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Socio-economic Rights and COVID-19: The Right to Basic Education¹

Submitted in partial fulfilment for the Degree of Master of Laws
Multidisciplinary Human Rights

by

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Abstract

There are numerous crises related to the full realisation of the right to basic education. The provision of high-quality education and the elimination of inequality within the education system have been two of the major developments and targets that the government has been working on for the past few years. However, the emergence of the pandemic in 2019 caused a crisis within the educational system, resulting in the exacerbation of pre-existing educational inequalities. Therefore, this dissertation critically analyses these inequalities with specific reference to the unequal distribution of resources and digital inequalities. In this dissertation, the development of basic education in South Africa during the colonial, apartheid, and post-apartheid periods is observed. In this regard, it is argued that educational disparities are deeply rooted within the schooling system, regardless of democracy and constitutionality. Further, the pre-existing inequalities in the distribution of resources before the pandemic are analysed. It is argued that there is a reproduction of apartheid within the educational system where the education rights of black and/or poor learners are not properly realised to reflect social change as envisioned in the Constitution. As a result, the impact of the pandemic reveals that there is a need for long-term and substantial measures that will serve as alternative educational imaginaries.

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Chapter 1: Introduction

1.1 Background

Socio-economic rights were included in the South African Constitution in order to transform society.² The significance of such inclusion was aimed at eradicating any form of division that was created by the apartheid era and producing a democratic society that is grounded on values, justice, and human rights.³ However, according to Franklin and McLaren,

the level of poverty and inequality, exacerbated by widespread unemployment and a lack of access to basic services in many disadvantaged areas, continues to violate people's rights and weaken our democracy.⁴

Nonetheless, recognition of the right to education in international law and different constitutions across the world provides social, economic, and political advantages for educated individuals and populations.⁵ The right to basic education is contained in section 29 of the Constitution of the Republic of South Africa. Historically, the education system was racially segregated, and black children were given poor quality education. Given this struggle for education, section 29 was birthed to accordingly bring about educational transformation.⁶ Despite this history and the concept of educational transformation, the reality remains that “unfair discrimination and inequality” are still social problems that manifest in a variety of ways.⁷

The right to basic education, according to the Constitution, as well as historically, entails the provision of equal education to everyone, irrespective of their socio-economic background. This has been stressed both in academia as well as by the judiciary. For instance, in the case of *MEC for Education, KwaZulu-Natal v Pillay*, the

² M Trilsch 'What's the Use of Socio-Economic Rights in a Constitution? – Taking a look at the South African experience' (2009) 42 *Verfassung in Recht und Übersee* at 553.

³ C Simbo 'Defining the term basic education in the South African Constitution: An international law approach' (2012) 16 *Law Democracy and Development* at 166-167.

⁴ S Franklin & D McLaren 'Realising the Right to a Basic Education in South Africa: An analysis of the content, policy effort, resource allocation and enjoyment of the constitutional right to a basic education' (2015) Studies in Poverty and Inequality Institute, Working Paper 10.

⁵ Simbo (n 3) 163.

⁶ L Lomofsky & S Lazarus 'South Africa: First steps in the development of an inclusive education system' (2001) 31 *Cambridge Journal of Education* at 302.

⁷ C McConachie 'Equality and unfair discrimination in education' in F Veriava and others *Basic right to education handbook - Educational right in South Africa* (2017).

Constitutional Court stated that there is a need for all to take measures to allow people to enjoy their rights equally.⁸ However, there are numerous crises related to the full realisation of the right to basic education. The provision of high quality education and the elimination of inequality within the education system has been one of the major developments and targets that responsible role players have been working on for the past years. However, the emergence of the COVID pandemic in 2019 caused a crisis within the educational system, revealing how mostly black and/or poor learners did not enjoy the full realisation of their rights. The inception of the coronavirus intensified all pre-existing inequalities in accessing education. As a result, the impact of the pandemic reveals that there is a need for long-term and substantial measures that will serve as alternative educational imaginaries.⁹

Educational inequalities have been a global concern, even before the emergence of the pandemic. As a result, the 2030 Agenda for Sustainable Development aims to improve education to become inclusive and equitable and to enable all people to engage in lifelong learning.¹⁰ In South Africa,

the social mandate of schools is to prepare young people to become responsible citizens who can participate meaningfully in society, irrespective of their race, gender, class, culture, physical, or intellectual ability.¹¹

However, achieving these goals of educational equality has been relatively impossible due to the type of school a learner will attend is determined by their social or economic status.¹² As a result, the majority of poor black learners have unequal access to quality education, where there are neither resources nor infrastructure. To illustrate, in the case of the *Minister of Basic Education v Basic Education for All*,¹³ the Department of Education delayed delivering textbooks to Limpopo schools after changing the curriculum. The Supreme Court of Appeal held that indeed the department violated

⁸ 2008 1 SA 474 (CC) at para 73.

⁹ V John and others 'Interlocking inequalities, conflicts and crises: COVID-19 and education in the Global South' (2021) 84 *Journal of Education* at 1.

¹⁰ Transforming our world: The 2030 Agenda for Sustainable Development: Goal 4.

¹¹ Department of Basic Education 'National Curriculum Statement (NCS): curriculum and assessment policy statement (CAPS) further education and training phase: Grades 10–12' (2013) government printer.

¹² R Mudaly & V Mudaly 'Exploring how the national COVID-19 pandemic policy and its application exposed the fault lines of educational inequality' (2021) 84 *Journal of Education* at 107.

¹³ (20793/2014) [2015] ZASCA 198.

the right to education of learners and equality.¹⁴ Other crises include several schools without laboratories, libraries, internet connections, and sanitation.¹⁵ Therefore, it is clear that, despite the emergence of COVID-19, children from marginalised societies are still encumbered by education that is not of quality based on their social status and background. Yet, the Constitutional Court has emphasised that people must not be relegated to the margins of society because of failing to conform to certain social norms.¹⁶

As already highlighted above, the South African education system is deeply rooted in socio-economic inequalities. As a result, some scholars consider this system fragile, because the apartheid experience resulted in most learners being disadvantaged.¹⁷ This fragility became all the more evident during the emergence of COVID-19.

The spread of COVID-19 leading to the shutting down of schools globally resulted in a change in the mode of teaching and learning.¹⁸ According to Soudien, the emergence of COVID-19 resulted in learners not receiving education because schools were closed. This closure worsened educational inequalities that were already in existence and thereby undermined the realisation of basic education.¹⁹ Despite having alternative ways of continuing with schooling during the lockdown, their effectiveness varied widely because of the different social circumstances of learners.²⁰ Children from disadvantaged and remote communities did not have access to education, because even before the emergence of the pandemic, they were already struggling as indicated above.²¹ The study conducted by Darmody and others, reveals how control measures

¹⁴ *Minister of Basic Education* at 46.

¹⁵ F Veriava and others *Basic education rights handbook: Education rights in South Africa* (Section 27 2017) at 3.

