

## 1.7 Provide sufficient teaching and learning support materials and equipment *(continued)*

| State's obligations  | Indicators/rights   | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s)  |
|--|---|---|---|
| <p>Provide basic learning and teaching support infrastructure, furniture and equipment to provide an enabling teaching and learning environment for all learners, including learners with disabilities.</p> <p>This includes the provision of physical teaching and learning spaces, such as science laboratories, computer laboratories, workshops and other specialised teaching spaces; and spaces that support teaching and learning, such as libraries, school halls, media rooms, counselling centres; and sports facilities.<sup>93</sup></p> | <ol style="list-style-type: none"> <li><b>1</b> All ordinary public schools have sufficient desks and chairs to accommodate all learners.</li> <li><b>2</b> All schools and learners have access to a school library that is: <ol style="list-style-type: none"> <li><b>a</b> adequately and age-appropriately stocked;</li> <li><b>b</b> takes the form of one of the models provided for by the National Guidelines for School Library and Information Services; and,</li> <li><b>c</b> maintained by a qualified librarian.<sup>94</sup></li> </ol> </li> <li><b>3</b> All schools have a Whole School Library Developmental Plan governing the provisioning of a comprehensive Library and Information Service for learners and educators.<sup>95</sup></li> <li><b>4</b> All public schools have: <ol style="list-style-type: none"> <li><b>a</b> a stocked science laboratory;<sup>96</sup></li> <li><b>b</b> a stocked computer laboratory/classroom/media room;<sup>97</sup></li> <li><b>c</b> at least one sports field for soccer or rugby, and at least one for netball or volleyball;<sup>98</sup> and,</li> <li><b>d</b> a meeting hall.<sup>99</sup></li> </ol> </li> <li><b>5</b> All schools provide adequate assistive devices, infrastructure and furniture that allows for ease of access and movement to support teaching and learning for learners with disabilities.<sup>100</sup></li> </ol> | <ol style="list-style-type: none"> <li><b>1</b> The Policy for the Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010) and accompanying guidelines (2012) require the provision of libraries, science laboratory facilities, computer rooms and sports grounds. Moreover, they oblige the departments of Basic Education to prioritise schools in the poorest quintiles.</li> <li><b>2</b> Despite this policy directive, there are significant backlogs and inequities in the provision of learning and teaching support infrastructure. In 2011, 79% of schools had no library. Whilst 21% had a library, only 7% of these were stocked. Similarly, 85% of schools had no laboratories; 77% of schools had no computer centres, and of the 23% that had a computer centre, only 10% were stocked. Seventeen percent of schools had no sports facilities in 2011.<sup>101</sup> <p>As in the case of the other infrastructure backlogs, the position is much worse in poorer provinces. For example, in the Eastern Cape, 90% of schools had no library, and in KwaZulu-Natal and Limpopo, 80% and 93% of schools did not have a library in 2010/11. The situation is similar in relation to access to science laboratories, computer rooms, counselling centres and sports facilities.<sup>102</sup></p> </li> <li><b>3</b> The DBE has committed to remedy these backlogs by providing either media centres or libraries in all schools, to promoting mini-libraries in classrooms, and to establishing computer centres in schools by 2020.<sup>103</sup> In the medium-term it has committed to provide 80% of schools with library information services by 2014/15.<sup>104</sup> In the short-term, it has committed to provide libraries or media centres fulfilling certain minimum standards in an additional 20% of schools that do not, as at 2009, have libraries.<sup>105</sup></li> <li><b>4</b> The Draft School Sport Policy for Schools in South Africa (November 2011) commits to the provision, at each school, of a "structured programme for recreational and educational sport and to mobilise resources for the implementation thereof".<sup>106</sup></li> </ol> | <p>National and provincial departments of Basic Education</p> <p>Department of Public Works</p> |

## 1.8 Provide and spend sufficient funds to make and keep schooling available

| State's obligations  | Indicators/rights  | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)   |
|--|--|--|--|
| Ensure sufficient allocation of the public fiscus for ECD. <sup>107</sup>  | 70% of the per-learner cost allocated for Grade 1 learners by the DBE is allocated to Grade R learners. <sup>108</sup>   | <p><b>1</b> Whilst the allocation of funds for Grade R in sites attached to public schools doubled between 2007/8 and 2009/10, the per capita amount allocated to Grade R learners in 2009/10 was less than half the R7826 allocation for primary and secondary learners.<sup>109</sup></p> <p><b>2</b> The DBE has committed to ensure that:</p> <ul style="list-style-type: none"> <li><b>a</b> all schools are funded at the least, at the minimum per learner levels;</li> <li><b>b</b> that the funds will be used transparently and effectively;</li> <li><b>c</b> that the amount to be paid to individual schools will be published on the internet.<sup>110</sup></li> </ul> <p>These commitments must be equally applicable to Grade R funding.</p>  | Provincial departments of Basic Education.   |
| <p><b>1</b> Ensure sufficient allocation of the national budget to realise the right to basic education.</p> <p><b>2</b> Ensure sufficient allocation of funds to the provincial departments of Basic Education and the efficient expenditure of national and provincial funds to provide the necessary school infrastructure, equipment and learning and support materials.<sup>111</sup></p> | <p><b>1</b> The national education budget is 9% of the national GDP.<sup>112</sup></p> <p><b>2</b> All provinces allocate sufficient funds to ensure the availability of adequate infrastructure at all schools and all spend their budgets within the allotted financial year.</p> <p><b>3</b> All provinces allocate sufficient budgets for the purchase of assistive devices and other supportive infrastructure for learners with disabilities and spend these within stipulated budget periods.</p> | <p><b>1</b> In 2011/12 the national allocation to basic education is almost 6% of GDP. The system is marked by provincial variations in the allocation of budgets and high levels of under-spending, especially on capital and infrastructure budgets.<sup>114</sup> In addition, transfers to many schools by provincial departments are characterized by inefficiencies and delays.<sup>115</sup> Similarly, there is provincial variation in the budgets allocated and under-spending of budgets for the purchase of assistive devices and other supportive infrastructure for learners with disabilities.<sup>116</sup></p> <p><b>2</b> The DBE has committed to ensure that:</p> <ul style="list-style-type: none"> <li><b>a</b> all schools are funded at the least, at the minimum per learner levels;</li> <li><b>b</b> that the funds will be used transparently and effectively; and,</li> <li><b>c</b> that the amount to be paid to individual schools will be published on the internet.<sup>117</sup></li> </ul> | <p>National and provincial departments of Basic Education</p> <p>The national Planning and Delivery Oversight Unit</p> |

## 1.8 Provide and spend sufficient funds to make and keep schooling available *(continued)*

| State's obligations | Indicators/rights  | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s) |
|---------------------|--|---|----------------------------|
|                     | <p><b>4</b> All schools receive funding timeously from the provincial departments of Basic Education so as to enable proper operation, maintenance and administration of the school and realization of its obligations to learners.</p> <p><b>5</b> The distribution of the education budget between personnel and non-personnel costs is 80:20.<sup>113</sup></p> <p><b>6</b> The PDOU reports annually on provincial expenditure and delivery on policy priorities such as infrastructure and workbooks, and on remedial measures for improved fiscal discipline in provincial departments of Basic Education.</p> | <p><b>3</b> The DBE has committed to coordinating the procurement of assistive devices for schools by provinces until 2014 to ensure equity of access for learners with disabilities and expenditure of allocated budgets.<sup>118</sup></p> <p><b>4</b> In addition, the DBE established the national PDOU in 2011 "with a view to promoting a more direct and interventionist relationship between the national level on the one hand, and provinces and districts, on the other".<sup>119</sup> This unit will work closely with the provincial departments to oversee and address problems of under-performance and under-expenditure of capital and goods and service budgets.<sup>120</sup></p> |                            |



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## 2. Accessible Education

Education must be accessible to all children. Meaningful access to education requires more than just getting through the school gates. It requires that learners access, remain in and complete their schooling. This requires that the State take the necessary legislative, administrative and other steps to ensure that the education system does not actively or passively exclude any children. The first step is for the law to make enrolment, attendance and completion compulsory. However, the law cannot be enforced, and parents and learners cannot be expected to comply with the law, if their circumstances bar them from doing so. This places a further obligation on the State to identify and address barriers that prevent children from accessing the education made available to them (Tomaševski K., 2004). The obligation is thus two-fold. “Accessibility requires that the system is non-discriminatory and accessible to all, and that positive steps are taken to include the most marginalized” (Right to Education Project, 2010).

