisite materials, the department of education in Limpopo violated section 29 (1) (a) of the constitution. In 2014, the delivery of these materials was still an issue in the Province and there were reports of widespread shortages in many schools in Limpopo. Basic Education for All together with 18 schools approached the Northern Gauteng High Court to once again compel the department. During this case the court ruled that:

"The delivery of textbooks to certain learners but not others cannot constitute fulfilment of the right. Section 29(1) (a) confers the right of a basic education to everyone. If there is one learner who is not timeously provided with her textbooks, her right has been infringed."

Given the above judgements and the fact that there are roughly 69% of learners in the province without access to learner material, the Department of Education in the Province is presumably violating the basic right to education.

(b) As the right to education refers uniformly to everyone- in situations where a select few have been given access to these materials over others: it develops a system which is discriminating on those who do not have and also resulting in variations between that have and have nots. Section 9 (2) of the Constitution reads that:

"Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other

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LEADER: Mmusi Maimane

CHAIRPERSON: Athol Trollip

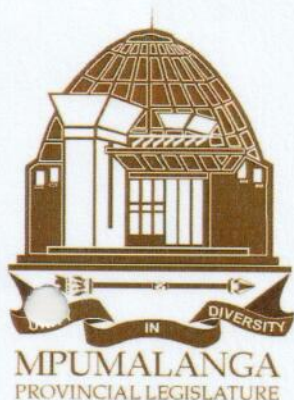
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measures designed Chapter 2: Bill of Rights to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken"

(c) Section 3 of the **School Education Act No. 8 of 1995 in Mpumalanga** states that the relevant MEC at the time is responsible for Education in the province and irrespective of whether the Province uses a centralized, a school based or a hybrid LTSM supply system - the system in place is to the detriment of the best interests of children in the province and discriminating. The Department of Education in the province is responsible for the choice of system and the failure to monitor all aspects of this system and as such the department failed the learners as majority of the textbooks are not being delivered.

(d) As there are roughly 69% of learners without supply materials, the decision to cut the LTSM budget by 49% was ill advised and presumably contradicts with sections in the South African Schools Act 84 of 1996.

The Province is centralized and hires service providers to deal with the supply and distribution of these learning materials. It is a system chosen by the department which is in turn presumably violating section 29(1) (a) of the Constitution, section 9 of the constitution and the South African Schools Act No 84 of 1996.

It is from the above that I request you to conduct an investigation into the supply and delivery of textbooks to the learners in this province and compel the Department of Education to live up to its mandate.

Should you require more information feel free to contact me.

I thank you,

RJ Sithole

082 854 9711

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LEADER: Mmusi Maimane

CHAIRPERSON: Athol Trollip