¹⁶ n 8 above.

¹⁷ C Soudien and others 'The impact of COVID-19 on a fragile education system: the case of South Africa' in F Reimers(ed) *'Primary and secondary education during covid-19 disruptions to educational opportunity during a pandemic'* (2020) 303.

¹⁸ Darmody and others 'Impacts of the COVID-19 Control measures on widening educational Inequalities' (2021) 29 *YOUNG* at 366.

¹⁹ C Soudien and others 'The impact of COVID-19 on a fragile education system: the case of South Africa' in Reimers (n 17) 310.

²⁰ F Reimers 'Learning from a pandemic. The impact of COVID-19 on education around the world' in F Reimers(ed) *'Primary and secondary education during Covid-19 disruptions to educational opportunity during a pandemic'* (2020) 1-2.

²¹ Amnesty International 'South Africa: Failing to learn the lessons? The impact of COVID-19 on a broken and unequal education system' (2021) <https://www.amnesty.org/en/documents/afr53/3344/2021/en/> (accessed 25 July 2022)

as adopted by the government resulted in learning loss, widening the learning gap amongst learners.²² As a result, they called for deeper research that focuses on re-engaging students who suffered during this time.²³

During the lockdown period, many learners did not receive the same support as they would in a normal classroom. As already discussed above in relation to inequalities associated with accessing education, the new mode of learning evidently perpetuated inequalities. To illustrate, middle-class learners appeared to adapt well to online learning and proceeded with the academic year, whereas other learners battled to gain access to data and equipment.²⁴ Furthermore, while they were expected to learn from home, the home environment did not cater to their learning needs, because they lacked the necessary learning resources.²⁵ The difference in economic resources resulted in different learning experiences.²⁶ According to Mudaly and Mudaly, while the terrible legacy of educational inequity has always been present, it became all the more obvious following the emergence of COVID-19. Furthermore, the Financial and Fiscal Commission found that

if performance challenges and uneven access to school infrastructure and other educational inputs are not addressed, the wide disparities in educational outcomes between rural and urban provinces and between less affluent and more affluent schools will persist. COVID-19 has served to further highlight these existing inequalities in access to quality education where we saw learners from private schools able to continue learning under lockdown through online classes whereas learners from poorer schools were not able to do so.²⁷

Furthermore, in formulating its education policy during the pandemic, the South African government relied heavily on advice provided by scientists and scientific advisors.²⁸

²² Darmody and others (n 18) 367.

²³ Darmody and others (n 18) 368.

²⁴ Mudaly & Mudaly (n 12) 108.

²⁵ Mudaly & Mudaly (n 12) 109.

²⁶ C Soudien and others 'The impact of COVID-19 on a fragile education system: The case of South Africa' in Reimers (n 17) 312.

²⁷ E Nchabeleng, '2019/20 DBE Audit Outcomes & Expenditure Patterns in Respect of ASIDI, Conditional Grants & Equity in Education: FFC Briefing | PMG' (2020) <https://pmg.org.za/committee-meeting/31355/> (accessed 25 July 2022).

²⁸ Y Sayed & M Singh 'Evidence and education policy making in South Africa during Covid-19: Promises, researchers and policymakers in an age of unpredictability' (2020) *Southern African Review of Education* at 24.

While adopting these policies, the disparities in learners' homes have still not been sufficiently explored. Consequently, learners continue to be assailed by governmental policies.²⁹ This makes one question, namely whether the measures adopted by the government aimed at curbing the spread of the virus conform to international and national standards of ensuring accessible education to everyone during this time. Apart from learning loss, other impacts of COVID-19 as indicated by Reimers, include reduced support for learners by their families.³⁰ Furthermore, economic shock and trauma diminished the opportunity to learn for learners from disadvantaged schools.³¹

Over the years around the globe, there have been numerous pandemics and outbreaks, such as SARS and Ebola, while the issue of socio-economic inequality remains extant.³² The question then becomes how education can be re-imagined ensuring equal education for all. Mudaly and Mudaly suggest that a change when making and adopting education policy can address educational inequalities and this can be achieved by viewing the whole education system from the perspective of the unprivileged.³³ Nonetheless, there is a need for a substantial response that will address the core roots of inequality within the education system. It is necessary to avoid ignoring this, where the right to basic education contains a comprehensive normative framework that effectively addresses educational inequalities and demands transformation.

1.2 Research problem and objectives

The question of educational inequality existed before the emergence of the novel Coronavirus. Apart from the virus, other factors that hinder the full realisation of the right to basic education include poverty, insufficient school infrastructure, and basic services at schools, such as water, sanitation, and electricity.³⁴ However, the emergence of COVID-19 exacerbated educational inequalities that have been in existence. Thus, this study will provide a detailed analysis of the impact of the virus on the right to basic education in South Africa and provide recommendations on how to

²⁹ Mudaly & Mudaly (n 12) 119.

³⁰ F Reimers 'Learning from a pandemic. The impact of COVID-19 on education around the world' in Reimers (n 20) 2.

³¹ n 29 above.

³² As above.

³³ Mudaly & Mudaly (n 12) 120.

³⁴ John and others (n 9) 2.

rethink and re-imagine the object and notion of the right to basic education in general and during pandemics. Therefore, the research objectives of this study are to:

- Examine the right to basic education and its realisation in South Africa;
- Explore the educational inequalities that have been in existence before the emergence of the pandemic impacting the full realisation of the right to basic education;
- Analyse how the pandemic exacerbated educational inequalities; and
- Propose recommendations on how to rethink and re-imagine the object and notion of the right to basic education in order to address these inequalities.

1.3 Demarcation and limitations of the dissertation

The concept of educational inequality is broad and covers a wide range of disparities that manifest within the schooling system. This dissertation is concerned with educational inequalities that were exacerbated by the emergence of COVID-19.

The right to basic education is not defined in the Constitution. For the purpose of this dissertation, the content of the right will be based on an international law approach and the Constitutional Court's interpretation in the *Moko v Acting Principal of Malusi Secondary School and Others*.³⁵

In terms of section 29(1)(a), the full realisation of the right to basic education entails the full provisioning of all necessary educational inputs essential for educating learners.³⁶ These inputs include but are not limited to school infrastructure, stationery, textbooks and trained teachers. To illustrate, the case of *Madzodzo and Others v Minister of Basic Education and Others* dealt with the failure of the government to provide schools with necessary furniture within the Eastern Cape Province and other poor communities.³⁷ The High Court highlighted that this failure is a violation of the right to basic education, and further emphasised that the necessary condition for achieving this right also includes the provision of adequate resources.³⁸ Therefore this

³⁵ [2020] ZACC 30

³⁶ F Veriava (ed) *Basic Right to Education handbook: Educational right in South Africa* (Section 27, Johannesburg 2017).

³⁷ [2014] ZAECMCHC 5 para 1.