Thus, the State is obliged to outlaw discrimination within the education system and put in place adequately funded policies, laws and programmes to identify and address barriers to education. It is obliged to:

- 1 ensure universal access at an appropriate age, progression through the system and completion of education cycles by all children;<sup>121</sup>



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- 2 prohibit discrimination on the grounds of disability, health status, gender, race as well as geographical location, and actively promote the inclusion of vulnerable children;<sup>122</sup>
- 3 address economic barriers to education by making primary education free and secondary education progressively free;<sup>123</sup>
- 4 address physical barriers to schools, such as distance and access for children with disabilities; and,<sup>124</sup>
- 5 address administrative obstacles such as onerous documentation requirements.<sup>125</sup>

### 2.1 Ensure access, retention, progression through, and completion of education cycles

| State's obligations   | Indicators/rights  | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)  |
|---|--|--|---|
| Ensure that all children have access to, are retained at, and complete pre-primary and primary school, especially those that are marginalised. <sup>126</sup> | <ol style="list-style-type: none"> <li>1 Every child entering Grade 1 has participated in an accredited Reception year by 2014.<sup>127</sup></li> <li>2 100% of children within the compulsory age band, 7-15, are enrolled at school.</li> </ol> | <ol style="list-style-type: none"> <li>1 In 2011, pre- and primary enrolment, attendance and retention rates were low, especially for children subject to multiple vulnerabilities.</li> <li>2 The DBE has committed to ensuring 100% Grade R access for all five-year-olds by 2014.<sup>128</sup> This was not achieved by 2011 when the Grade R enrolment rate was 78,3%, with much lower rates in poor provinces such as the North West (66,8%).<sup>129</sup></li> </ol> | <p>National and provincial departments of Basic Education</p> <p>Department of Social Development</p> |

## 2.1 Ensure access, retention, progression through, and completion of education cycles *(continued)*

| State's obligations | Indicators/rights  | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)   |
|---------------------|--|--|--|
|                     | <p><b>3</b> 100% of the following vulnerable children aged 7-15 are enrolled at school:</p> <ul style="list-style-type: none"> <li><b>a</b> Children with disabilities;</li> <li><b>b</b> Children who are orphaned (double or single);</li> <li><b>c</b> Children living in poverty;</li> <li><b>d</b> Children living with their grandparents;</li> <li><b>e</b> Children living with someone other than parents or grandparents;</li> <li><b>f</b> Children involved in child labour (both domestic and for economic gain).</li> </ul> <p><b>4</b> 100% of children within the compulsory age band attend school on a daily basis.</p> <p><b>5</b> 100% of children remain enrolled until they complete their compulsory cycle.</p> | <p><b>3</b> The DBE has committed to achieving a 99% enrolment rate for children aged 9-15, and to ensure that children remain effectively enrolled until they turn 15.<sup>130</sup> In 2011, 2% of children within the compulsory age range (7 to 15 years) were out of school.<sup>131</sup> Children living in poverty, with a disability, orphans, children living with non-relatives and children involved in child labour were disproportionately represented in the out-of-school population.<sup>132</sup></p> <p><b>4</b> For many of those that are enrolled, daily attendance remains a challenge. The high rate of absenteeism (7,4%) is caused by, inter alia, illness, family responsibilities, poverty, transport inadequacies, and violence.<sup>133</sup></p> <p><b>5</b> Only 87% of 16-year-olds had completed primary school in 2009. Whilst retention rates are good for children in Grades 1-6, drop-out rates increase from Grade 7 upwards. In 2007/2008, drop-out rates for children in Grades 1 and 2 were 1% and below. For children in Grades 3-6 it varied from 0,3 to 1,5%. Thereafter it increased to 2,7% in Grade 7, to 3,8% in Grade 8, and to 6,5% in Grade 9.<sup>134</sup></p> <p><b>6</b> The DBE's pro-poor policies have succeeded in improving and maintaining enrolment rates for the majority of children in the compulsory age range.<sup>135</sup> UNESCO observes that as progress is made towards near-universal enrolment, attention must turn to including those who are most marginalized and hardest to reach.<sup>136</sup> South Africa now faces the challenge of ensuring the implementation of its compulsory education policies for the most marginalised children — children living in extreme poverty, children living with disabilities, and children experiencing other multiple vulnerabilities.</p> <p><b>7</b> The DBE has developed a range of programmes aimed at monitoring enrolment and attendance and addressing some of the underlying causes of absenteeism and early drop-out.</p> | <p>School principals</p> <p>Teachers</p> <p>Parents/caregivers</p> <p>Learners</p> |

## 2.1 Ensure access, retention, progression through, and completion of education cycles *(continued)*

| State's obligations | Indicators/rights | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s) |
|---------------------|-------------------|---|----------------------------|
|                     |                   | <p><b>8</b> One of the more recent innovations to aid in the identification of learners at risk of dropping out is the Policy on Learner Attendance (2010). It provides standard processes for recording, managing and monitoring learner attendance, with the obligation on principals to identify learners who are frequently absent, to establish the cause of such absenteeism, and to facilitate access to support for the learner to overcome the underlying difficulties.</p> <p><b>9</b> In addition, the LURITS system, which covered 50% of schools in 2011, is a national computerised data and information management system which records the attendance and drop-out patterns of children. This system should be expanded to cover 100% of schools.</p> <p><b>10</b> Receipt of the Child Support Grant (CSG) is linked to school enrolment and attendance.<sup>137</sup> The Social Assistance Act No. 13 of 2004 (as amended) requires that the caregiver of a child between the ages of 7 and 18 receiving the CSG ensures that the child is enrolled at and attending school. If the child is not enrolled or does not attend school, the Director General (DG) of the DSD must, in consultation with the national DBE, initiate a social-worker investigation and take steps to ensure that the child is enrolled at and attends school. It does not require the termination of the grant.</p> <p>The Minister of Social Development recently committed to “more forcefully applying the conditions starting with an extensive communication campaign to create awareness about the importance of these conditionalities”. Moreover, the DSD has “signed a protocol with the DBE to confirm school enrolment and attendance of children in receipt of the CSG and the Foster Care Grant (FCG)”.<sup>138</sup></p> <p><b>11</b> In addition, the Department has identified the National School Nutrition Programme (NSNP), the extension of the “No-Fee” school policy, its workbook project, and the provision of more full-service and special schools to accommodate learners with disabilities as key interventions to improve enrolment, retention and repetition rates.<sup>139</sup></p> |                            |

## 2.1 Ensure access, retention, progression through, and completion of education cycles *(continued)*

| State's obligations  | Indicators/rights  | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)                              |
|--|--|--|---|
| Ensure that secondary school is generally accessible to all children. <sup>140</sup> | <ol style="list-style-type: none"> <li>1 100% of children completing primary school enroll at secondary school.<sup>141</sup></li> <li>2 80-90% of learners complete their secondary schooling and obtain either their National Senior Certificate or an FET college certificate.<sup>142</sup></li> </ol> | <ol style="list-style-type: none"> <li>1 Secondary education is not compulsory, but is universally available to all children in South Africa. This has not, however, translated into universal accessibility, which is evident from the substantial increase in the drop-out rate in the secondary education phase, especially in the senior secondary phase. As mentioned previously, the drop-out rate increases from Grade 7 and peaks in Grades 10 and 11 at 11,5%.<sup>143</sup> In consequence, only 83% of children aged 16-18 years were enrolled in 2011, compared to 98% of children aged 7-15 years. Only 40% of those who remain enrolled complete their schooling and graduate with a National Senior Certificate. Only 1% complete the secondary education at an FET college.<sup>144</sup> In short: "South Africa loses half of every cohort that enters the school system by the end of the 12 year schooling period."<sup>145</sup></li> <li>2 The DBE has introduced a number of interventions to improve enrolment and retention of learners at secondary school level. These include the extension of: <ol style="list-style-type: none"> <li>a the National School Nutrition Programme (NSNP) to quintile 2 and 3 secondary schools; and,</li> <li>b the no-fee school policy to additional schools.<sup>146</sup></li> </ol> </li> <li>3 Gustafsson (2011) recommends that the DBE's policies should, in addition, include interventions to address financial constraints faced by secondary learners, such as the cost of books, stationery and transport. In addition, he argues that teenage pregnancies must be addressed as they are the cause of 50% of girls dropping out. With regard to the latter recommendation, a strategy for the prevention and management of teenage pregnancy has been developed. It is to be presented to the Director General for approval in 2012, and is discussed in more detail under item 2.2 below.<sup>147</sup></li> <li>4 In addition, a number of innovations have been introduced to improve FET colleges so that more learners can access secondary education through alternative educational institutions. (These innovations are outside of the scope of this Charter as they fall within the mandate of the Department of Higher Education and Training (DHET)).</li> <li>5 The National Planning Commission (2012) recommends a more systemic solution to improving the rate of access to, and completion of, secondary education. It recommends that "compulsory education should be extended to successful completion of Grade 12 in basic education or the equivalent level in the post-school sector".</li> </ol> | National and provincial departments of Basic Education. |

