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A review of the right to basic education, the 2020 Covid-19 related schools' shutdown, and the courts in South Africa

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A REVIEW OF THE RIGHT TO BASIC EDUCATION, THE 2020 COVID-19 RELATED SCHOOLS' SHUTDOWN, AND THE COURTS IN SOUTH AFRICA

By

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Submitted in partial fulfilment of the requirements for the degree of

Master of Laws by Coursework and Research Report

at the University of the Witwatersrand, Johannesburg

Date: 28 October 2022

DECLARATION

I, **1422836**, declare that this Research Report is my own unaided work. It is submitted in partial fulfilment of the requirements for the degree of Master of Laws (by Coursework and Research Report) at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other university. I have submitted my final Research Report through Turnitin and have attached the report to my submission.



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ABSTRACT

Owing to COVID-19, the South African government ordered the closure of educational facilities in the country to try and curtail the spread of the virus. At the time, no one knew the extent to which the virus had spread, its potency for the South African public, how it impacted on children and what actions the government could take, besides locking down the country. Both the government and the public were facing a pandemic of this kind for the first time. However, the closure of schools placed the educational rights of learners under a spotlight, as under the Constitution of the Republic of South Africa, 1996, basic education is a right. The closure of the schools had many consequences for the right to basic education, including that education delivery, as it was then known, had to be changed. Yet, it is reasonable to assume that many schools were ill equipped for the sudden change which could not have been foreseen. To this end, there had to be a way forward for schools, and online learning became a viable avenue for ensuring that education did not come to a standstill. Yet again, it is reasonable to assume that many schools would not have had the capacity to transition to, let alone facilitate and maintain, online learning. A preliminary conclusion then would be that COVID-19 had a direct impact on the right to education. This is only the start, however, because the next line of inquiry would be whether the decision of the state to close educational facilities through the lockdowns was reasonable, and consequently justified considering the limitation it brought to the right to education. This report concludes by examining two cases that addressed these questions.

Table of Contents

1 Section A: Introduction and contextual background 1

2 Section B: The right to education: Background and context 4

2.1 The international and regional framework on the right to education in general 4

2.2 The right to education under the South African Constitution 7

3 Section C: COVID-19, school closures and issues arising thereof 9

3.1 The timeline 9

3.2 Some issues exposed as a result of the Regulations and Directions 12

3.2.1 The reality of the 'faucet theory' 12

3.2.2 The digital divide 13

3.2.3 Likely increased school drop-out rates 14

3.2.4 Long term skills shortages 15

3.2.5 Intersectional problems 16

4 The Role of Courts in litigating the right to Education 17

4.1 Legal mobilization as a tool to enforcing basic educational rights 18

4.2 A tale of two cases 18

4.2.1 One South Africa Movement v President of the Republic of South Africa ..19

4.2.2 Equal Education v Minister of Basic Education 21

5 Conclusion 23

6 Bibliography 26

1. Introduction and contextual background

The first COVID-19 case in South Africa was reported on the 5th of March 2020[1] That very same month, the government ordered the closure of educational facilities in the country, as a counter and pre-emptive measure to try and curtail the spread of the virus.[2] Needless to say, no one knew the extent to which the virus had already spread, its potency for the South African public, how it impacts on children and what exact actions the government could take, besides locking down the country. Consequently, the South African government and the public were experiencing a disaster and pandemic of this kind for the first time.

The COVID-19 pandemic and the responses to it are known to have exposed deep inequalities across racial, gender and class lines.[3] In so far as learners are concerned, various issues arose because of the lockdowns and the closing of schools. Some of these include the question of the best interests of the child, the human rights of children and the role of the state in protecting children's rights, all of which did not have clear answers considering the novel circumstances triggered by COVID-19.[4] As a country, South Africa was hit hard, with its health system coming under immense strain both in terms of human capacity and medical provisions to deal with the pandemic.[5] The country, as a result, suffered significant deaths across the citizenry. What was clear, unfortunately, was that to try and arrest the situation and lessen the impacts and spread of the virus, government had to take drastic and decisive measures.

The South African government declared a National State of Disaster and enacted the first national lockdown regulations, with effect from the 27th of March 2020.[6] These regulations

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1 NICD, 'First Case of Covid-19 Coronavirus Reported in SA' (2020) <https://www.nicd.ac.za/first-case-of-covid-19-coronavirus-reported-in-sa/> .

2 C Albertyn and R Adams 'Introduction: Special issue on 'The Covid-19 Pandemic, Inequalities and Human Rights in South Africa' (2021) 37 *South African Journal on Human Rights* 147,; M Reyneke 'Case law suggests South Africa must do more about disrupted schooling' (2020) <https://theconversation.com/case-law-suggests-south-africa-must-do-more-about-disrupted-schooling-145355> .

3 Albertyn and Adams ibid,153; C Albertyn 'Section 9 in a time of COVID: Substantive equality, economic inclusion and positive duties' (2021) 37 *South African Journal on Human Rights* 205.

4 M Reyneke 'Case law suggests South Africa must do more about disrupted schooling' (2020)<https://theconversation.com/case-law-suggests-south-africa-must-do-more-about-disrupted-schooling-145355>.

5 M Schröder and others 'COVID-19 in South Africa: outbreak despite interventions' 11 Scientific Reports 4956, 2; S Liebenberg 'Austerity in the midst of a pandemic: Pursuing accountability through the socio-economic rights doctrine of non-retrogression' [(2021) 37 *South African Journal on Human Rights* 181, 182; Albertyn and Adams (note 3 above) 147.