³⁸ [2014] ZAECMCHC 5 paras 19-20.

dissertation also addresses the unequal distribution of resources with specific reference to the unequal distribution of trained teachers.³⁹

The term “black people” is defined by legislation in South Africa. For the purpose of this dissertation, it refers to Africans, Coloureds and Indians.⁴⁰

Furthermore, the rapid growth of technology and its usage in all spheres of the world forces different institutions including schools to adopt Information and Communications Technology (ICT) in teaching and learning.⁴¹ This entails the provision of necessary resources to adjust to this global change.⁴² This dissertation is more concerned with digital inequality and/or the digital divide that was exacerbated by the education policy adopted as an expeditious response to COVID-19 with the purpose of wanting to ensure continuous learning. In the same vein, digital inequality is defined as social inequality that exists between people in terms of who has access to ICT, how often they use it, and how they can variously utilise it.⁴³

1.4 Theoretical Approach and Methodology

For a proper analysis of the impact of COVID-19 on the right to basic education, this project will follow doctrinal legal research, historical analysis, and socio-legal research.

The doctrinal legal research is based on secondary data and existing legal authorities, and it focuses on the interpretation, assessment and development of law.⁴⁴ This research will be done through desktop research comprising a range of sources, including case law, legislation, journal articles, books, theses, and reports. Therefore, this study is based on the collection of primary and secondary sources that will be

³⁹ Amnesty International ‘South Africa: Failing to learn the lessons? The impact of COVID-19 on a broken and unequal education system’ (2021) <https://www.amnesty.org/en/documents/afr53/3344/2021/en/> (accessed on 25 July 2022).

⁴⁰ Broad-Based Black Economic Empowerment Act 53 of 2003.

⁴¹ S Mwapwele and others ‘Teachers’ ICT adoption in South African rural schools: A study of technology readiness and implications for the South Africa connect broadband policy’ (2019) *African Journal of Information and Communication* at 2-6.

⁴² As above.

⁴³ G Chisango & N Marongwe ‘The digital divide at three disadvantaged secondary schools in Gauteng, South Africa’ (2021) *Journal of Education* at 150.

⁴⁴ D Coetsee & P Buys ‘A doctrinal research perspective of master’s degree students in accounting’ (2018) 32 *South African Journal of Higher Education* at 71-72.

analysed and interpreted in order to ascertain if the right to basic education was properly realised during the pandemic.

The historical analysis is based on tracing and examination of historical antecedents of law, and it provides an understanding of the social transformation of the present law.⁴⁵ The present study commences with an approach that provides a historical overview of the development of the right to basic education. This overview is essential mainly because it will later assist in determining whether indeed the right to education is properly realised in light of social transformation as envisioned in the Constitution during the pandemic. Firstly, the historical development of basic education will be taken into account from different eras, and this will provide an understanding of how inequalities found their way into the schooling system and how the emergence of the democratic era promised to bring social transformation by undoing all the social injustices of the past.

The socio-legal analysis is based on the analysis of the effects of law and legal institutions on society.⁴⁶ It involves the use of methods from different disciplines in order to understand how society influences the legal ideas and practices of institutions.⁴⁷ Therefore, keeping in mind the notion of transformative constitutionalism that aims to bring social and political change through law,⁴⁸ the existing and visible educational inequalities are examined. I resort to using this analysis to determine whether the government's response indeed promoted the right to basic education during COVID-19. To this end, my argument is that, during COVID-19, the government failed to realise the right to basic education, while revealing all the inequalities that ought to have been effectively addressed by the democratic dispensation.

1.5 Outline of chapters

Chapter 2 of this dissertation will provide a detailed analysis and examination of the right to basic education. This analysis is based on the historical development of basic education during three different eras namely, the colonial, apartheid, and democratic

⁴⁵ K Vibhute & F Aynalem 'Legal research methods' (2009) *Justice and Legal System Research Institute* at 106.

⁴⁶ Vibhute & Aynalem (n 44) 89.

⁴⁷ As above.

⁴⁸ K Klare 'Legal culture and transformative constitutionalism' (1998) *South African Journal on Human Rights* at 146-188.

eras. This analysis is essential because it will assist in tracing the development of inequalities in the South African basic education system.

Chapter 3 will examine educational inequalities that have been in existence before the emergence of the pandemic impacting the full realisation of the right to basic education. This chapter provides an overview of the pre-existing educational disparities that relate to the unequal distribution of resources. A detailed analysis of the training and distribution of teachers will be provided. Furthermore, an examination of digital inequality in schools located in rural areas is explored.

Chapter 4 will provide a detailed analysis of how the pandemic exacerbated educational inequalities. Furthermore, this analysis will take into consideration the regulations that were implemented by the Department of Basic Education that affected the schooling system.

Finally, **Chapter 5** will provide recommendations on how to rethink and re-imagine the object and notion of the right to basic education during pandemic and non-pandemic times.

Chapter 2: Background of the Right to Basic Education

2.1 Introduction

Basic education is an important tool in the development of society and individuals, considering the historical experiences of apartheid.⁴⁹ It is therefore concerning that the education system is still rooted in inequalities and dysfunctions in the current democratic dispensation.⁵⁰ The struggle for inclusive education is not something new but has been in existence even before apartheid. This chapter provides an analysis of basic education during colonialism, apartheid, and the post-apartheid eras.

In demonstrating the historical background of basic education in South Africa, the outline of basic education in these different eras will be discussed. The subsequent paragraphs will also provide a detailed account of the development of the right to education during post-apartheid and provide a detailed analysis of the formulation of section 29(1)(a). It is believed that this analysis will assist in determining whether this right was indeed properly realised during the pandemic.

2.2 Historical background of the basic right to education in South Africa

2.2.1 Education during Colonialism

The first formal school in South Africa was introduced during the colonial era in 1658.⁵¹ The main motive behind opening this school was to educate slaves, because it was believed that if their intellectual and moral welfare were to be improved their serving to the master would also be more efficient.⁵² Arendse describes this kind of schooling as a way in which the Dutch settlers wanted to indoctrinate the slaves and subdue them to their authority.⁵³ This indoctrination fundamentally taught slaves about

⁴⁹ *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* 2011 8 BCLR 761 (CC).

⁵⁰ C McConnachie and others 'The Constitution and the right to a basic education' in F Veriava and others (eds) *Basic education rights handbook education rights in South Africa* (2017) at 13.

⁵¹ F Molteno 'Schooling of black South Africans and the 1980 Cape Town students' boycott: A sociological interpretation' Master's thesis, University of Cape Town, 1983 at 22.

⁵² As above.

⁵³ L Arendse 'Inequality in the public basic education system: the role of the South African courts in effecting radical transformation' LLD thesis, University of Pretoria, 2020 at 24.