## 2.1 Ensure access, retention, progression through, and completion of education cycles *(continued)*

| State's obligations   | Indicators/rights   | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s)   |
|---|---|---|--|
| Ensure that children progress through the grades at the appropriate age. <sup>148</sup> | <ol style="list-style-type: none"> <li>1 Only 5% of learners repeat grades.<sup>149</sup></li> <li>2 85% of children aged 9 at the start of the year have completed Grade 3.<sup>150</sup></li> <li>3 75% of children aged 12 at the start of the year have completed Grade 6.<sup>151</sup></li> </ol> | <ol style="list-style-type: none"> <li>1 Repetition rates are high amongst learners in South Africa. At 9%, the rate is higher than in other developing countries (5%).<sup>152</sup> It is higher in the secondary phase. In Grades 1-3 it averages 7%, compared to 16-17% in Grades 10 and 11.<sup>153</sup></li> <li>2 The DBE recognises that this is caused by the failure of learners to acquire the necessary skills during the foundation phase. For this reason it has focused its energy on improving the quality of inputs (such as literacy and numeracy workbooks for Grades 1-6) and the quality of literacy and numeracy outcomes for learners in Grades 3, 6 and 9.<sup>154</sup> This is discussed in greater detail under the "Acceptability" heading below.</li> </ol> | <p>The national and provincial departments of Basic Education</p> <p>Schools</p> <p>Parents/caregivers, learners</p> |

## 2.2 Prohibit discrimination on the grounds of disability, health status, gender, race as well as geographical location and actively promote the inclusion of vulnerable children

| State's obligations   | Indicators/rights   | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)  |
|---|---|--|---|
| Ensure that education and related policies effectively outlaw discrimination on all internationally prohibited grounds, and include effectively children with disabilities, girls (including those who become pregnant), and children of refugees. <sup>155</sup> | <ol style="list-style-type: none"> <li>1 Education laws prohibit the exclusion of children from school on the internationally and nationally prohibited grounds of discrimination, including gender, race, disability, health status, language, ethnicity, geography, etc.</li> </ol> | <ol style="list-style-type: none"> <li>1 Numerous policies prohibit discrimination of learners on the prescribed ground within the education system. For example, the South African Schools Act No. 58 of 1996 (section 5) and the Admission Policy for Ordinary Public Schools Act No. 27 of 1996 (sections 7 and 9) prohibit discrimination in school admission policies. In addition, they guarantee admission to lawfully resident non-South Africans residents, as well as learners with special education needs, such as learners with a disability or who are chronically ill or living with HIV, and prohibit discrimination against children because of an inability to pay school fees.</li> <li>2 Learners living with HIV or AIDS may not be discriminated against in terms of the current National Policy on HIV/AIDS for Learners and Educators in Public Schools.<sup>156</sup></li> <li>3 In terms of the Measures for the Prevention and Management of Learner Pregnancy (2007), schools may not expel or otherwise unfairly discriminate against learners that become pregnant.</li> </ol> | <p>National and provincial departments of Basic Education working together with the DSD, DOH and DHA.</p> <p>Schools, principals and teachers</p> <p>Learners, their parents and caregivers</p> |

## 2.2 Prohibit discrimination on the grounds of disability, health status, gender, race as well as geographical location and actively promote the inclusion of vulnerable children *(continued)*

| State's obligations | Indicators/rights  | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s) |
|---------------------|--|---|----------------------------|
|                     | <p><b>2</b> All children with disabilities, refugee children, children affected by HIV and AIDS and girls who become pregnant while teenagers are enrolled, attend and complete their primary and secondary schooling cycles.</p> <p><b>3</b> Children do not discriminate against their peers on the grounds of their HIV status.</p> | <p><b>4</b> Despite these measures, 10% (476 000) of children with disabilities are out of school. Higher rates are observed in some provinces. For example, 27% in the Northern Cape, 15% in the North West and 12% in Gauteng and Limpopo.<sup>157</sup> Only 53% of 16-18 year olds with a disability attended an educational institution, leaving 47% out of school. Many children of refugees are barred from enrolling at schools.<sup>158</sup> Six percent of out of school learners aged 7-18 were not at school in 2009 because of pregnancy.<sup>159</sup></p> <p><b>5</b> The SACMEQ III study found that 8,3% of learners would stigmatize their peers infected with HIV.<sup>160</sup></p> <p><b>6</b> The DBE has committed to improving implementation of the relevant policies by, inter alia, increasing full service schools to accommodate learners with disabilities to at least one per district by 2014.<sup>161</sup></p> <p><b>7</b> In addition to the allocation of additional budgets by national and provincial departments of education for building special schools or developing ordinary public schools to accommodate diversity, the DBE should embark on a collaborative recruitment drive with the Departments of Social Development, Health and Home Affairs to identify and ensure all children with disabilities and all refugee children are in schools from as early an age as possible. In addition, it should implement awareness-raising campaigns publicising the education rights of refugee children and the requirements for admission, together with a complaints mechanism to report cases of exclusion to the Department.<sup>162</sup></p> <p><b>8</b> In terms of the Measures for the Prevention and Management of Learner Pregnancy, 2007, schools must encourage pregnant learners to continue with their education before and after the birth of the baby. These Measures are, however, to be replaced by a revised Strategy and Regulations for the Prevention and Management of Teenage Pregnancy which are expected to be released in 2012.<sup>163</sup></p> |                            |

## 2.3 Address economic barriers to education by making primary education free and secondary education progressively free

| State's obligations  | Indicators/rights  | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s)   |
|--|--|---|--|
| Make primary education free for all children by eliminating school fees, as well as addressing associated costs such as the cost of school uniforms, transport, stationery, extra-mural costs, school lunches, etc. <sup>164</sup> | <ol style="list-style-type: none"> <li>1 Primary schooling is free at all public schools.</li> <li>2 All public schools for children with disabilities do not charge school and related fees.<sup>165</sup></li> <li>3 All children benefiting from a social grant are fully exempted from paying school fees at primary school.<sup>166</sup></li> <li>4 All children living in poverty attending a primary school that charges fees are fully exempted from paying school fees.</li> <li>5 No child is unable to attend a primary school due to an inability to pay fees.<sup>167</sup></li> <li>6 No child is excluded from school or punished due to an inability to pay school fees.<sup>168</sup></li> <li>7 No child is excluded from school, or otherwise punished due to an inability to pay other education costs such as uniforms, stationery, or extra-curricular costs, etc.</li> </ol> | <ol style="list-style-type: none"> <li>1 In 2012 South Africa does not have a free primary education policy. The majority of children living in poverty do not pay fees because of the current no-fee and school fee exemption policies. All schools in quintiles 1, 2 and 3 are no-fee schools. Learners that attend quintile 4 and 5 schools may qualify for a school fee exemption in terms of the Amended National Norms and Standards for School Funding (2006). Depending on their caregivers' levels of poverty, they may qualify for either a full or partial fee exemption. Children receiving the CSG, a FCG, or who are in the care of kin and have no visible means of support, automatically qualify for a full exemption. In addition, learners in primary schools in quintiles 1, 2 and 3 receive daily food in terms of the NSNP.</li> <li>2 The reach of the no-fee and exemption policies is extensive. Almost 80% of schools benefit from the no-fee policy, and in 2011, 55.6% of learners did not pay tuition fees.<sup>169</sup></li> <li>3 However, the policies do not provide for universally free primary education. In addition, they are inadequately designed and implemented so as to exclude a number of poor students enrolled at quintile 4 and 5 schools.<sup>170</sup><br/><br/>In 2008/9, 25% of children in quintile 1 schools and 46% in quintile 2 schools in households surveyed in the greater Johannesburg area were paying fees, despite the fact that they were all no-fee schools. One percent of learners participating in the study had been expelled for non-payment of fees and 7% of learners were temporarily absent from school because their households could not afford to pay school fees and other costs such as uniforms.<sup>171</sup> In addition, there have been reports of schools failing to facilitate access to exemptions for poor children and of children receiving the CSG or other grants not automatically receiving a school fee exemption.<sup>172</sup></li> <li>4 The DBE has recognised some of the challenges in the design and implementation of the current no fee and school fee exemption policies. It has committed to: <ol style="list-style-type: none"> <li>a reviewing the use of the quintile system as a means of allocation of schools as no-fee schools;</li> </ol> </li> </ol> | <p>The national and provincial departments of Basic Education</p> <p>Schools</p> <p>School governing bodies and principals</p> <p>Parents and caregivers</p> |