6 Liebenberg ibid.

included measures such as the complete closure of all educational institutions (from early childhood development to institutions of higher education) as well as the curtailment of public activities, amongst others, to try and curb the spread of the virus.[7] As history shows us, the lockdown was the first of many and, while some of the measures were soon relaxed, measures against the opening of educational facilities remained in place and had to be phased out incrementally.[8]

This closure of schools brought educational rights of learners under the spotlight, as under the Constitution of the Republic of South Africa, 1996, basic education is a right.[9] Furthermore, there is a right of access to further education, which the state must fulfill progressively through reasonable measures within its available resources.[10] The difference between these two rights is that the right to basic education is an unqualified right, which has been affirmed in ~~a~~ cases such as *Governing Body of the Juma Musjid Primary School v Essay*[11] and *Minister of Basic Education v Basic Education for All*.[12] These cases, however, concern basic education rights during normal times, outside of a pandemic. The implications of COVID-19 on education, especially with the closures, were that education delivery as it was then known, had to be changed. Here it is reasonable to assume that many schools were ill equipped for the sudden change which could not have been foreseen. To this end, there had to be a way forward for schools, and online learning became a viable avenue for ensuring that education did not come to a standstill. Here again, it is reasonable to assume that many schools would not have had the capacity to transition to, let alone facilitate and maintain, online learning. Deeper implications are that curriculums and the year's timelines had to re-adjusted to the point where the government entity on official statistics, Stats SA, acknowledged the multifaceted challenges of COVID-19 on education:

> Education is deemed to be a basic human right but, in 2020, the COVID-19 pandemic changed not only the way we live, but also the way we learn. First-time learners were destined to experience learning in a very different way than their predecessors. In South Africa, school

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7 F Veriava and N Ally 'Legal mobilisation for education in the time of Covid-19' (2021) 37 *South African Journal on Human Rights* 230.

8 ibid, 244.

9 Section 29(1)(a) of the Constitution of the Republic of South Africa, 1996.

10 Section 29(1)(b) ibid.

11 *Governing Body of the Juma Musjid Primary School v Essay* 2011 (8) BCLR 761 (CC).

12 *Minister of Basic Education v Basic Education for All* 2016 (4) SA 63 (SCA).

> closures were announced on 18 March 2020, interrupting the learning of almost 17 million learners from pre-school to secondary school. Close to 2,3 million students enrolled in post-school education and training institutions were affected by the implementation of the strict lockdown rules. New educational policies and regulations, including the adjustment of the academic timetable, new teaching programs, mode of delivery, catch up of the curriculum, health and safety measures as well as financial relief packages were designed for the education sector. While remote learning programmes were designed, this did not guarantee that the children participated in the instruction.[13]

Based on the information above, a preliminary conclusion would be that COVID-19 had a direct impact on the right to education. One could also rightly ask if this indirectly resulted in educational exclusion for some schools with less resources, and by implication, the learners who attend such schools.[14] Here, the divide between urban and rural schools, as well as access to internet connectivity come into play.[15] This is only the start, however, because the next line of inquiry would be whether the decision of the state to close educational facilities through the lockdowns was reasonable, and consequently justified, considering the limitation it brought to the right to education. This implicates section 36 of the Constitution dealing with the limitation of rights. To address these questions, it would be necessary to pursue 3 main objectives:

- To establish the international and national context and legal framework for the right to basic education as well as the context within which it could be limited;

- To review the COVID-19 related regulations and directions (in terms of which schools were shut down), considering the right to basic education and to establish the issues that arose thereof;

- To determine the role courts played (and perhaps could have played) in facilitating the protection of the right to basic education and establishing whether the COVID-19

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13 Stats SA, 'How COVID-19 changed the way we learn' (2022) <https://www.statssa.gov.za/?p=15197&gclid=CjwKCAjwp7eUBhBeEiwAZbHwkYaezkmGidLE3MepidblxsMZTRwi-puajO933IYpZKE8UKXL3D1WvRoCz7gQAvD_BwE> ;

14 Veriava & Ally (note 7 above) 230; Albertyn & Adams (note 3 above) 148.

15 Stats SA, *COVID-19 and barriers to participation in education in South Africa, 2020* (Education Series 2022); Stats SA, 'How COVID-19 changed the way we learn'; Liebenberg (note 5 above) 182.

responses unduly interfered with the right to basic education, including how section 36(1) was addressed.

These objectives will form the basis of the discussion that follows in sections 2 to 4 of the report.[16]

The right to education: Background and context

The right to education is recognised both on an international and national level as a fundamental right upon which several other rights are dependent.[17] The brief discussion below illustrates how the right to basic education finds international and regional support, as well as detailing how the right is captured in the South African Constitution. An equally important part is to show how courts have established the circumstances and considerations under which the right to basic education can be limited.

1.1 The international and regional framework on the right to education in general

From an international perspective,[18] the Universal Declaration of Human Rights (UDHR),[19] provides for the right to education (in general) under article 26 as follows:

> (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
> (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

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16 To bring focus to the discussion, the report will be limited to only basic education, which is composed of primary and secondary education and also provided for under section 29(1)(a) of the Constitution. See SouthAfricanEducation, 'Education System of South Africa' (date unknown) <https://www.southafricaeducation.info/education-system> .

17 See for example article 13(1) of the International Covenant on Economic, Social and Cultural Rights and paragraph 1 of the UN CESCR General Comment No. 13: The Right to Education (Art. 13 of the Covenant).

18 The discussion will only consider the core human rights instruments and will not venture into all international documents dealing with the right to education.

19 Universal Declaration of Human Rights General Assembly resolution 217 A (10 December 1948).

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

The inclusion of the words fundamental and elementary within this provision imply that only basic education is included within the ambit of the UDHR. Regardless, one could argue that a more clearly defined international right is more persuasive, and this is where the International Covenant on Economic, Social and Cultural Rights (ICESCR)[20] comes in. The ICESCR provides for the right to education in article 13:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
(a) Primary education shall be compulsory and available free to all:
(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; …

Unlike the UHDR, the ICESCR is explicit in its mention of primary and secondary education, which are both part of basic education. In addition, the UN Committee on Economic Social and Cultural Rights has clarified the ambit of article 13, noting that education in all its general forms must subscribe to four elements: availability, accessibility, acceptability, as well as adaptability.[21] While not all of these elements can be realized immediately, there must be a progressive approach to the implementation of the right to education, as stated by the UN Committee on Economic Social and Cultural Rights:

The realisation of the right to education over time, that is 'progressively', should not be interpreted as depriving States parties' obligations of all meaningful content. Progressive

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20 International Covenant on Economic, Social and Cultural Rights. General Assembly Resolution 2200A (XXI) (16 December 1966)

21 Para 6 of UN CESCR General Comment No. 13: The Right to Education (Art. 13 of the Covenant) E/C.12/1999/10 (8 December 1999)

> realisation means that States parties have a specific and continuing obligation 'to move as expeditiously and effectively as possible' towards the full realisation of article 13.[22]

In other words, even in a time of crisis, actions taken by the state to avert the effects of a crisis must be done in a meaningful way, without compromising the elements of the right to education. Therefore, accessibility and adaptability are potentially the main aspects that could be used to analyse the effects of the COVID-19 Regulations and Directions on the right to basic education. Accessibility in this instance has to do with educational facilities being 'accessible to everyone, without discrimination, within the jurisdiction of the State party', while adaptability would engage the flexibility to adapt to changing times and societies.[23] As the discussion will show below, the school closures had the result that basic education was neither readily accessible nor sufficiently adaptable to meet the needs of some learners.