Christianity and the Dutch languages.⁵⁴ The slaves were expected to learn submission and discipline in a structured setting where basic academic material had to be memorised by heart and "respect" for new "superiors" and an authority figure was drilled into them.⁵⁵

In 1663, a second school was opened, mainly for the children of these colonists. The issue of segregation was introduced in 1676, when schools for slaves were duly separated.⁵⁶ Afterwards, the school that was open in 1663 was now exclusively for Dutch children, and those who were not slaves.⁵⁷ The establishment of this schooling system ushered South Africa into centuries of educational inequality that was based on race and class.

2.2.2 Formal African education

Before the introduction of Bantu education in 1953, Christian Mission schools were already established. This served to educate black people, and initially, there was not much difference in the curriculum between blacks and whites.⁵⁸ Previously, formal education was introduced with the aim of training efficient slaves. During the 19th century, education was utilised by missionaries who intended to convert Africans to Christianity.⁵⁹ As a result, Zungu points out that the development of education in South Africa by both colonists and missionaries was not meant for educational purposes or dismantling the idea of white superiority.⁶⁰ The main objective of this formal education was to enable African people to submit to colonisation, so as to further subordinate them.⁶¹

As evidence that this form of education was not responsive to Africans' needs, the funding system did not sufficiently finance education for Africans, when the provincial government started financing education.⁶² In 1925, education was in demand and the funding system was being moved to the central government. However, it could not

⁵⁴ Molteno (n 51) 23.

⁵⁵ As above.

⁵⁶ As above.

⁵⁷ As above.

⁵⁸ Arendse (n 53) 26.

⁵⁹ Y Zungu 'The education for Africans in South Africa' (1977) 46 *The Journal of Negro Education* at 203.

⁶⁰ Zungu (n 59) 204.

⁶¹ Arendse (n 53) 27.

⁶² Zungu (n 59) 205.

keep up with the increasing number of pupils who were enrolling in schools, because the grant received from the government was fixed.⁶³ Despite all the criticism levelled against the missionary schools, Ndlovu points out that formal education led by missionaries provided blacks with the education that improved their employability and developed their communities and the economy.⁶⁴

Missionary schools were intended to separate black people from their culture and contributed to the colonisation of black people. Nevertheless, mission schools gave some learners a high standard of academic education, who later developed strong anti-colonialist views, and helped bring about democratic transformation in South Africa.⁶⁵

2.2.3 Education during apartheid

The Nationalist Party came to power in 1948, marking the first time that a political party took over and deliberately proclaimed apartheid as its official slogan and policy.⁶⁶ Apartheid is defined as “the systematic division of [South African] social, political, and economic life along racial lines”.⁶⁷ The issues of segregation started long before the adoption of the apartheid policy. The patterns of racism could be traced far back, during colonialism. The coming to power of the Nationalist Party further perpetuated segregation through the enforcement of certain policies and these policies are further outlined below.⁶⁸

2.2.3.1 Christian National Education

The Christian National Education (CNE) was an alternative ideology that was established by Afrikaners, based on Christian-national principles. They opposed the education system introduced by the British.⁶⁹ The main reason for this contention was that the British education system was a way of forcing them to adopt the English

⁶³ As above.

⁶⁴ N Ndlovu 'A historical-educational investigation into missionary education in South Africa with special reference to mission schools in Bushbuckridge' Master thesis, University of South Africa, 2002 at 176.

⁶⁵ Arendse (n 53) 30.

⁶⁶ Zungu (n 59) 206.

⁶⁷ 'Amersfoort Legacy - History of Education in South Africa | South African History Online' <https://www.sahistory.org.za/article/amersfoort-legacy-history-education-south-africa#:~:text=The%20opening%20moment%20of%20education> (accessed 03 January 2023).

⁶⁸ P Christie *Right to learn: the struggle for education in South Africa* (1985) at 52.

⁶⁹ Christie (n 68) 159.

language and culture, and to abandon their own.⁷⁰ When the Nationalist Party came to power, it introduced a policy that essentially insisted on mother tongue education and tried to isolate the children of the two white language groups by promoting the development of single-medium schools and by restricting parents' ability to decide the medium of instruction.⁷¹ Since this was education established to favour Afrikaners, during this time, black learners received education that was mainly based on preparing them to be subordinated, and this was done by teaching them more about racial segregation and inequality by using the dual conceptions of the CNE.⁷²

This whole notion of the CNE became the blueprint for the formation of educational policies and laws that further perpetuated the apartheid regime.⁷³ To illustrate, Bantu education legislation was formulated in terms of this ideology, whereby education and resources were distributed unequally amongst different races in South Africa.⁷⁴ The detailed discussion of the formation and impact that Bantu education had is discussed in detail below (paragraph 2.2.3.3).

2.2.3.2 The Eiselen Commission

The Eiselen Commission was appointed in 1949 to investigate native education and then played a role in the formulation of Bantu education policy.⁷⁵ When the investigations were completed, the commission recommended that education for black people should be integrated with a “carefully planned policy of segregated socio-economic development for black people”.⁷⁶ It is clear from this recommendation that the objective of this commission was to align the education for black people with the

⁷⁰ As above

⁷¹ Zungu (n 59) 207.

⁷² As above.

⁷³ D Lavin 'The Dilemma of Christian-National Education in South Africa' (1965) *Royal Institute of International Affairs* at 430-431.

⁷⁴ 'Bantu education' <https://overcomingapartheid.msu.edu/sidebar.php?kid=163-581-2&page=2> (accessed 31 May 2023)

⁷⁵ The investigation included: “The formulation of the principle and aims of education for Natives as an independent race, in which their past and present, their inherent racial qualities, their distinctive characteristics and aptitude, and their needs under the ever-changing social conditions are taken into consideration. (2) The extent to which the existing primary, secondary and vocational education system for Natives and training of Native teachers should be modified in respect of the context and form of syllabuses, in order to conform to the proposed principles and aims, and to prepare Natives more effectively for their occupations. (3) The organisation and administration of the various branches of Native education. (4) The basis on which such education should be financed. (5) Such other aspects of Native education as may be related to the preceding.” See Zungu (n 51) at 208.

⁷⁶ Arendse (n 53) 41.

apartheid policy introduced by the Nationalist Party.⁷⁷ When the report was accepted in 1953, the government embarked on the implementation of the recommendation. The government started with the adoption of the Bantu Education Act of 1953 (which is further discussed below).⁷⁸

2.2.3.3 Impact of apartheid on education

One of the main objectives behind Bantu Education was to ensure that the development of black people is rooted in their cultural institutions and customs.⁷⁹ In other words, Bantu Education was to be used as a tool to bring about social, cultural, and economic development to black communities and result in them being independent and self-reliant.⁸⁰ It was clear that this was a method the Nationalist Party used to oppress black people through education that mainly taught and trained them to accept inferior positions and remain subordinates.⁸¹ Furthermore, the separate approach to development as recommended by the report of the commission entailed racial segregation, wherein black people were not afforded equal and adequate opportunities in education. This is because one of the notable changes that were brought about by this policy was the change in the content of education. The new content entailed a shift to mother tongue education as a medium of instruction. In addition to this change, emphasis was placed on oral work and speech, which would become of utility in receiving and carrying out instructions from whites as their superiors.⁸² It is clear that this education did not really develop black people to become independent and self-reliant, but instead prepared and trained them to adopt the role of slaves.⁸³

Apart from the change in the content of education, firstly, Bantu education was not compulsory, leading to a high dropout rate. Secondly, schools for Africans could not cater to a sufficient number of black learners.⁸⁴ Thirdly, the teachers worked overtime and were underpaid, and most teachers were not properly trained.⁸⁵ These issues had

⁷⁷ Zungu (n 59) 209.