## 2.3 Address economic barriers to education by making primary education free and secondary education progressively free *(continued)*

| State's obligations  | Indicators/rights  | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)   |
|--|--|--|--|
|  | <p><b>8</b> The NSNP reaches all children living in poverty</p>  | <p><b>b</b> ensuring that all children who receive the CSG do in fact get exempted from school fees as per current policy requirements; and,</p> <p><b>c</b> compensating fee-charging schools that provide school fee exemptions to poorer learners.<sup>173</sup></p> <p>There is, however, contrary to clear international legal obligations, no commitment as at 2012 to make all primary schools free.</p> <p><b>5</b> Whilst the DBE makes provision for assisting children with the cost of tuition fees through its no-fee and exemption policy, there is, in 2012, no comparable policy to subsidise the cost of school uniforms and transport. The cost of these essentials serve to bar children from school.<sup>174</sup> The Portfolio Committee on Basic Education has recommended that appropriate policies be developed to secure subsidisation of these costs.<sup>175</sup></p> <p><b>6</b> Whilst the NSNP reaches close to 10 million children, it is nonetheless only available in primary schools in quintiles 1-3 and in secondary schools in quintile 1. There are however no measures or commitments in place to facilitate access to school nutrition for poor learners in quintiles 4 and 5.</p> |  |
| <p>Make secondary education progressively free and have a time-bound plan in place to achieve this goal.<sup>176</sup></p> | <p><b>1</b> The State has committed to making secondary schooling progressively free and has developed a time-bound plan to realise the goal.</p> <p><b>2</b> All secondary school learners living in poverty and attending a public school do not pay school fees and receive support to cover associated school costs.</p> <p><b>3</b> Secondary school learners living in poverty have access to the NSNP</p> | <p><b>1</b> The drop-out rate is higher at secondary level and the primary reason for premature cessation of studies is lack of fees.<sup>177</sup></p> <p><b>2</b> To address the poverty barrier, the DBE has committed to address implementation problems related to the school fee exemptions as well as the targeting gaps brought about through classification of no-fee schools based on their quintile categorisation. (These were discussed in more detail in the previous table).</p> <p><b>3</b> In addition, the DBE has committed to expanding the NSNP to all secondary schools in quintiles 2 and 3.<sup>178</sup> However, no commitments have been made to facilitate access to school nutrition for poor learners attending quintile 4 or 5 secondary schools</p>  | <p>The national and provincial departments of Basic Education</p> <p>Schools</p> <p>School governing bodies and principals</p> <p>Parents and caregivers</p> |

## 2.4 Address physical barriers to schools such as distance and access for children with disabilities

| State's obligations   | Indicators/rights  | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s)  |
|---|--|---|---|
| Address the barrier presented by physical distance to schools through scholar transport and other interventions. <sup>179</sup> | <ol style="list-style-type: none"> <li>1 All learners living more than 5 kilometres from school that cannot afford to pay transport costs have access to either free or subsidized transport or hostel accommodation.<sup>180</sup></li> <li>2 The national school transport policy recognises and makes special provision for the additional transport and safety needs of very young learners, learners with disabilities, and learners in rural areas.</li> </ol> | <ol style="list-style-type: none"> <li>1 "For many learners, especially in rural South Africa, access to education is hampered by the long distances they have to travel between home and school."<sup>181</sup><br/><br/>The Department recognises that 19% of learners take more than 30 minutes to walk to school.<sup>182</sup> Learners in remote rural and farming areas have reported walking up to 34 kilometres per day.<sup>183</sup></li> <li>2 The National Policy for the Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010) commits to providing alternatives and to implementing these on a pro-poor basis where "ease of physical access to schools is not financially feasible". Proposed alternatives include the provision of transport and the provision of hostels.<sup>184</sup></li> <li>3 The Guidelines Relating to Planning for Public School Infrastructure (2102) make provision for "either transport or hostel accommodation on a progressively phased and pro-poor basis" for learners that have to walk more than 5 kilometres to school.<sup>185</sup></li> <li>4 The DBE has indicated that a Hostel Policy was finalised in 2010 and a draft presented to departmental management for consideration. In addition, discussions are taking place between the Minister of Basic Education and the Department of Transport around a national Draft Learner Transport policy.<sup>186</sup></li> <li>5 It is important that the policies in development: <ol style="list-style-type: none"> <li>a Make provision for affordable and safe transport for all learners with additional needs and vulnerabilities, including very young learners, learners with disabilities, and children living in rural areas. Transport is prohibitively expensive for learners with disabilities because of their special needs and, for many, special schools are very far from their homes. Moreover, the quality and availability of transport for them is poor.<sup>187</sup></li> <li>b Children living in rural areas are especially vulnerable to the dangers and risks of long distances. A five-kilometre walk for a child in a rural area is often more dangerous than for their urban counterparts, given the lack of tarred roads, poor security due to dense vegetation, dangerous animals and other factors.<sup>188</sup></li> </ol> </li> </ol> | <p>National and provincial departments of Basic Education</p> <p>Departments of Public Works</p> <p>Department of Transport</p> |

## 2.4 Address physical barriers to schools such as distance and access for children with disabilities *(continued)*

| State's obligations   | Indicators/rights   | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s)   |
|---|---|---|--|
| Ensure that children with disabilities enjoy physical access to schools. <sup>189</sup> | All public schools provide facilities that enable access to the school premises for children with disabilities, including ramps, accessible toilets, signage drop-off zones, accessible transport and other technical support. <sup>190</sup> | <ol style="list-style-type: none"> <li>1 Physical access to schools for learners with disabilities is a problem. In 2009, 97% of public schools did not have facilities such as ramps, elevators and disability-abled toilets.<sup>191</sup></li> <li>2 White Paper 6 (2001), together with the National Policy for the Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010) and its accompanying Guidelines (2012), oblige the DBE to ensure access for all children with disabilities by "providing adequate spaces and resources to support teaching and learning". The policy further provides that infrastructure and furniture must allow for ease of access and movement and seating. The Guidelines for Full Service Schools require that all such schools must be accessible.</li> <li>3 For further statistics and comments, see the discussion under the "Availability" heading, under item 1.5 — "Provide sufficient, safe, functional educational institutions", dealing with the sufficiency of schools, school spaces and infrastructure for children with disabilities.</li> </ol> | <p>National and Provincial departments of Basic Education</p> <p>Department of Public Works</p> <p>Department of Transport</p> <p>Schools and Principals</p> |

## 2.5 Address administrative barriers to schools

| State's obligations  | Indicators/rights   | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)  |
|--|---|--|---|
| Ensure that administrative requirements such as documentation requirements for admission do not bar children from school. <sup>192</sup> | <ol style="list-style-type: none"> <li>1 Education laws prohibit discrimination on the grounds of lack of documents.</li> <li>2 No child is denied access to school on the basis of lack of access to documents.</li> </ol> | <ol style="list-style-type: none"> <li>1 Although documents such as birth certificates are required for admission to a public school, the Admission Policy for Ordinary Public Schools (2006) and the South African Schools Act (2006) require that children who lack these be provisionally registered until their documents can be obtained.</li> <li>2 Despite this provision, in 2012, children of refugees continue to be barred from enrolling, often because they lack the necessary documents.<sup>193</sup></li> <li>3 The DBE should, together with the DHA and DSD, engage in an awareness-raising campaign about the rights of all children to be admitted, regardless of their documentation status.</li> </ol> | <p>National and provincial departments of Basic Education</p> <p>Department of Home Affairs and Social Development</p> <p>Schools</p> |

### 3 Acceptable Education

The curriculum, teachers, teaching methods, educational outcomes and teacher and learner behaviour must be acceptable.