Within the African context, the African Charter on Human and Peoples' Rights[24] follows the UDHR by noting that everyone has the right to education.[25] Commenting on this provision, one scholar notes that it exists because 'education is a core basis for the realisation of social and economic proficiency of an individual and also a nation's development'.[26] Ultimately, failures in advancing the right to basic education, could result in long-term vulnerability (since education is considered to be emancipatory and leads to the enjoyment of life) of those without education as their options in society and communities might be limited.[27] This is why the state has a crucial role to play in ensuring that the right to basic education is not only accessible, but constantly fostered even in times of emergencies. However, basic education is not just about provision, it is also about the quality of such education as well as the elimination of discrimination within its provision.[28] To this end, the right to basic education requires the state to promote, fulfil and respect the right to basic education.[29]

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22 Ibid Para 44.
23 A Skelton 'The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law' (2013) 46 *De Jure Law Journal* 1, 5.
24 African Charter on Human and Peoples' Rights AU 1 June 1981.
25 Ibid Article 17(1).
26 A C Onuora-Oguno *Development and the Right to Education in Africa* (Springer 2018) 16.
27 ibid, 12.
28 ibid, 16.
29 ibid, 28.

1.2 The right to education under the South African Constitution

Sections 29 of the 1996 Constitution of the Republic of South Africa[30] provides for the right to education which is enforceable by the State and all the people of South Africa, and it states that '[e]veryone has the right - (a) to a basic education, including adult basic education'.[31] Skelton is of the view that the scope of this right implies that the state must guarantee the right, as opposed to merely providing access to it, with the result that the state cannot rely on the progressive realisation of rights doctrine.[32] In other words, if the right to basic education is considered to be an 'immediately-realizable' right,[33] this implies definitively that it is not subject to internal qualifiers like progressive realisation or even the margin of appreciation. Viewed in this light, this interpretation, coupled with section 7(2) of the Constitution which requires the state to 'respect, protect, promote and fulfil' rights, creates a litigable right on the part of learners. With such a litigable right, one could say that learners have a legitimate expectation to have the state provide for, protect and maintain basic education.

It is important, however, to underscore the fact that some of the legacies of apartheid still exist, even within educational spaces. That there are obvious differences between low-income and high-income schooling is quite palpable.[34] Skelton goes as far as to suggest that denying this is futile, as '[e]ven if we have not established what a basic education consists of, the fact that some children enjoy a dramatically better standard of education would certainly be simple to demonstrate, based on infrastructure, conditions, class sizes, and indicators such as test scores'.[35]

The courts have also added their voice to the importance of the right to basic education. While there are many cases to consider,[36] one of the most important decisions is *Governing Body of the Juma Musjid Primary School v Essay*,[37] which had to do with issues concerning the

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30 The Constitution of the Republic of South Africa, 1996.
31 Section 29(1)(a) of the Constitution of the Republic of South Africa, 1996.
32 Skelton (note 23 above) 3.
33 Liebenberg (note 6 above) 199.
34 South Africa was regarded as the most unequal society in the world in 2018, I Pillay, 'The impact of inequality and COVID-19 on education and career planning for South African children of rural and low-socioeconomic backgrounds' (2021) 3 *African Journal of Career Development* 7, 1.
35 A Skelton, 'How far will the courts go in ensuring the right to a basic education?' (2012) 27 Southern African Public Law 392, 406; Skelton (note 23 above) '4.
36 See for example cases like *Minister of Basic Education v Basic Education for All* (note 12 above)
37 *Governing Body of the Juma Musjid Primary School v Essay* (note 11 above).

availability of education. In this case, a school on private land had been evicted owing to the provincial authorities having failed to conclude an effective tenancy lease agreement. The Constitutional Court had this to say:

> this right is immediately realisable. There is no internal limitation requiring that the right be 'progressively realised' within 'available resources' subject to 'reasonable legislative measures'. The right to a basic education in section 29(1) (a) may be limited only in terms of a law of general application which is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom'. This right is therefore distinct from the right to 'further education' provided for in section 29(1) (b). The state is, in terms of that right, obliged, through reasonable measures, to make further education 'progressively available and accessible.[38]

Consequently, in evaluating the effects of the regulations and directions which led to school closures, one has to consider the test established in *Governing Body of the Juma Musjid Primary School v Essay*.[39] One would have to determine if the regulations and directions were reasonable and justifiable in cases where they were of general application. This would be in line with section 36 of the Constitution which provides as follows:

> (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom, taking into account all relevant factors, including-
>
> (a) the nature of the right;
>
> (b) the importance of the purpose of the limitation;
>
> (c) the nature and extent of the limitation;
>
> (d) the relation between the limitation and its purpose; and
>
> (e) less restrictive means to achieve the purpose.

In addition, when in a time of crisis, such as the COVID-19 pandemic, decisions that affect children's right to basic education must also be considered from the principle of the best interest of the child as required by section 28 of the Constitution.[40] The principle of the best interest of the child simply means that when a decision is made which might impact on children's rights, a 'decision-maker must then take all reasonable steps to minimise any negative impact' on the

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38 ibid, para 37

39 Note 37 above.

40 Section 28(2) of the Constitution states that "a child's best interests are of paramount importance in every matter concerning the child."

interests and rights of children.[41] In other words, the principle of the best interest of the child requires that in a time of crisis, as with the COVID-19 pandemic, a holistic approach be taken, one that remains true to protecting children's rights and interests, yet also remaining realistic to the dangers that could be experienced.[42] This would align with the balancing act required under section 36. This is why in *Governing Body of the Juma Musjid Primary School v Essay,* the Constitutional Court affirmed the private landowner's land rights, yet gave the authorities time to make alternative arrangements for learners since such action would be in line with the best interests of the child.[43]

To summarise, the right to basic education is crucial to the South African social fabric because it establishes the foundations for the country's future. This is why in *Minister of Basic Education v Basic Education for All*,[44] ~~for example,~~ the court linked basic education to the whole process of transformation South Africa, stating that '[i]t cannot be emphasised enough that basic education should be seen as a primary driver of transformation in South Africa'.[45] In view of this, one cannot argue against the fact that today's children might be tomorrow's leaders, and so their right to basic education needs to be protected and invested in. It is against this context that decisions that have the potential to negatively affect the right to basic education have to be scrutinized. Consequently, the discussion now turns to establishing the COVID-19 context, the school closures, and the issues that arose therefrom.