⁷⁸ Zungu (n 59) 210.

⁷⁹ M Horrell *Bantu education to 1968* (1969) at 7.

⁸⁰ As above

⁸¹ n 27 above.

⁸² Zungu (n 59) 211.

⁸³ Simbo (n 3) 168.

⁸⁴ Zungu (n 59) 214.

⁸⁵ As above.

to be addressed by the government through a proper financing strategy and policy. However, improvements in this type of schooling were far-fetched since the government had already placed the education of Africans squarely on the African people, as the oppressed and poorest section of the society. Over and above the fixed grant, which was paid by the government, all other financing had to come from the Africans. This accounts in part for the lack of adequate facilities, badly trained teachers, high drop-out rates, and poor performance of black pupils.⁸⁶

2.3 Basic education post-apartheid

2.3.1 Transition to democracy

After 44 years of oppression and segregation legislated by the apartheid regime, in 1992 the white people of South Africa finally voted for a transition to full democracy.⁸⁷ The African National Congress (ANC) and other political groups had gained legal status before 1992.⁸⁸ In the same political moment, legislation like the Group Areas Act⁸⁹ and the Land Act⁹⁰ were finally repealed. However, apartheid was not completely abolished until the 1994 elections when black South Africans were granted citizenship.⁹¹

Numerous reasons led to white South Africans having to vote for democracy and opening the political arena. For instance, the country was already not in good standing within the international community after being isolated in February 1990.⁹² Consequently, the country was denied loans, experienced increased inflation, and lacked foreign investors.⁹³ This indicated that the apartheid regime was a total failure, which eventually led to the withdrawal of legitimacy from the apartheid system.⁹⁴ During this period, the reformation of the education system took place that sought to provide education free from segregation and preserve the cultures and languages of

⁸⁶ As above.

⁸⁷ K Schwartzman & K Taylor 'What caused the collapse of apartheid' (1999) 27 *Journal of Political & Military Sociology* at 109-110.

⁸⁸ As above.

⁸⁹ 41 of 1950.

⁹⁰ 27 of 1913.

⁹¹ As above.

⁹² A Minty 'South Africa: From apartheid to democracy' (1993) 24 *Security Dialogue* at 70.

⁹³ As above.

⁹⁴ Schwartzman & Taylor (n 87) 112.

all South African racial groups (the reformed system is discussed and analysed below).⁹⁵

2.3.2 Transformative constitutionalism

Following the demise of colonialism and apartheid, the negotiation of the new Constitutional order commenced, which led to the adoption of the Constitution which is regarded as the supreme legal order of South Africa. The emergence of the constitutional period initiated a continuous project aimed at eradicating the injustices and inequalities of the past.⁹⁶ According to the late Justice Langa, there is no single or unified understanding of what this process of transformation under the Constitution entails.⁹⁷ For this dissertation, the relevant understanding of transformative constitutionalism involves undoing the political, social, and economic injustices brought about by the apartheid and colonial order.⁹⁸ It is also based on the reconstruction of a society based on the founding values of the Constitution.⁹⁹ In addition to social and economic transformation, the process of change is embedded in substantive equality, not only the fulfilment of socio-economic rights.¹⁰⁰ As a means of achieving this social change, socio-economic rights were included in the Bill of Rights to allow equal participation of people in the democracy.¹⁰¹

As pointed out previously, the education received during apartheid did not prepare black learners to be active and contributing members of society, since they were not provided with relevant and essential resources for quality education.¹⁰² The emergence of the constitutional era ushered in a change in the educational system.¹⁰³ This is because the government is now obligated to provide basic education that is of quality to everyone, irrespective of race and social status.¹⁰⁴ Despite the attempt to achieve this transformation envisioned in the Constitution, South Africa remains

⁹⁵ Simbo (n 3) 171.

⁹⁶ Arendse (n 53) 56.

⁹⁷ P Langa 'Transformative constitutionalism' (2006) 17 *Stellenbosch Law Review* at 351.

⁹⁸ S Liebenberg 'Socio-economic rights under a transformative Constitution: The role of the academic community and NGOs' (2007) 8 *ESR Review* at 3.

⁹⁹ As above.

¹⁰⁰ Langa (n 97) 352.

¹⁰¹ Liebenberg (n 98) 4.

¹⁰² Simbo (n 3) 167.

¹⁰³ Simbo (n 3) 172.

¹⁰⁴ R Malherbe 'A fresh start 1: Education rights in South Africa' (2000) 4 *Europe Journal for Education Law and Policy* at 49.

fraught with inequalities and has achieved only a minimal fulfilment of socio-economic rights.¹⁰⁵ As a result, scholars like Modiri argue that the transformation envisaged under this process only facilitates the colonialism experienced under the apartheid regime.¹⁰⁶

2.3.3 The right to basic education

Section 29(1) of the Constitution states the following:

Everyone has the right-

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

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

From the above provision, it is clear that education is not restricted to citizenship, everyone within South African borders has the right to basic education.¹⁰⁷ Furthermore, the right to basic education is distinct from the other socio-economic rights, it is a right that is unqualified. This distinction is clearly outlined in the case of *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others*.¹⁰⁸ In this case, the Court stated that “other socio-economic rights are qualified, and their realisation is not subject to progressive realisation, available resources and reasonable legislative measures but the right to basic education is immediately realisable”.¹⁰⁹ This means, unlike other socio-economic rights that require the State to show that it has allocated resources reasonably, the right to basic education takes priority, despite other budgetary commitments of the State.¹¹⁰ Keeping in mind the provisions of section 36 of the Constitution that permit the limitation of rights, however, such limitation needs to be justified by law of general application. To illustrate, in cases where the state has failed to allocate resources such as furniture to schools needs to be authorised by specific law. In most cases, the State often fail to provide a specific

¹⁰⁵ Langa (n 97) 352.

¹⁰⁶ J Modiri ‘The time and space of critical legal pedagogy’ (2016) 12 *Stellenbosch Law review* at 507.

¹⁰⁷ C McConnachie and others ‘The Constitution and the right to a basic education’ in Veriava and others (n 50) 22.

¹⁰⁸ 2011 8 BCLR 761 (CC).

¹⁰⁹ *Juma Masjid* at para 37.