The right to education “by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. The State is obliged to ensure that all schools conform to the minimal criteria which it has developed, thus ensuring ... education [is] acceptable” (Tomasevski K., 2001) (Tomasevski K., 2004) (UN CESCR. General Comment No. 13, 8 December 1999).

This translates into an obligation on the State to regulate the form and substance of education so as to ensure:

- 1 the provision of quality education through appropriate teaching methods and an appropriate curriculum;<sup>194</sup>
- 2 the acquisition by learners of necessary literacy, numeracy and problem-solving skills as measured against international and regional standards;<sup>195</sup>
- 3 the curriculum and teaching is linguistically responsive so that language does not become a barrier and is non-discriminatory; and,<sup>196</sup>
- 4 a learning environment that is not harmful to children.<sup>197</sup>



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#### 3.1 Teaching methods and curriculum are adequate to cultivate basic knowledge and skills

| State's obligations  | Indicators/rights  | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)   |
|--|--|--|--|
| Ensure the provision of teaching through methodologies and a curriculum capable of ensuring children acquire the necessary numeracy, literacy and critical skills and competencies. <sup>198</sup> | <ol style="list-style-type: none"> <li>1 All learners in the foundation and intermediate phases participate in daily reading for enjoyment.<sup>199</sup></li> <li>2 All learners in the foundation and intermediate phases participate in daily writing exercises.<sup>200</sup></li> </ol> | <ol style="list-style-type: none"> <li>1 In 2011, the quality of education provided in Grade R was poor.<sup>202</sup></li> <li>2 In 2011, primary and secondary teaching practices did not involve daily writing and numeracy skills.<sup>203</sup> An evaluation conducted by the NEEDU found that the majority of evaluated primary schools ignored key components of teaching reading; that reading materials were insufficient; and learners were not given sufficient work in language and mathematics.<sup>204</sup></li> </ol> | <p>National and provincial departments of Basic Education</p> <p>Principals</p> <p>Teachers</p> <p>NEEDU</p> |

### 3.1 Teaching methods and curriculum are adequate to cultivate basic knowledge and skills *(continued)*

| State's obligations | Indicators/rights  | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s) |
|---------------------|--|--|----------------------------|
|                     | <p><b>3</b> All learners in the foundation and intermediate phases spend an hour per day practising maths/numeracy, including practising the application of arithmetic exercises.<sup>201</sup></p> <p><b>4</b> The NEEDU conducts annual reviews of compliance with minimum time allocations for assigned tasks and coverage of essential elements of the curriculum.</p> | <p><b>3</b> The DBE has committed to improving the quality of Grade R through the distribution of high-quality teaching and learning materials.<sup>205</sup></p> <p><b>4</b> Furthermore, the revised 2011 Curriculum Statements (CAPS) for all subjects for Grades R-12 are intended to improve both teaching content and methodology.<sup>206</sup> The department has committed to training all educators in the new CAPS and to provide ongoing teacher development and monitoring to ensure adherence to minimum teaching inputs in the class at primary and secondary levels.<sup>207</sup> (See further comments on the revised CAPS under 3.2 below.)</p> <p><b>5</b> The NEEDU has been established to monitor the state of teaching and learning in schools and is required to report and make recommendations with regard to issues such as curriculum quality and compliance.<sup>208</sup></p> |                            |

### 3.2 Education results in the acquisition of skills and capacities linked to basic education

| State's obligations   | Indicators/rights  | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s)  |
|---|--|---|---|
| <p><b>1</b> Ensure that all children acquire the necessary skills and knowledge to achieve the objectives of basic education.</p> | <p><b>1</b> An assessment framework is developed and implemented at all schools for the assessment of every individual learner's progress in literacy, numeracy and all other subject areas offered through the national curriculum.<sup>210</sup></p> | <p><b>1</b> The curriculum and assessment framework to measure learner progress was revised through the Curriculum and Assessment Policy Statements for Grades R-12 (2011). The revised CAPS were designed to ensure improved acquisition of the skills and knowledge necessary to achieve the aims of education through appropriate content development and mechanisms for better teaching and learning. The revised curriculum focuses on the acquisition of basic skills such as literacy and numeracy, especially in the early years. It has been made more accessible to teachers through the development of specific content statements for each subject as well as specific statements as to the requisite teaching methodology and time to be spent on each subject area in all education phases.</p> | <p>National and provincial departments of Basic Education</p> <p>Teachers</p> |

### 3.2 Education results in the acquisition of skills and capacities linked to basic education *(continued)*

| State's obligations  | Indicators/rights   | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s) |
|--|---|---|----------------------------|
| <p><b>2</b> Develop and implement learner assessments which are benchmarked against international standards to determine progress of all individual learners as well as progress made by all children in the education system towards attaining basic education goals.<sup>209</sup></p> | <p><b>2</b> All ordinary public schools make use of differentiated assessments to accurately assess progress made by learners with barriers to learning, including children with disabilities.<sup>211</sup></p> <p><b>3</b> A national assessment tool is developed and implemented annually to determine systemic progress towards national targeted educational outcomes in literacy and numeracy (benchmarked against international standards) at different grades, and is designed to monitor the comparable rate of progress across the different provinces and districts, income quintiles, and in rural and urban areas.</p> <p><b>4</b> 60% of Grade 3 learners perform at the minimum competency levels required for literacy and numeracy according to the ANA.</p> <p><b>5</b> 60% of Grade 6 learners perform at the minimum competency levels required for literacy and numeracy according to the ANA.</p> <p><b>6</b> The results of Grade 6 learners for language and mathematics in the SACMEQ study increase from 495 to 600 or more by 2022.<sup>212</sup></p> | <p><b>2</b> The curriculum statements are supported by accompanying assessment and promotion standards in the National Policy Pertaining to the Programme and Promotion Requirements of the National Curriculum Statement Grades R-12 (2011) and The National Protocol for Assessment Grades R-12 (2011). In sum: "Each subject in each grade now has a single concise Curriculum and Assessment Policy Statement which provides specific details on what teachers ought to assess on a grade-by-grade and subject-by-subject basis."<sup>216</sup></p> <p><b>3</b> In addition, the curriculum and assessment policies and statements, together with the Guidelines for Responding to Learner Diversity in the Classroom through Curriculum and Policy Statements (2012), require that both the curriculum and assessments be modified in all ordinary public schools to ensure that learners experiencing barriers to learning, including children with disabilities, acquire the necessary knowledge and skills, and that their progress is appropriately and accurately assessed.</p> <p><b>4</b> The DBE makes provision for three different kinds of alternative assessments for learners experiencing barriers to education, and has committed to making all three forms available in ordinary public schools.<sup>217</sup></p> <p><b>5</b> The DBE introduced Annual National Assessments (ANA) in 2011. The results of the first assessment point to serious deficiencies in the quality of educational inputs and outcomes in South Africa. In 2011, only 20% of Grade 3 learners had adequate grade-appropriate literacy skills and only 12% had grade-appropriate numeracy skills. On average, just over 30% of learners in Grade 6 in 2011 performed at the requisite level.<sup>218</sup></p> <p><b>6</b> The number of learners that pass their final national senior certificate exam is low. In 2009, only 60% of learners passed. This increased to 73% in 2011. The pass rate is even lower in subjects such as mathematics and science. The number of learners passing mathematics in their final examinations dropped from 133 505 in 2009 to 104 033 in 2011.<sup>219</sup> In 2011, only 120 767 graduating learners qualified for admission to a bachelor's degree, which was lower than in 2010 when 126 371 qualified.<sup>220</sup></p> |                            |