COVID-19, school closures and issues arising thereof

1.3 The timeline

There is generally agreement on the timeline in relation to how COVID-19 affected South Africa and the steps taken by government. It was on 15 March 2020 that the government took national action by declaring a National State of Disaster in terms of section 27 of the *Disaster Management Act*.[46] Once a National State of Disaster has been declared, provisions within the

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41 Reyneke (note 4 above).
42 ibid.
43 *Governing Body of the Juma Musjid Primary School v Essay* (note 37 above) para 71.
44 *Minister of Basic Education v Basic Education for All* (note 11 above)
45 ibid, para 40.
46 Section 27 of the Disaster Management Act, states as follows: "27(1) In the event of a national disaster, the Minister may, by notice in the Government Gazette, declare a national state of disaster

Disaster Management Act empower the Minister to develop regulations which would facilitate processes and plans in navigating the disaster. To this end, section 27(2) reads:

> If a national state of disaster has been declared in terms of subsection (1) the Minister may, subject to subsection (3), and after consulting the responsible Cabinet member, make regulations or issue directions or authorise the issue of directions concerning-…
> (n) other steps that may be necessary to prevent an escalation of the disaster, or to alleviate, contain and minimise the effects of the disaster.

It is because of this provision that regulations and directions concerning the closure of schools were enacted. To start with, on 18 March, the government published the initial Regulations.[47] In no uncertain terms, section 6 of the 18 March Regulations stated as follows: 'Schools and partial care facilities must be closed by 18 March 2020 until 15 April 2020, which period may be extended for the duration of the national state of disaster by the cabinet member responsible.' To this end, every person, including children, were to stay home unless they were performing an essential service.

On 29 April 2020, further Regulations[48] were developed, in terms of which boarding houses were effectively closed.[49] In terms of these regulations, the Minister was given authority to issue directions: "3. [t]he Cabinet members responsible for basic and higher education may (a) issue directions to address, prevent and combat the spread of COVID-19 in all schools and institutions of higher learning; and (b) vary the directions referred to in (a) as the circumstances require."[50] Pursuant to this, on 29 May 2020, the Minister of Basic Education developed Directions for a phased in return to school, in terms of which certain grades, on a rotational basis, would be allowed to attend schools until 3 August 2020.[51]

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if- (a) existing legislation and contingency arrangements do not adequately provide for the national executive to deal effectively with the disaster: or (b) other special circumstances warrant the declaration of a national state of disaster."

47 Regulations issued in terms of section 27(2) of the Disaster Management Act 57 of 2002, Notice 318, in Government Gazette No. 43107 of 18 March 2020 (2020).

48 Regulations issued in terms of section 27(2) of the Disaster Management Act 57 of 2002, Notice 480, in Government Gazette No. 43258 of 29 April 2020 (2020).

49 Section 21 of the 29 April 2020 Regulations.

50 Section 4(3) of the , Regulations issued in terms of section 27(2) of the Disaster Management Act 57 of 2002, Notice 480, in Government Gazette No. 43258 of 29 April 2020.

51 Section 4 of the Directions issued in terms of Regulation 4(3) of the Regulations made under the Disaster Management Act 57 of 2002: Regarding the re-opening of schools and measures to

Various amendments to the 29 May Directions were made, to the point where parents and caregivers were given options to decide whether children would return to school or learn from home.[52] The move to online learning was initiated and the government partnered with network providers to try and ensure that learners could access online learning materials. This was not without major challenges, and reality of it is quite simple: there are many schools without sanitation services, water, and general hygiene structures, and even without classrooms. In such a difficult context and settings, social distancing, personal hygiene and sanitation (all of which emerged as the main active personal and family measures against COVID-19) were difficult to maintain. It therefore became quite clear that many schools would not have been able withstand the COVID-19 onslaught.[53] Online learning became the only option, and this meant that learners had to have digital accessories in order to receive the online learning materials. Yet, some scholars note, while 'well-resourced schools rapidly transitioned to online remote learning platforms, the vast majority of the country's learners languished in a digital black hole'.[54] Suffice to say that this was a trying time for all involved, government, parents/caregivers, as well as the learners themselves. For this reason, the COVID-19's public health crisis spilled on to also be an educational crisis[55], which crisis was (as will be shown below), more pronounced and obvious to poor students across the country.

But more so, during the phased in return to school, not all learners were catered for. Kamga shows, for example, that government was reluctant to allow the return of learners with disabilities.[56] This eventually led to the case of *Centre for Child Law v Minister of Basic*

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address, prevent and combat the spread of Covid-19 in the National Department of Basic Education, all provincial education departments, all education district offices and all schools in the Republic of South Africa, Notice 302, in Government Gazette No. 43372 of 29 May 2020 (2020).

52 See section 6 of the *Amendment of Directions issued in terms of Regulation 4(3) of the Regulations made under the Disaster Management Act 57 of 2002: Regarding the re-opening of schools and measures to address, prevent and combat the spread of Covid-19 in the National Department of Basic Education, all provincial education departments, all education district offices and all schools in the Republic of South Africa, Notice 411, in Government Gazette No. 43578 of 2 August 2020* (2020).

53 Veriava and Ally (note 7 above) 231; Reyneke (note 4 above)

54 Veriava and Ally (note 7 above), 230.

55 ibid

56 SD Kamga, 'COVID-19 and the Violation of the Right to Basic Education of Learners with Disabilities in South Africa: An Examination of Centre for Child Law v Minister of Basic Education' Cambridge University Press (2021) 65 *Journal of African Law* 347, 354.

Education,[57] which found that the Directions made by the Department of Basic Education (DBE) did not cater for learners with disabilities and needed to be amended.[58]

Ultimately, the Regulations and Directions were an almost 'kneejerk'[59] or almost 'automatic'[60] response, which was necessary, yet exposed deeper challenges that exist within the South African social fabric. In the next section, the discussion turns to some of the challenges which were exposed.