¹¹⁰ C McConnachie and others ‘The Constitution and the right to a basic education’ in F Veriava and others (n 50) 21-22.

law that justifies such failure because no law justifies the non-provision of essential resources and infrastructure.¹¹¹

2.3.4 Defining basic education

Basic education is not defined in the Constitution, and as a result, to properly understand this concept, international law has been a useful guide. The provisions of section 39 of the Constitution empower the courts to take into account international law when interpreting rights contained in the Bill of Rights. This position was confirmed in the case of *Government of Republic of South Africa & others v Grootboom & others (Grootboom)*,¹¹² where the Court stated that international law is important when interpreting the Bill of Rights, irrespective of whether it is binding or not.¹¹³ The right to basic education under international law is regulated by numerous treaties such as the International Covenant on Social, Economic and Cultural Rights (ICESCR), Article 13 creates an obligation on state parties to make primary education compulsory and free.¹¹⁴ In addition to this treaty, the Convention on the Rights of the Child (CRC) provides comprehensive protection for the right to education.¹¹⁵

Therefore, as a point of departure to understanding what the right to basic education entails, firstly education, in general, is understood to be

the entire process of social life by means of which individuals and social groups learn to develop consciously within and for the benefit of the national and international communities, the whole of their personal capacities, attitudes, aptitudes, and knowledge. This process is not limited to anti-specific activities.¹¹⁶

¹¹¹ C McConnachie and others 'The Constitution and the right to a basic education' in Veriava and others (n 50) 28.

¹¹² 2000 11 SA BCLR 1169 (CC)

¹¹³ *Grootboom* at para 26.

¹¹⁴ United Nations, 'International Covenant on Economic, Social and Cultural Rights' (1966) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (accessed 10 August 2022).

¹¹⁵ United Nations, 'Convention on the Rights of the Child' (1989) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (accessed 10 August 2022).

¹¹⁶ UNESCO 'Recommendation Concerning Education for International Understanding, Co-Operation and Peace and Education Relating to Human Rights and Fundamental Freedoms' <https://www.unesco.org/en/legal-affairs/recommendation-concerning-education-international-understanding-co-operation-and-peace-and-education> (accessed 29 October 2022).

Basic education is then defined as the

a whole range of educational activities in different settings that aim to meet basic learning needs. It comprises both formal schooling (primary and sometimes lower secondary) and a variety of non-formal, informal, public and private educational activities offered to meet the defined basic learning needs of people of all ages.¹¹⁷

The above definition clearly outlines that basic education refers to education that is of an appropriate standard. This approach is also supported by the World Declaration on Education for All.¹¹⁸ Furthermore, General Comment No. 1, provides that the promotion of the right to basic education as contained in the CRC is not only limited to the content of the curriculum, but also the education process and the learning environment where the teaching and learning process takes place.¹¹⁹

In the case of *Moko v Acting Principal of Malusi Secondary School and Others*,¹²⁰ the Constitutional Court relied on the majority judgment in *AB v Pridwin Preparatory School*, in considering the position of international law in relation to the right to education, where it held that basic education ought to be described by reference to the content of the education provided. It noted that basic education is—

a flexible concept which must be defined so as to meet the 'learning needs appropriate to the age and experience of the learner, whether child, youth or adult... and should also provide access to nationally recognised qualifications.'¹²¹

¹¹⁷ Human Sciences Research Council, Nelson Mandela Foundation and Education Policy Consortium (South Africa, *Emerging Voices: A Report on Education in South African Rural Communities* (HSRC Press 2005) at 141.

¹¹⁸ World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs. Adopted by the World Conference on Education for All Meeting Basic Learning Needs Jomtien, Thailand (1990)

Every person child, youth and adult shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.

¹¹⁹ UN Committee on the Rights of the Child (CRC) 'General Comment No 1: Article 29(1): The Aims of education' (2001) <https://digitallibrary.un.org/record/447223> (accessed 25 November 2023).

¹²⁰ [2020] ZACC 30.

¹²¹ [2020] ZACC 30 at 30.

Therefore, basic education must be understood in accordance with its purpose, that is, to develop societies and individuals within the democratic dispensation given the historical struggles of education during apartheid.¹²² Following this is the understanding of necessary basic learning needs, which cover learning tools and learning content, for instance, literacy, numeracy and relevant knowledge and skills.¹²³

Finally, the above-mentioned learning needs require adequate resources, such as trained teachers, classrooms, and so on. From the above discussion, it is clear that the concept of basic education is broad, and what is more important, is that learners must receive the education that will assist them in making use of their inherent and potential capacities.¹²⁴

2.4 Formulation of Section 29(1)(a)

As has already been pointed out, this right is different from other socio-economic rights like the rights to food and water, housing and so on.¹²⁵ Its distinctness emanates from the notion that it is not qualified.¹²⁶ This means that the right to basic education is not limited to the adoption of “reasonable legislative and other measures”.¹²⁷ As a result, the standard of review for this right also differs from the other rights. According to Veriava and Coomans, “*the standard of review necessary for this right places an obligation on the State to prioritise its realisation*” (emphasis added).¹²⁸ Therefore, as part of the realisation of this right, the Government needs to ensure that basic education is accessible to everyone. In order to ensure that the Government fulfils its obligations and meets the prescribed standards of education, the former UN Special Rapporteur formulated a 4A framework/ scheme that provides the scope and nature for the realisation of the right to education.¹²⁹ Therefore, the government must ensure that education is available, accessible, acceptable, and adaptable to everyone.¹³⁰ Put

¹²² *Governing Body of the Juma Masjid Primary School v Essay* 2011 8 BCLR 761 (CC) 6.

¹²³ *Simbo* (n 3) 176-178.

¹²⁴ *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa*

¹²⁵ F Veriava & F Coomans ‘The right to education’ in D Brand & C Heyns (eds) *Socio-economic rights in South Africa* (2005) 62.

¹²⁶ As above.

¹²⁷ As above.

¹²⁸ As above.

¹²⁹ K Tomasevski ‘Human rights obligations: Making education available, accessible, acceptable and adaptable’ (2001) 3 *Right to Education Primers* at 12.

¹³⁰ Tomasevski (n 129) 13.

differently, the education that the government provides must be funded and have adequate resources, together with teachers who are trained (available).¹³¹ Furthermore, such education must not discriminate, and must be physically and economically accessible to all (accessible).¹³² The content of such education needs to be high quality, and not discriminate within a safe schooling environment (acceptable).¹³³ Finally, the education system must be able to meet learner needs and adapt to the changing needs of the society (adaptable).¹³⁴

Despite not mentioning all the extensive protection afforded to the right to basic education, emphasis is placed on basic education as an essential and comprehensive tool for social and economic change globally. And yet, every year there are new cases dealing with educational inequalities in the realisation of this right. For instance, in the case of *Komape v Minister of Basic Education*, the unforeseen death of a five-year-old mainly emanated from the government's failure to provide proper infrastructure (toilets) for the school.¹³⁵

2.5 Conclusion

This chapter sought to provide a detailed demonstration of the historical background of basic education in South Africa. It first outlined the development of education during colonialism and established that the education system did have traits of inequality which manifested greatly during the development of missionary schools.