### 3.2 Education results in the acquisition of skills and capacities linked to basic education *(continued)*

| State's obligations | Indicators/rights   | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s) |
|---------------------|---|---|----------------------------|
|                     | <p><b>7</b> The average Grade 8 scores in the Trends in Mathematics and Science Study (TIMSS) increase to 420 by 2023 and to 500 by 2030.<sup>213</sup></p> <p><b>8</b> By 2014, 175 000 learners complete secondary schooling with results that make them eligible for a bachelor's programme. This number increases to 300 000 by 2024 and to 450 000 by 2030.<sup>214</sup></p> <p><b>9</b> By 2030, 350 000 and 320 000 learners complete secondary education with mathematics and physical science with results that make them eligible for a bachelor's programme.<sup>215</sup></p> <p><b>10</b> The difference in educational outcomes (as measured through the ANA, National Senior Certificate examinations at the end of Grade 12, SACMEQ and TIMSS evaluations) between children in different provinces, in poor versus wealthier quintiles, and between children in rural and urban areas, is less than 10%.</p> | <p><b>7</b> There is a marked inequity in the levels of educational attainment between children living in poverty and their wealthier counterparts, as well as between children living in rural as opposed to urban areas.<sup>221</sup> Children living in poorer quintiles and children living in rural areas perform more poorly than their counterparts.<sup>222</sup></p> <p><b>8</b> The DBE has committed to a range of interventions to improve educational outcomes, including:</p> <ul style="list-style-type: none"> <li><b>a</b> the provision of workbooks for learners in Grades 1-6 for numeracy and literacy;</li> <li><b>b</b> ongoing teacher training and development;</li> <li><b>c</b> testing and monitoring of teacher knowledge;</li> <li><b>d</b> improving the infrastructure and learning and support materials at schools; and,</li> <li><b>e</b> the introduction of targeted support to districts and schools that have performed poorly.<sup>223</sup></li> </ul> <p>Many of these interventions are discussed in more detail in previous columns.</p> |                            |

### 3.3 The curriculum and teaching is linguistically responsive so that language does not become a barrier and is non-discriminatory

| State's obligations   | Indicators/rights  | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s)   |
|---|--|---|--|
| Ensure that language is not a barrier to learning, through the provision of education in learners' home languages. <sup>224</sup> | <ol style="list-style-type: none"> <li>1 All children are taught in their home language and receive instruction in an additional language in the Foundation Phase.</li> <li>2 After the Foundation Phase, all children have the opportunity to choose one of the official languages as their language of teaching and learning, subject to the proviso that realisation of the right depends on what is reasonably practical. What is reasonably practical depends on, inter alia, the availability of resources and the number of learners wishing to be taught in the language in question.<sup>225</sup></li> </ol> | <ol style="list-style-type: none"> <li>1 Whilst the majority of children (80%) in the Foundation Phase received instruction in their home language in 2010, 20% (600 000) continued to be taught in another language — primarily English.<sup>226</sup></li> <li>2 The DBE has taken a number of measures to improve the implementation of the Language in Education Policy (1997) which, together with the Revised National Curriculum Statement of 2002, requires that Foundation Phase learners are taught in their home language. For example, the DBE is developing guidelines for mother-tongue teaching and learning across the curriculum from Grades R-12. It has piloted a training module which is now in the process of being strengthened. In addition, district officials have been trained in strategies for teaching language across the curriculum.<sup>227</sup></li> </ol> | <p>National and provincial departments of Basic Education.</p> <p>District officials</p> <p>Schools, principals and teachers</p> |

### 3.4 A learning environment that is not harmful to children

| State's obligations   | Indicators/rights   | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)   |
|---|---|--|--|
| Ensure that all children are free from exposure to harmful behaviours at school, such as corporal punishment, bullying and sexual abuse. <sup>228</sup> | <ol style="list-style-type: none"> <li>1 No children experience violence and/or abuse at school at the hands of a teacher, any other person employed within the education system, or another child.</li> <li>2 No child is subjected to discipline that harms him or her or takes the form of physical punishment.</li> </ol> | <ol style="list-style-type: none"> <li>1 The SASA (2006) prohibits all forms of violence and abuse, including the use of corporal punishment at schools.</li> <li>2 In 2009 the President stated a number of education "non-negotiables". One of these was that there would be no abuse of pupils by teachers. This commitment was furthered through the development of a Code of Conduct for Quality Education, in terms of which teachers committed to "eliminate unprofessional behaviour, such as teacher-pupil relationships ... assault, sexual harassment and other infringements".<sup>229</sup> This echoes the South African Council of Educators Code of Professional Ethics, which prohibits educators from engaging in any form of humiliation and/or any form of physical or psychological abuse.</li> </ol> | <p>The national and provincial departments of Basic Education</p> <p>The South African Council of Educators</p> <p>South African Police Services</p> <p>Departments of Justice and Constitutional Development and Social Development</p> |

### 3.4 A learning environment that is not harmful to children *(continued)*

| State's obligations | Indicators/rights  | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s)   |
|---------------------|--|---|--|
|                     | <p><b>3</b> The DBE and/or the South African Council of Educators (SACE), and/or the South African police conclude an investigation into all alleged cases of teacher abuse (including physical and sexual abuse and corporal punishment), support the prosecution of offenders and prevent all further contact between learners and the teacher in question.</p> <p><b>4</b> All teachers are screened by schools to determine if their names are recorded in Part B of the National Child Protection Register (NCPR) as a person unsuitable to work with children, in terms of the Children's Act No. 38 of 2005 (as amended), and in the National Register for Sex Offenders (NRSO) as required by the Criminal Law (Sexual Offences and Related Matters) Amendment Act (2007).</p> <p><b>5</b> The details of all teachers and other persons employed within the education system convicted of child abuse are registered in Part B of the NCPR and the NRSO as a person unsuitable to work with children as prescribed by the Children's Act No. 38 of 2005 (as amended) and by the Sexual Offences Amendment Act (2007).</p> | <p><b>3</b> Despite these measures, in 2009, 19% of children reported experiencing some form of violence at schools.<sup>230</sup> In addition, in 2011, 17.2% of learners experienced corporal punishment at schools in South Africa. This number has increased from 16.8% in 2009, undergoing larger increases in the Eastern Cape, where it jumped from 25.5% to 30.2%, and in Limpopo, where it jumped from 14.6% to 19.3%. The highest levels of corporal punishment are experienced in the Eastern Cape (30.2%), KwaZulu-Natal (22.5%) and the Free State (22.1%).<sup>231</sup></p> <p><b>4</b> In 2011, the DBE reported on its commitments to implement the following initiatives to improve safety in schools:</p> <ul style="list-style-type: none"> <li><b>a</b> A collaborative partnership has been developed with the South African Police Service (SAPS) in terms of which 9 000 schools have been linked to police stations. The Department has committed to increasing this number to 25 850 by 2014/15.<sup>232</sup></li> <li><b>b</b> Eight thousand Safe School Committees have been established.</li> <li><b>c</b> A draft School Safety Policy has been developed.</li> <li><b>d</b> School Management Teams and School Governing Bodies in nine high priority areas where corporal punishment levels are high, have received training on positive discipline and classroom management.</li> <li><b>e</b> Plans are in development for provinces to support "hot-spot" schools with high levels of corporal punishment and hence a clear need for positive discipline interventions.<sup>233</sup></li> <li><b>f</b> Awareness-raising interventions have been undertaken and targeted at teachers and school management. A further Speak-Out Handbook targeting learners has been developed and distributed to help in the identification, prevention and reporting of sexual abuse.</li> <li><b>g</b> Future plans include the training of teachers to identify and respond to abused and distressed children.<sup>234</sup></li> </ul> | <p>Teachers</p> <p>School governing bodies</p> <p>Parents and caregivers</p> <p>Learners</p> |

## 4 Adaptable Education

The education system must be inclusive, flexible and responsive to the different circumstances and learning needs of children. The education system must be sufficiently diverse and flexible so as to be able to meet the needs of children in differing circumstances. This requires the education system to be adaptable (Tomasevski K., 2004) (Tomaševski K., 2001) (Pigozzi).