1.4 Some issues exposed as a result of the Regulations and Directions

COVID-19 was an emergency. As such, some scholars have coined the term 'education in emergencies'[61] to indicate that there are indeed expected changes that would follow once an emergency emerges. A European Union report noted that, in general, the physical closures of schools in reaction to COVID-19 were likely to impact children in four main ways: less time was spent on education and learning in general; stress symptoms increased; the way in which students interact changed, considering normal interaction would be limited; and there was a lack or loss of motivation to learn.[62] While this might be true of Europe, literature in South Africa shows that there were also some more localised problems. Although there was considerable variation, four main types of impact can be discerned: the reality of the 'faucet theory'; the exposure of the huge digital divide and how it affected learning; increased school dropouts; and the possible creation of a long-term skills shortage foundation. These are referred to below.

1.4.1 The reality of the 'faucet theory'

The 'faucet theory' is based on equity and the power of access. Specifically, it is believed that

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57 *Centre for Child Law v Minister of Basic Education* no 3123/2020.

58 ibid, para 1.

59 Albertyn C 'Section 9 in a time of COVID: Substantive equality, economic inclusion and positive duties' (2021) 37 *South African Journal on Human Rights* 205; Albertyn and Adams (note 2 above), 153.

60 Veriava and Ally (note 7 above), 244.

61 N Landa, S Zhou and N Marongwe, 'Education in emergencies: Lessons from COVID-19 in South Africa' (2021) 67 *International Review of Education* 167, 169.

62 Giorgio Di Pietro and others, *The likely impact of COVID-19 on education: Reflections based on the existing literature and recent international datasets* (2020), 8.

> schools provide roughly equal benefits to children of every economic background. However, during the time when there is no school (like summer vacations), while performance among children from higher socio-economic status continues to develop, no similar growth is observed in children from lower socio-economic status.[63]

There are various reasons for this, but one reality is that because of the poverty levels in many low-income households, some parents or caregivers are not sufficiently equipped (educated) to be able to support homeschooling for children. In fact, some scholars go on to state that social capital can result in differentiation of learning experiences, since 'many parents and caregivers in South Africa in lower income households are not sufficiently educated to assist with homework'.[64] Consequently, in line with the 'faucet theory', the amount of time such children stay at home has an impact on their overall capacity to learn or keep up with learning. This seemed to have been an effect of the COVID-19 in South Africa, with Kamga going as far as to suggest that learners with disabilities, for example, have become all but 'uneducable'.[65]

1.4.2 The digital divide

Considering that responding to pandemics like COVID-19 requires significant financial resources, some scholars note that COVID-19 exposed the 'digital divide' that exists within the South African educational space,[66] with some schools being highly resourced and prepared, while others having limited or no capacity at all and requiring significant government intervention. Here, when children were forced to stay home, low-income circumstances became the social ill connecting the consequences of the COVID-19 response with existing deep-rooted problems like poverty.[67] This ultimately manifested as an inhibiting factor to the capacity of children to successfully complete educational tasks: '[g]iven the unavailability of computers at home in many low-income households, children are likely to gain access to online classroom learning only through their mobile phones, which makes any completion of work

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63 ibid, 12.

64 Z Duby and others, *Navigating education in the context of COVID-19 lockdowns and school closures: challenges and resilience among adolescent girls and young women in South Africa* (Frontiers in Education, 2022), 10.

65 Kamga (note 55 above), 353.

66 Duby and others (note 64 above) 9; S Fredman, 'A human rights approach: The right to education in the time of COVID-19: Commentary on COVID-19 Special Section' 92 Child Development e900, e901.

67 Landa, Zhou & Marongwe (note 60 above)169; Albertyn and Adams (note 2 above), 153; Albertyn (note 59 above) 207.

and uploading it onto an e-platform very difficult'.[68] The digital inequalities therefore clearly exposed severe discrimination in the South African social fabric.

1.4.3 Likely increased school drop-out rates

If the 'faucet theory' is correct, and if COVID-19 actually deepened educational inequalities and poverty, then one of the consequences of the school lockdowns was likely to have been increased school dropouts. It is, of course, important to note that school dropouts were already a problem before COVID-19. For example, some scholars observed the following:

> Despite completion of grade nine being compulsory in South Africa, in 2018 only 70% of adolescents aged 16–17 years attained their grade nine certificate, and 90.2% of 19–21-year-olds, meaning around 60% of young South Africans effectively drop out of school, with no school-leaving qualification; there is considerable variation across provinces, household income quantiles and population groups.[69]

Considering this, the school closures are likely to have affected an already worrisome trend of school dropouts, which are caused by 'a cumulative process of disengagement, with multiple causal factors at the individual, social and institutional level'.[70] More so, the school dropouts are skewed across gender, racial and economic lines: '[s]chool drop-out is correlated with being female, low family socio-economic status, population group/ethnicity, poor school facilities, and infrastructure, low quality schooling, household responsibilities, and household head's level of education.'[71] A deductive conclusion would be that school closures as a result of COVID-19 are likely to have impacted on access to education, which by many accounts would lead to school drop-outs. This is particularly true if regard is had to the fact that poor schools and learners from low-income households would have not been able to fully transition to online learning platforms.[72] Furthermore, the provision of data services to facilitate online learning, as well as the provision of laptops to work with, were also found to be problematic issues.[73] Assuming that laptops were provided, the fact that the computer literacy rates were extremely

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68 Di Pietro and others (note 61 above), 16; Fredman (note 65 above), e901.
69 Duby and others (note 65 above), 2.
70 ibid, 2.
71 ibid, 2.
72 ibid, 2.
73 ibid, 5.

low meant that the effective use of laptops for educational purposes was not fully leveraged.[74] Consequently, some scholars estimated in January 2022 that roughly 700 000 learners had not returned to school by then (full scale schooling had however not resumed).[75]

1.4.4 Long term skills shortages

The South African Human Rights Commission also noted that COVID-19 had cascading effects on the right to basic education, and that such effects would affect 'skills and knowledge for future employment, entrepreneurship, economic growth and poverty alleviation'.[76] This is because the shortfalls in the learning process produce cumulative effects which compound as time goes on. As such, the interruptions to the schooling process are likely to have long term consequences beyond 2020. Consider this finding for example:

> [o]verall, in 2020, with the on-and-off school closures in South Africa, it is estimated that a full third of the school year was lost, meaning that the country's 13 million learners, including approximately 1.2 million matriculants (final year students), fell behind on curriculum coverage and risk severe skills deficiency well beyond 2030.[77]

This is worrisome, especially as:

> [t]he importance attached to the role of basic education, realising this obligation, is hinged on the premise that it is the start-off point in the building block of self-sufficiency, therefore requiring attention and input of all stakeholders to ensure that its quality is well guaranteed. Consequently, when quality is guaranteed at a basic education level, then the socio-economic development of a nation is highly guaranteed.[78]

That the nation could potentially suffer in the long term is probable, especially considering the impacts of the school closures on low-income households. In fact, this can be tied to another

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74 ibid, 9.