Even when apartheid was introduced in 1948, there was an unequal distribution of educational opportunities.¹³⁶ Apartheid policies affected black learners and teachers detrimentally through the content of learning, funding, and quality of teachers.¹³⁷ As a result, the education system was racially segregated, and resources were distributed unequally amongst races based on social and economic status.¹³⁸ Most black and

¹³¹ As above.

¹³² As above.

¹³³ As above.

¹³⁴ Tomasevski (n 129) 15.

¹³⁵ *Komape v Minister of Basic Education* 2018 ZALMPPHC 18.

¹³⁶ Simbo (n 3) 167.

¹³⁷ M Ocampo 'A brief history of educational inequality from apartheid to the present' (2004) https://web.stanford.edu/~jbaugh/saw/Lizet_Education_Inequity.html#:~:text=The%20Apartheid%20system%20created%20educational (accessed 08 August 2022).

¹³⁸ A Mbere & P Christie 'The Right to Learn: The struggle for education in South Africa' (1988) 21 *The International Journal of African Historical Studies* at 57.

poor South Africans received an inferior education, which only prepared them to become servants.¹³⁹ Due to a segregated educational system, the funding models were unequal and favoured specific groups. Most black and poor communities received an education of inferior quality.¹⁴⁰

However, one may agree that, despite South Africa's transformative constitutionalism, the aftermath of apartheid is still in existence within our education system, as well as other social structures. Social disparities and inequalities remain within our communities, as Moseneke puts it in the case of the *Head of Department: Mpumalanga Department of Equality and another v Hoërskool Ermelo and others*.¹⁴¹ Therefore, the subsequent chapter will establish that, despite democracy, the education received by poor South Africans remains laced with a component of inequality. This was starkly highlighted when COVID-19 was declared a global pandemic.

¹³⁹ Simbo (n 3) at 168.

¹⁴⁰ D McLaren 'Funding basic education' in F Veriava and others *Basic education rights handbook education rights in South Africa* (2017) 38.

¹⁴¹ 2010 3 BCLR 177 at 45.

Chapter 3: Pre-COVID-19 Crises and the realisation of the right to basic education

3.1 Introduction

Despite approaching three decades of formal democracy, the life chances of a child in South Africa are still determined by race, place, and economic status.¹⁴² This dilemma remains a focus for this chapter about the pre-existing and persistent educational inequalities within a democratic South Africa. Inequality is broad, covering both schooling and policymaking, which includes the conceptualisation of the curriculum and training of teachers.¹⁴³ This inequality is most evident when closely assessing the learning outcomes of children from different schools, whereas a result, Spaully perceives South Africa as a divided nation where poor communities receive education that is not of quality compared to wealthy counterparts.¹⁴⁴ Based on extant literature, the quality of education of the individual is interdependent on labour market prospects.¹⁴⁵

This chapter provides an overview of the pre-existing educational disparities that relate to unequal distribution of resources and will be divided into three sections: the first part will provide a detailed analysis of the training of teachers as well as their distribution; the second part will provide an examination of digital inequality that is prevalent in schools that are located in rural areas; and the last part will provide an overview of the current schooling system in South Africa.

3.2 Distribution of resources

3.2.1 Basic education provisioning

The full realisation of the right to basic education requires a proper provision of resources from the government. This provision forms part of the obligation imposed by section 29. Veriava defines basic education provision as the provision of

¹⁴² N Spaully 'Equality: A price too high to pay' in *South African schooling: The Enigma of inequality* at 1.

¹⁴³ Spaully (n 142) 2-3.

¹⁴⁴ N Spaully 'Poverty & Privilege: Primary School Inequality in South Africa' (2013) 33 *International Journal of Educational Development* at 3.

¹⁴⁵ As above.

educational inputs or resources that are used in educating or teaching learners.¹⁴⁶ The proper provision of these inputs results in the full enjoyment of the right to basic education.¹⁴⁷ The provision of basic education is broad and covers a variety of things such as teachers and textbooks.¹⁴⁸ Most importantly, the provision of learning inputs or resources are essential for addressing inequalities because, during apartheid, most South Africans who were black and from poor backgrounds suffered greatly under the Bantu education policies. Nonetheless, it is both concerning and surprising that the same group that was oppressed under the apartheid regime still suffers with minimal or no provision of basic education. It is clear that this is the legacy of apartheid policy as highlighted in the case of *Governing Body of the Juma Masjid Primary School & Another v Ahmed Asruff Essay NO and Others*.¹⁴⁹ In this case, the Court stated that:

The inadequacy of schooling facilities, particularly for many blacks, was entrenched by the formal institution of apartheid, after 1948, when segregation even in education and schools in South Africa was codified. Today, the lasting effects of the educational segregation of apartheid are discernible in the systemic problems of inadequate facilities and the discrepancy in the level of basic education for the majority of learners.¹⁵⁰

3.2.2 Unequal resource distribution

Resource distribution or allocation can be defined as the provision of essential learning inputs that are necessary for education that is of quality to learners.¹⁵¹ The historical background of the South African schooling system led to numerous advocacies for the proper provisioning of basic education that is of quality. The kind of education that is being advocated for is based on the fulfilment of all “basket of entitlements” necessary for the full realisation and enjoyment of the right to basic education. These entitlements

¹⁴⁶ F Veriava ‘Basic education provisioning’ in F Veriava and others *Basic education rights handbook education rights in South Africa* (2017) 220.

¹⁴⁷ As above.

¹⁴⁸ As above, see also General Comment No 1: UN Committee on the Rights of the Child (CRC) ‘General Comment No 1: Article 29(1): The Aims of education’ (2001) <https://digitallibrary.un.org/record/447223>.

¹⁴⁹ 2011 8 BCLR 761 (CC).

¹⁵⁰ 2011 8 BCLR 761 (CC) at 30.

¹⁵¹ A Molaudzi and others ‘The nexus between the allocation of school resources and learners’ achievement in public schools: A case of Limpopo Province, South Africa’ (2022) 6 *African Perspectives of Research in Teaching & Learning* at 174-175.

include the provision of teachers, textbooks, infrastructure and more.¹⁵² Debates and theories have surfaced amongst scholars about the causes and solutions of educational inequalities. Studies have revealed how teaching and learning resources are distributed unequally in schools and how such unequal distribution prevents learners from fully enjoying their right to education.¹⁵³ To illustrate this, the study conducted by Taylor revealed that the unequal distribution of disciplinary knowledge resources amongst teachers results in weak educational outcomes, especially for children from low-income families.¹⁵⁴ Furthermore, the technological divide between rich and poor learners amounts to educational inequality that in turn hinders the realisation of the right to basic education. This is evident in the study conducted by Duma and others that schools located in remote areas often suffer from digital disparities, mainly because little attention is paid to these schools.¹⁵⁵ These are some of the disparities that have been in existence before the pandemic, and they are further discussed below in detail.