The education system must:

- 1 be designed and implemented to include children precluded from formal schooling, such as children deprived of their liberty, or working children, and children with disabilities;<sup>235</sup> and,
- 2 promote human rights through the curriculum, such as equality and freedom from gender or HIV-linked discrimination and prejudice.<sup>236</sup>



### 4.1 Include children precluded from schooling and with disabilities

| State's obligations   | Indicators/rights   | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)  |
|---|---|--|---|
| <ol style="list-style-type: none"> <li>1 Develop and implement an inclusive basic education system.</li> <li>2 It must offer a learning environment that recognises, welcomes and accommodates diversity through mainstream classes for children with moderate disabilities and special schools for children with severe disabilities.</li> </ol> | <ol style="list-style-type: none"> <li>1 All young children between the ages of 4 and 6 years with a disability can access an early childhood development centre and/or programme.</li> <li>2 All ordinary public schools are physically accessible to, and provide the necessary levels of support, teaching and assessment strategies to accommodate, a diversity of learning needs, especially the needs of learners with disabilities.<sup>238</sup></li> <li>3 There is at least one full service public school in every school district.<sup>239</sup></li> </ol> | <ol style="list-style-type: none"> <li>1 Education White Paper 6: Special Needs Education (2001) commits the DBE to develop an inclusive education system that will uncover and address barriers to learning and recognise and accommodate a diverse range of learning needs.</li> <li>2 White Paper 6, and related policies, commit to achieving an inclusive education system through a range of different institutions, including:               <ol style="list-style-type: none"> <li>a special schools for children with high-intensive disabilities;</li> <li>b full-services schools to meet the needs of children with moderate disabilities; and,</li> <li>c ordinary public schools equipped with accessible infrastructure and staffed with teachers trained, capacitated and supported to recognise children with barriers to learning, including children with disabilities, and to provide differentiated teaching and assessment of the curriculum</li> </ol> </li> <li>3 Despite these commitments, only 4-5% of children with disabilities attend ECD facilities. The lack of accessible ECD facilities for children with disabilities is aggravated by a number of policy gaps. For example, White Paper 5 on ECD (2001) does not make provision for access to ECD for children with disabilities, no law currently obliges the State to provide or fund ECD services for children</li> </ol> | <p>National and provincial departments of Basic Education</p> <p>Department of Social Development</p> |

## 4.1 Include children precluded from schooling and with disabilities *(continued)*

| State's obligations  | Indicators/rights   | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s) |
|--|---|---|----------------------------|
| <p><b>3</b> All public schools must be designed in all respects, including infrastructure, transport, teacher qualifications and competencies, assessments, and curriculum development, to be available, accessible, acceptable and adaptable for learners with disabilities and other learning barriers.</p> <p><b>4</b> Children with severe disabilities must be accommodated in specialised schools with appropriate and adequately resourced infrastructure and appropriately trained teachers.<sup>237</sup></p> | <p><b>4</b> All teachers at ordinary public schools, full service and special schools are trained in the National Strategy on Screening, Identification, Assessment and Support Strategy (SIAS, 2008).<sup>240</sup></p> <p><b>5</b> Sufficient special schools are established in equitable numbers in all nine provinces, especially in rural areas, to accommodate learners with disabilities requiring intensive support.<sup>241</sup></p> <p><b>6</b> Adequately resourced state-funded specialised schools are available to accommodate all learners with severe disabilities.<sup>242</sup></p> | <p>with disabilities, and there is no policy guidance for the development of an inclusive ECD curriculum.<sup>244</sup> The DBE is urged, together with the DSD, to develop an inclusive ECD policy.</p> <p><b>4</b> The extent to which ordinary public schools have failed to accommodate the needs of learners with disabilities is discussed in detail under the "availability", "accessibility" and "acceptability" headings above. A recent NEEDU evaluation found that in many mainstream schools there was no differentiated teaching to address the learning needs of children with different learning styles and barriers to learning.<sup>245</sup> There are insufficient full service schools. There are currently only 94, whereas there should be one in each district.<sup>246</sup> Similarly, not all district and school-based officials have been trained in the screening, identification and provision of support to learners with disabilities. Only 5000 district and school-based officials have been trained on Screening, Identification, Assessment and Support Strategy (SIAS) since 2008. In addition, there are not enough special schools or adequate numbers of trained teachers, especially in rural areas.<sup>247</sup></p> <p><b>5</b> The Department has committed to address these inadequacies by:</p> <ul style="list-style-type: none"> <li><b>a</b> increasing the number of full service schools to ensure one for each district; and,</li> <li><b>b</b> increasing the number of schools that have teachers trained in SIAS to 416 by 2014/15.<sup>248</sup></li> </ul> <p><b>6</b> The education rights of children with severe disabilities have been neglected in South Africa. White Paper 6 (2001) envisages the expansion of access to education for learners with severe disabilities through, inter alia, the upgrading of special schools to provide high quality services for these learners.</p> <p>Despite the goals of White Paper 6 and the protection afforded by the Constitution of the Republic of South Africa, the UN Convention on the Rights of People with Disabilities, and the Children's Act No 38 of 2005 (as amended), the State has failed to recognise, respect and promote the right to education for severely disabled children.</p> |                            |

## 4.1 Include children precluded from schooling and with disabilities *(continued)*

| State's obligations | Indicators/rights | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s) |
|---------------------|-------------------|--|----------------------------|
|                     |                   | <p>The Western Cape High Court recently highlighted the State's failure to adequately fund and/or provide equal educational opportunities for severely and profoundly intellectually disabled children. The court ruled that the State's failure to provide publicly funded schools, and its failure to provide comparable educational subsidies, amounted to a breach of the right to basic education. It ordered the State to give effect to these rights by taking the following steps:</p> <ul style="list-style-type: none"> <li><b>a</b> ensuring that every child with a severe or profound intellectual disability has affordable access to basic education of an adequate quality;</li> <li><b>b</b> provide adequate funds to organisations which provide education for severely and profoundly intellectually disabled children at special care centres to provide adequate facilities and hire adequate staff;</li> <li><b>c</b> provide appropriate transport for the children to and from such special care schools;</li> <li><b>d</b> enable the staff at special care centres to receive proper accreditation, training and remuneration; and,</li> <li><b>e</b> make provision for the training of persons to provide education to children who are severely and profoundly intellectually disabled.</li> </ul> <p><b>7</b> In July 2012 the national DBE released a report that provides a synopsis of proposed models of service delivery which are under consideration to address the educational needs of severely disabled learners in the most cost-effective way. These include:</p> <ul style="list-style-type: none"> <li><b>a</b> exploring the ways in which existing special schools could, within the framework of their role as resource centres, provide outreach services to special care centres;</li> <li><b>b</b> the establishment of a multi-disciplinary team at the district or circuit level consisting of special needs teachers, psychologists, therapists and social workers who will provide mobile support to care centres;</li> <li><b>c</b> establishing units at existing special schools at which learners with high-level needs can be accommodated;</li> <li><b>d</b> the active promotion of the inclusion of children who are out of school in special schools; and,</li> <li><b>e</b> the expansion of other services to existing care centres.<sup>249</sup></li> </ul> <p>The department has committed to costing all of the proposed interventions and to develop a short, medium and long-term implementation plan to respect, protect and promote the right of children with severe disabilities to basic education.<sup>250</sup></p> |                            |

## 4.1 Include children precluded from schooling and with disabilities *(continued)*

| State's obligations   | Indicators/rights   | Commitments and recommendations for optimal realisation of the right  | Responsible role-player(s)  |
|---|---|---|---|
| <p>The education system recognises and accommodates the learning needs of working children.</p> <p>It must ensure access to education for both those with domestic responsibilities which impinge on their education and those who work for remuneration.<sup>251</sup></p> | <p>All children involved in labour activities (both economic and domestic) attend school and receive support through the education system to attend regularly, remain at school until they complete their education, and cope with their school work.</p>                                   | <ol style="list-style-type: none"> <li>1 The Basic Conditions of Employment Act (1997) prohibits the employment of children under the age of 15 years and the employment of children in labour harmful to their education. The National Child Labour Programme of Action (2008) requires the DBE to develop and implement programmes for the identification and support of learners with onerous domestic responsibilities.</li> <li>2 Despite these provisions, in 2010, 34,3% of children that were not attending school were involved in economic activities.<sup>252</sup> In addition, no programmes have been developed by the DBE for the identification and support of children with onerous domestic responsibilities.<sup>253</sup></li> <li>3 The DBE is urged to develop a comprehensive programme of support for learners bearing onerous domestic responsibilities and who are involved in economic activities that negatively impact on their schooling.</li> <li>4 The Departments of Labour and Basic Education are urged to work together to develop guidelines regarding onerous domestic responsibilities.</li> </ol>   | <p>National and provincial departments of Basic Education</p> <p>Department of Labour</p> <p>Schools and teachers</p> <p>Parents and caregivers</p> |
| <p>Children deprived of their liberty because they are in conflict with the law must have access to quality education.<sup>254</sup></p>  | <ol style="list-style-type: none"> <li>1 All children that are awaiting trial are provided with education.</li> <li>2 All sentenced children are provided with education.</li> <li>3 All children of compulsory school age in detention attend educational programmes regularly.</li> </ol> | <ol style="list-style-type: none"> <li>1 Children who are deprived of their liberty are equally subject to the compulsory education provisions contained in the South African Schools Act. Section 19(1) of the Correctional Services Act No. 111 of 1998 provides that every inmate who is a child and subject to compulsory education must have access to educational programmes. In the case of children not subject to compulsory education, where practicable, they should be allowed access to educational programmes.</li> <li>2 A survey conducted in 2011 found that, with the exception of a few prisons, unsentenced children are not provided with access to any educational services. It found further that not all sentenced children have access to educational services and that there is variation between correctional facilities, with some facilities not making education available to children sentenced for less than two years.<sup>255</sup></li> <li>3 The Department of Correctional Services and the DBE are urged to work together to develop and implement an education programme for awaiting-trial children who, on average, spend 70 days in custody. Likewise, urgent action is required to ensure that sentenced children serving less than two years are provided with educational programmes.</li> <li>4 There should be close monitoring of the quality of, and attendance at, educational programmes by children of compulsory school age in custody.</li> </ol> | <p>Department of Correctional Services</p> <p>National DBE</p>  |