75 DL Shepherd and N Mohohlwane, 'How COVID is affecting school attendance in South Africa: piecing together the puzzle' (2022) <https://theconversation.com/how-covid-is-affecting-school-attendance-in-south-africa-piecing-together-the-puzzle-174711> .

76 A Gaum, K Sithebe and S Tembani, 'Covid-19 and the right to basic education: The SA Human Rights Commission's position' (2021) <https://www.sahrc.org.za/index.php/sahrc-media/opinion-pieces/item/2715-covid-19-and-the-right-to-basic-education-the-sa-human-rights-commission-s-position>.

77 Duby and others (note 65 above), 2.

78 Onuora-Oguno (note 26 above), 17.

issue, the existence of 'no fee schools', which primarily cater for low-income households.[79] In describing how the 'no fee' schools have been impacted, South African Human Rights Commission researchers found that 'primary school children in no-fee schools have learnt between 50-75% less compared with previous years as a result of school closures and amended school timetables induced by Covid-19 measures."[80] In the end, while schools are back to normal, the jury is likely still out insofar as calculating the long-term skills cost the school interruptions (as a result of the COVID-19) might have caused.

1.4.5 Intersectional problems

An indirect consequence of COVID-19's schools' closure was the exposure of the interconnectedness of education and other social issues. For example, the attendance (or lack thereof) of learners to school can likely impact on the incidence of social ills like domestic violence, child abuse, teenage pregnancies etc.[81] Assuming these are avoided, there are also some general difficulties, especially in low-income households, for children to effectively complete educational tasks while at home. For example, it has been noted that children in large households' struggle, considering they have to share their educational time with other house duties, and when they do have time for education, they share the space with other family members.[82] This can ultimately impact on their capacity to master educational content effectively.

Also, the COVID-19 pandemic is believed to have had negative consequences on the middle classes, with about 33 percent of such families likely to have fallen into the vulnerability classification.[83] A logical corollary of this is that if families become vulnerable, then this potentially directly or indirectly impacts on the livelihoods of children, including their education needs. To this end, Liebenberg argues that the consequences of the pandemic on institutions delivering socio-economic services were that more funding needed to be invested in such structures/institutions.[84] Yet this was a struggle too, since it is also believed that there

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79 Duby and others (note 65 above) 9.
80 Gaum, Sithebe and Tembani (note 75 above).
81 Duby and others (note 65 above) 2.
82 Di Pietro and others (note 61 above) 16; Duby and others (note 65 above), 9.
83 Liebenberg (note 6 above), 182; Albertyn (note 59 above), 208; Landa, Zhou and Marongwe (note 60 above) 169.
84 Liebenberg ibid.

were budgetary constraints on socio-economic services like healthcare and education during the early stages of COVID-19.[85] Why this is alarming is quite obvious: there exists many inequalities in education in South Africa, with the result that budget cuts are only likely to worsen these inequalities.

In a time of a pandemic, as was the case with COVID-19, it is understandable that urgent action needed to be taken. Yet, such action must not be overly intrusive on rights, which in this case are the rights of learners to basic education. The issues arising from the school closures, and their effects on children's right to basic education, call into question the steps taken by the state. It is now necessary to briefly turn to the role courts played in balancing the need for the state to regulate for the purposes of flattening the COVID-19 curve and the need to ensure that basic education continued, thus ensuring that children's rights were not unjustifiably limited by the state. This is discussed in the next section.

The Role of Courts in litigating the right to Education

Justice Albie Sachs once stated that courts have the 'ability to ensure the interpretation of the right to access of basic education as well as other rights firmly aided by the expectation of the judiciary defending the core values which are part of world jurisprudence and part of the evolving constitutional development'.[86] Also, Brown has noted that 'it is not a breach of the separation of powers to order the state to fulfil its already-recognised duties, and that its failures to do so can be noted by the courts'.[87] Consequently, there exists a popular faith in the judiciary to hold the government to account for its decisions,[88] especially considering the perceived transformative nature of the South African Constitution. To this end, through litigation, it is possible to determine if government has failed, either through action or inaction, to uphold its constitutional duties.[89] In the context of this study, this would be determining the extent to which courts have found the state to have failed, through action or inaction, to fulfil the right

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85 ibid, 184.

86 A Sachs, 'Social and economic rights: can they be made justiciable' (2000) 53 SMUL *Review* 1381, 1388.

87 J Brown, 'Lawfare under lockdown: Challenges to South Africa's Covid Regulations, March to August 2020' 37 *South African Journal on Human Rights* 302, 310.

88 ibid, 302.

89 ibid, 303.

to basic education. This faith in the power of the judiciary, however, can only be fully effective with legal mobilization.

1.5 Legal mobilization as a tool to enforcing basic educational rights

It is well known that the South African judicial system involves an adversarial approach,[90] with the result that litigation is not always the best forum to use if relations are expected to continue. Yet, in instances where rights are at stake, especially children's rights, then litigation seems to be a viable option. Consequently, there is evidence that legal mobilisation has yielded positive results. In a piece published in the South African Journal on Human Rights, Veriava and Ally discuss instances wherein legal mobilisation led to the Department of Basic Education being forced to actively consider the rights of children to basic education as well the rights of children with disabilities. In other words, legal mobilisation creates possibilities to bring change, much in the same way that social movements and litigation led to government policy changes in relation to the role out of anti-retroviral drugs during the Treatment Action Campaign activism and litigation.[91] As such, what Veriava and Ally sought to do, was to show that the effects of COVID-19 on the rights of learners were mitigated in part by court action[92] Thus, when litigation works, especially in the public interest and for the benefit of children, it might bring a proportionate balance to the various interests at stake and to ensure that rights are not unjustifiably limited.

1.6 A tale of two cases

The discussion below now turns to evaluating, in view of the consequences and issues arising from the Regulations and Directions on the rights of learners to basic education, whether the courts were able to find a proportionate balance. Two cases will be used as illustrative examples: *One South Africa Movement v President of the Republic of South Africa*,[93] (*One South Africa Movement*) and *Equal Education v Minister of Basic Education*[94] (*Equal Education*).

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90 D Erasmus and Hornigold, 'Court supervised institutional transformation in South Africa' 18 Potchefstroom Electronic Law Journal (PELJ) 2457, 2457.

91 The case was *Minister of Health v Treatment Action Campaign* 2002 (5) SA 721(CC).

92 Veriava and Ally (note 7 above) 232.

93 *One South Africa Movement v President of the Republic of South Africa* (2020) ZAGPPHC 249.

94 *Equal Education v Minister of Basic Education* 2021 (1) SA 198 (GP).

1.6.1 One South Africa Movement v President of the Republic of South Africa

The context of *One South Africa Movement*, is that the President had changed the alert level of the country from four down to three, leading to the reopening of public schools.[95] For the applicants, the decision to move the alert level down to three was indicative of irrationality and unlawfulness, as there were no specific and effective plans in place to ensure that the loss of lives would be mitigated.[96] The respondents countered, noting that the lockdown and regulations had always meant to serve a temporary purpose of flattening the curve of infections, and that there would be a gradual return to normalcy, accompanied by or directed through changing alert levels.[97] For context purposes, the alert levels were explained in court as follows:

> (a) Level 5 means that drastic measures are required to contain the spread of the virus to save lives.
> (b) Level 4 means that some activity can be allowed to resume, subject to extreme precautions required to limit community transmission and outbreak.
> (c) Level 3 involves the easing of some restrictions, including on work and social activities to address a high risk of transmission.
> (d) Level 2 involves the further easing of restrictions, but the maintenance of physical distancing and restrictions on some leisure and social activities to prevent a resurgence of the virus.
> (e) Level 1 means that most normal activity can resume, with precautions and health guidelines followed at all times.[98]

In other words, depending on the COVID-19 numbers and the developing knowledge about the pandemic, alert levels could change.

The applicants were also of the view that there should not be a staggered reopening of schools based on each school's readiness, but that all schools had to open simultaneously.[99] Presumably, this was based on equality issues.

In making its decision, the court revisited the initial decision as to why schools were closed, then went on to accept the challenges which came about as a result of the closure (some of these challenges are similar to the issues identified under section 3.2 above). The court concluded that 'if regard is had to the process of consultation, the range of risk factors considered, as well as the mitigating measures put in place, the decision to re-open schools was

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95 *One South Africa Movement v President of the Republic of South Africa* (note 93 above) para 8.
96 ibid, para 32.
97 ibid, para 47.
98 ibid, para 50.
99 ibid, para 129.

a properly considered one that took into account the safety and the health of the broader school community.'[100]

Concerning the aspect of the decision to re-open schools being one that violates several constitutional rights, the court was of the view that:

> Therefore, in our view it must follow that in the balancing exercise between the competing rights, the balance was appropriately struck between the right to life and other implicated rights, such as the right to education, and the right to food. On balance, the best interests of the child were not violated by the decision to re-open schools, albeit that there is inevitably some risk involved. The fourth respondent paid substantial regard to the need to mitigate these risks. It can hardly be said that the decision exposes the school community to risks which have not been properly considered and in respect of which adequate mitigatory measures have not been put in place.[101]

Even more telling was the fact that the court accepted the reasoning of the Minister of Basic Education that a return to school was best for children for various reasons which include: the prolonged interruption of learning; the ineffectiveness of distance learning for the majority of public schools; the mental and potentially physical harm learners could be exposed to while staying at home; the deepening of inequalities if a return to school was not implemented; and the unknown consequences on the schooling system if a full year of education was lost.[102] This clearly shows that government was not unaware of the glaring issues which the closing of schools exposed. Consequently, in deciding whether the decision to reopening the schools was balanced within the context of section 36, the court concluded that

> The decision to re-open schools serves an important constitutional purpose. That is to advance and give effect to the right to basic education. It also serves other purposes, such as the right to dignity, which is impinged by the denial of access to education, and the social and developmental needs met within the school environment. In short, the continued closure of schools, despite the precautionary measures that have been put in place, would not serve the best interests of children.[103]

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100 ibid, para 148.
101 ibid, para 165.
102 ibid, para 175.
103 ibid, para 178.

As to whether there might have been less restrictive measures which could have been used, the court found that it was a difficult choice:

> [t]he choice is thus a stark one: open public schools or accept that the vast majority of learners will not be educated for so long as they remain closed. The re-opening of schools could not be avoided. The extensive mitigating measures provide sufficient evidence that the least restrictive means were used.[104]

For these reasons, the court found that the limitation was justifiable considering the issues at stake. In a time of disaster, the state has to act decisively, and Brown confirms that indeed, "the court should not pre-empt the government's discretion during a disaster."[105] Going back to the research question, this confirms that difficult as the choices might have been, and disheartening as the effects of the school closures were, the right to basic education had to accept a bit of limitation at the start with the school closures in order to serve a bigger purpose: flattening the curve. Whether the price that was paid for this is acceptable is another inquiry, yet it will be revisited briefly in the last section of the discussion.