## 4.2 Promote human rights through the curriculum, such as quality and freedom from gender or HIV-linked discrimination and prejudice

| State's obligations  | Indicators/rights  | Commitments and recommendations for optimal realisation of the right   | Responsible role-player(s)   |
|--|--|--|--|
| Promote human rights knowledge and observance through the curriculum. <sup>256</sup> | Human rights education is taught as part of the school curriculum, including gender rights, the rights of people with disabilities, sexual and reproductive rights, and the rights of people affected by HIV and AIDS. | <ol style="list-style-type: none"> <li>1 The Life Skills Curriculum includes education on children's rights, gender equity, HIV and AIDS and Drugs and Substance Abuse. The programme is supported by a HIV and AIDS (Life Skills Education) Conditional Grant to develop, implement and manage Life Skills education in line with the National Strategic Plan on HIV and AIDS, policies on HIV and AIDS, curriculum and assessment policy, drug and substance abuse, and gender equity issues.<sup>257</sup></li> <li>2 The Department has developed a revised Draft Integrated Strategy on HIV and AIDS 2012-2016 with the objectives of: <ol style="list-style-type: none"> <li>a increasing "sexual and reproductive knowledge, skills and appropriate decision-making among learners, educators, school support staff and officials"; and,</li> <li>b mitigating "the impact of HIV by providing a caring, supportive and enabling environment for learners [and] educators in all South African schools".<sup>258</sup></li> </ol> </li> </ol> | <p>National and provincial departments of Basic Education.</p> <p>Teachers</p> |



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## ANNEXURE A: Stakeholders that participated in the development of the charter

Auditor General, Yusi Maseko  
 Centre for Child Law, Ms Karabo Ngidi  
 Community Law Centre, University of the Western Cape, Lorenzo Wakefield  
 Creighton Sunflower Health Education and Life Projects, Debbie Rowe  
 Department of Basic Education, Hope Mokgathle, David Hlabane  
 Department of Women, Children and People with Disabilities, Ms Lineo Toolo,  
 Dr Rose September  
 Equal Education, Coordinator, Mr Doron Isaacs  
 Equal Education, Executive Director, Mr Dmitri Holtzman  
 Equal Education, Nthuthuzo Nkomis  
 Gauteng Department of Basic Education, Chief Education Specialist;  
 Policy Development and Implementation, Mr Faizel Peerbhai  
 Graeme Bloch  
 International Institute for Studies in Race, Reconciliation and Social Justice,  
 University of the Free State, Prof André Keet  
 Jacaranda FM, Aldrin Sampear  
 Katamedia  
 Land Use Officer, Ms Thenjiwe Mbatha  
 MEC Western Cape Department of Basic Education, Mr Donald Grant  
 Ministry of Basic Education, Minister Angie Motshekga, Mr David Hlabane  
 Ministry of Performance, Monitoring and Evaluation, Dr Thabo Mabogoane  
 Nedbank Foundation, Ms Kone Gugushe  
 Nelson Mandela Institute for Education and Rural Development, Executive Director,  
 Ms Kimberley Porteus  
 Parliament, Chief Researcher, Ms Carmine Rustin  
 Patricia Martin, consultant Advocacy Aid  
 Portfolio Committee on Basic Education, Chairperson, Honourable Hope Helen Malgas  
 Portfolio Committee on Justice and Constitutional Development, Mr Luwellyn Tyrone Landers  
 Professor Michael Stein, Harvard Law School Project on Disability  
 SABC Radio, Angela Bolowane

SAHCR, Mr Victor Mavhidula  
 SAHCR, Ms Vivian John-Langdon  
 SAHRC, Ms Chantelle Williams  
 SAHRC, CFO, Mr Peter Makaneta  
 SAHRC, Chantal Kisoon, Judy Hoolenbach  
 SAHRC, Commissioner Adv. Bokankatla Malatji  
 SAHRC, Commissioner Education and Children, Ms Lindiwe Mokate  
 SAHRC, Deputy Chairperson, Dr P Govender  
 SAHRC, Deputy Director, Media Liaison, Mr Vincent Moaga  
 SAHRC, Ekanem Okon  
 SAHRC, Head of Programme: Parliamentary and International Affairs, Ms Judith Cohen  
 SAHRC, Lindiwe Khumalo  
 SAHRC, Melanie Dugmore  
 SAHRC, Mr Eric Mokonyama  
 SAHRC, Mr Kleinbooi Matsetela  
 SAHRC, Mr Loyiso Mpondo  
 SAHRC, Mr Randall Tsolo  
 SAHRC, Ms Angela Kartuki  
 SAHRC, Ms Naomi Webster  
 SAHRC, Ms Tanuja Munnoo  
 SAHRC, Senior Researcher, Ms Yuri Ramkissoo  
 SAHRC, Senior researcher: Equality, Dr Kgamadi Kometsi  
 SAHRC, Sindiswa Mathiso  
 Section 27, Thabang Poee  
 South African Press Association, Adam Wakefield  
 UNICEF, Chief Education Specialist, Ms Nadi Albino  
 UNICEF, Senior Social Policy Specialist, Mr André Viviers  
 World Vision South Africa

## END NOTES

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- 2 UN Commission on Human Rights: Economic and Social Council. (2002)
- 3 UN Committee on the Rights of the Child. (2006). *General Recommendation 7: Implementing child rights in early childhood*; United Nations. (2002). 'A World Fit for Children'; Education for All Goal 1; SADC Minimum Package of Services for OYV&C 2011 Annex 1a: Educational and vocational skills essential services
- 4 Universal Declaration of Human Rights (UDHR), Article 26(1); International Covenant on Economic, Social and Cultural Rights (ICESCR), article 13(2); Convention on the Rights of the Child (UNCRC), article 28(1) (a); African Charter on Human and People's Rights (ACHPR), article 11(3)(a); African Charter on the Rights and Welfare of the Child (ACRWC), article 11(3)(a); Education for All Goal 2; SADC Protocol on Education and Training; SADC Regional Indicative Strategic Plan
- 5 UDHR, article 26(1); ICESCR, article 13(2)(b); UNCRC, article 28(1)(b); ACRWC, article 11(3)(b), SADC Protocol on Education and Training ; SADC Minimum Package of Services for OYV&C 2011 Annex 1a: Educational and vocational skills essential services
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- 7 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.13 (1999), paragraph 6(a) and 50; World Education Forum, Dakar Framework of Action (2000), paragraph 8(viii); SADC Minimum Package of Services for OYV&C 2011 Annex 1a: Educational and vocational skills essential services
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- 16 Section 3(2) of the South African Schools Act No. 84 of 1996
- 17 Tomaševski (2004)
- 18 Section 3(2) of the South African Schools Act No. 84 of 1996
- 19 UN Committee on Economic, Social and Cultural Rights (CESCR) (1999); UNCRC, ACRWC. ICSECR; Department of Basic Education (2011b); SADC Protocol on Education and Training; UNCRPD
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- 22 Lorenzo Wakefield, Community Law Centre, University of the Western Cape, presentation to the SAHRC consultative workshop on the draft Charter of Basic Education Rights (2012)
- 23 Tomasevski (2001) ; UN CESCR. (1999) General Comment No. 13; Department of Basic Education, (2010c); South African Schools Act, No. 84 of 1996 as amended; World Education Forum. Dakar Framework of Action (2000)
- 24 Department of Basic Education (2012a)
- 25 Department of Basic Education (2010c)
- 26 Department of Basic Education (2001); Department of Basic Education (2010c); Department of Basic Education (2012a)
- 27 Department of Basic Education (2012d)
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- 29 Department of Basic Education (2010d)
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