1.6.2 Equal Education v Minister of Basic Education[106]

Following the ruling in *One South Africa Movement* that the Regulations and Declarations allowing for the re-opening of schools had been upheld, plans were set in motion to prepare for this return by provinces. However, another case was also before the courts on a quite different matter. *Equal Education v Minister of Basic Education* concerned South Africa's National School Nutrition Programme (NSNP) which allows for the provision of daily meals to learners who qualify.[107] Thus, when the schools were closed, the NSNP was also stopped. With the schools being prepared for re-opening, the Western Cape province committed to and made plans to provide NSNP not only to those students returning to school, but also those who would return, but who qualified to receive such. Other provinces, however, only sought to provide food for learners who would physically return to school. It is on the basis of this factual background that the applicants launched legal proceedings against the Minister of Basic Education and the MECs for Education of the other provinces, arguing that they were

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104 ibid, para 180.
105 Brown (note 86 above) 309.
106 *Equal Education v Minister of Basic Education* (note 94 above).
107 ibid, para 2.

mandated, as part of fulfilling the right to basic education, to provide such meals to qualifying students regardless of whether they were studying at school or away from school.[108]

In describing the impacts of COVID-19 on the NSNP, the court held that over 9 million children had been denied a nutritious meal during the period in which schools were closed[109] Even worse, the court accepted as evidence that there were many learners who would primarily rely on this NSNP for their nutrition, with some learners even giving up on studying altogether because access to the NSNP meals had been cut. For this reason, the court found that COVID-19 had a deleterious negative consequence on the right to basic education because it disconnected children from services which the state would have otherwise provided for them, considering that "the critical points of contact for reaching vulnerable children, with no other state service that can connect with children on such scale and with such regularity' was schools.[110] The DBE itself had also accepted that there is an inseparable link between the NSNP and the right to basic education: '[t]here are two main groups of arguments in support of feeding children in schools: The first group is a nutritional one; and the second is an educational one. However, it is difficult to separate the two, since well-nourished children are assumed to perform better at school.'[111] Consequently, the government indeed had a duty to provide the NSNP. The question was then whether the breach of this duty could be justified under the proportionality balancing act mandated by section 36 of the Constitution.[112]

For the court, only a 'compelling justification' by the state would be accepted as an appropriate reason to depriving the existing right to the NSNP as part of the right to basic education.[113] However, the government could provide any legitimate justification at all. Without such, on the day on which schools reopened, the government had to provide the NSNP, as failure would be retrogressive and against the precepts of international law concerning the socio-economic rights of children.[114] This was the case even in a time of crisis. The government was thus found to have failed to appropriately protect the right to basic education through the failure to resume the NSNP programme for all qualifying students.

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108 ibid, para 2.
109 ibid, para 20.
110 ibid, para 33.
111 ibid, para 38.2.
112 ibid, para 43.
113 ibid, para 48.
114 ibid, para 57.

Commenting on the case, Liebenberg is of the view that the use of the principle of non-retrogressive measures is important. On the one hand, the principle of non-retrogressive measures in this case implied that the state had a negative duty not to interfere with the right to basic education, or the conditions that facilitate the fulfilment of this right, i.e, the provision of food through the NSNP. In this instance, the suspension of the NSNP interfered with existing rights.[115] On the other hand, the failure to provide for the learners whose grades (years) had not yet been allowed to return to school could be conceived of as a breach of existing rights, i.e. the state would have failed by omission (the omission being the failure to reinstate the nutrition programme).[116] The case does indeed confirm the link between the right to basic education and the right to basic nutrition, with the latter, for example, helping to facilitate the fulfilment of the former. Veriava and Ally put it this way: '[t]he NSNP judgment has now affirmed that school nutrition is also a component of the right to basic education. School feeding schemes enhance the learning capacity of children while at school and are crucial to the provision of basic education.'[117]

Conclusion

A review of the right to basic education, the 2020 COVID-19 related schools' shutdown, and the courts in South Africa serves one main purpose: it could help us prepare for the next pandemic. As the report has shown, neither the country nor its citizens were prepared for COVID-19 nor the consequences it visited on the nation. Unfortunately, these consequences also fell on children, from both resourced and under resourced backgrounds. So, when decisions had to be made in an effort to counter or at least mitigate the effects of COVID-19, there were bound to be differing experiences as well as far-reaching revelations as to the state of preparedness and problems which the South African society faces. While it is known that South Africa has long had a problem with the delivery of quality education, especially for rural communities,[118] COVID-19 and the related school closures clearly exacerbated these problems. As the discussion showed, while the responses to COVID-19 might have been appropriate given the circumstances in which the government found itself, as well as the public interest in ensuring that the impacts of COVID-19 would not be too dire on the South African social and

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115 Liebenberg (note 6 above) 192; Veriava and Ally Note 7 above) 241.
116 Liebenberg ibid.
117 Veriava and Ally (note 7 above) 240.
118 Landa, Zhou and Marongwe (note 60 above) 170.

economic fabric, the Regulations and Directions which paved the way for the closure of schools revealed deeper inequalities which had been masked by the illusion of democracy.

Was this an acceptable price to pay? Perhaps not. In hindsight, it might seem easier to criticize the state and argue that it should have thought through and planned to perfection how basic education was to unfold as a result of the school closures. Yet, the reality is that COVID-19 was unprecedented, and there was no precedent or blueprint which any of us could have consulted for guidance. Responding to the impacts of COVID-19 on basic education was always going to be through trial and error, and this is exactly what happened. As the cases show, there were obvious polarities between those advocating for schools to reopen in a certain way (*Equal Education*) and those concerned about the preparedness for having students go back to school (*One South Africa Movement*). Ultimately, courts had to give a measure of deference to the state, while clearly operating within the prism of section 36 to determine if the right to education had been overly breached. In the cases, the state was found to have not overly breached rights (*One South Africa Movement*), and where it did so, the court ordered immediate action (*Equal Education*).

In the end the best interests of the child require that when decisions that potentially affect the interests of children are made, a holistic approach which considers the interconnectedness of interests related to children is taken. In other words, it serves no fair purpose to merely look at the Regulations and Directions and criticize them for how they impacted basic education without also considering what was at stake at the time. Fairness requires that even as we critique the unintended consequences of the lockdown regulations on basic education, we should also note that in a time of a pandemic, one of unprecedented proportion, some basic rights might have to be sacrificed (even for a bit) for the greater good. We now know the price that was paid as a result of the COVID-19 Regulations, some of which include the realisation that deep-rooted patterns of equality remain across racial, gender and class lines. With this arsenal of information, the South African society has a chance to try and address these problems by, for example, fast-tracking the digitalization process such that if online learning is ever needed in future, we are prepared.

Accordingly, although COVID-19 was devastating, it perhaps presented the South African government and society with a watershed moment, one which provides the context and even obligation to improve the educational circumstances of a great many learners in the South

African educational space. The hope is that a few years from now, we can all look back and rightly remember the overwhelming impacts of COVID-19, yet at the same time, be grateful for the improvements which were made as a result of the glaring basic educational impacts and inequalities COVID-19 brought. Only then, perhaps, could South Africa be in a position (from a right to basic education point of view) to be ready for the next pandemic.

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