3.2.2.1 Distribution of trained teachers

As already highlighted above, the provision of education further requires the distribution of well-trained teachers. However, one of the major issues that South African schools are facing is a teacher shortage.¹⁵⁶ A recent report by Van der Berg and others predicted that in the coming years, the shortage of teachers will be overwhelming, and requires a quick response from the government.¹⁵⁷ The process that is used across South Africa for the allocation and distribution of teachers in schools is called post provisioning/ post provisioning norms, and it ensures that a certain number of teachers are allocated accordingly in schools.¹⁵⁸

¹⁵² F Veriava 'Basic education provisioning' in Veriava and others (n 146) 223.

¹⁵³ F De Clercq 'The persistence of South African educational inequalities: The need for understanding and relying on analytical frameworks' (2020) 24 *Education as Change* at 1-22.

¹⁵⁴ N Taylor 'Inequalities in teacher knowledge in South Africa' in Spaul & Jansen (eds) *South African Schooling: The enigma of inequality: A study of the present situation and future possibilities* (2019) 263.

¹⁵⁵ N Duma and others 'Digital inequalities in rural schools in South Africa' (2021) 6 *Open Science Journal* at 1.

¹⁵⁶ S Van der Berg and others 'School teacher supply and demand in South Africa 2019 and beyond: A study undertaken for the Department of Education and Training (2019) Research on Socio-Economic Policy at 1-5.

¹⁵⁷ Van der Berg and others (n 156) 125.

¹⁵⁸ F Veriava 'Basic education provisioning' in Veriava and others (n 146) 229-230.

In addition to the above-mentioned process, section 5 of the Employment of Educators Act provides the Head of Department with discretion to determine how educators should be allocated to schools in different provinces.¹⁵⁹ However, since 2002, the Head of Department has been using the 'Post-Provisioning Norms' that allocate educators through the consideration of certain factors, such as the size of classes, poverty of classes and more.¹⁶⁰ Nonetheless, this approach has not been welcomed, mainly because certain factors used when weighing and allocating teachers still favour advantaged schools.¹⁶¹ That is because salaries that teachers receive are determined based on their qualifications and experience, and this favours the functional schools, with qualified and experienced educators.¹⁶² This means that schools located in rural areas predominately receive incompetent teachers who are either unqualified or underqualified.¹⁶³ Unqualified teachers are defined as those teachers that only matric as their highest qualification, whereas, underqualified teachers are those that possess matric and a 2 or 3 years professional qualification.¹⁶⁴ In most cases, these teachers are appointed in subjects such as mathematics, sciences and technology.¹⁶⁵

In 2017 about 5 139 unqualified teachers (3 848) and underqualified (1 291).¹⁶⁶ The recent report provided by the Minister of Education indicated that some provinces located in the Cape are still employing most of the unqualified and underqualified teachers.¹⁶⁷ To illustrate, out of 1 575 teachers employed as of 2021, about 1 028 of those teachers were unqualified and 547 were underqualified.¹⁶⁸ With respect to the underqualified teachers, the government has attempted to address this issue through programmes such as the National Professional Diploma which was implemented to serve as an interim qualification to upgrade underqualified teachers.¹⁶⁹ In addition to

¹⁵⁹ 76 of 1998.

¹⁶⁰ F Veriava 'Basic education provisioning' Veriava and others (n 146) 229-230.

¹⁶¹ As above.

¹⁶² As above.

¹⁶³ J Dlamini and others 'Staffing and retention challenges of teachers in rural schools of Eswatini: The case of the Lubombo region' 19 (2023) *International Journal of Rural Management* at 362

¹⁶⁴ Parliamentary Monitoring Group 'Question NW1938 to the Minister of Basic Education' <https://pmg.org.za/committee-question/6105/> (accessed 25 November 2023).

¹⁶⁵ As above.

¹⁶⁶ Parliamentary Monitoring Group 'Question NW1938 to the Minister of Basic Education' <https://pmg.org.za/committee-question/6105/> (accessed 25 November 2023).

¹⁶⁷ As above.

¹⁶⁸ Parliamentary Monitoring Group 'Question NW837 to the Minister of Basic Education' (2022) <https://pmg.org.za/committee-question/18105/> (accessed 25 November 2023).

¹⁶⁹ As above.

this attempt, there are other programmes such as the Funza Lushaka Bursary Programme aimed at increasing the supply of qualified teachers.¹⁷⁰ However, it is a question as to whether the allocation of teachers based on the above-discussed formula is sufficient for education that is of quality to poor communities that were previously disadvantaged.

In addition to the allocation of teachers based on the above-discussed formula, the content knowledge and development of teachers are discussed briefly below.

a) Teacher content knowledge

Teachers remain one of the central and essential role players within the global education system. For this reason, there is a link between the quality of education that learners receive, and the quality of teachers provided.¹⁷¹ Thus, the content knowledge of teachers remains essential for the full realisation of the right to basic education. This knowledge required from teachers is broad and includes the ability to understand, know, and research the subject and the curriculum.¹⁷²

In recent years, the locus of teachers within the education system has become an area of interest because subsequent poor performances of learners were revealed both by small-scale studies and national assessments.¹⁷³ Studies have revealed performance of learners is connected to classroom pedagogies that is to say for learners to understand mathematics and perform well in it is determined by the teachings they receive.¹⁷⁴ To illustrate, a study conducted by Taylor revealed that there is a reproduction of apartheid inequality within teacher knowledge and this conclusion emanates from the analysis of the Southern African Consortium for Monitoring Educational Quality (SACMEQ 2007). The SACMEQ 2007 tested 406 grade 6

¹⁷⁰ South African Government 'Funza Lushaka Bursary Programme' <https://www.gov.za/about-government/government-programmes/funza-lushaka-bursary-programme> (accessed on 25 November 2023).

¹⁷¹ N Spaul 'South Africa's Education Crisis: The quality of education in South Africa 1994-2011' (2013) *Centre for Development and Enterprise* at 24.

¹⁷² N Taylor 'Inequalities in Teacher Knowledge in South Africa' in Spaul & Jansen (n 154) 263.

¹⁷³ H Venkat & N Spaul 'What do we know about primary teachers' mathematical content knowledge in South Africa? An analysis of SACMEQ 2007' (2015) 41 *International Journal of Educational Development* at 121-130.

¹⁷⁴ M Khosa 'The link between learner performances in early reading literacy and what is happening in the grade 1 classroom' (2022) 12 *South African Journal of Childhood Development* at 1.

mathematics teachers in which the majority of teachers failed the test, which means their content knowledge was below the required band.¹⁷⁵

Furthermore, the ultimate outcomes of this assessment revealed that schools that perform well are those that have teachers who possess strong disciplinary knowledge, while the poor and disadvantaged schools have teachers with limited or weak knowledge.¹⁷⁶ It is without a doubt that the same knowledge that teachers possess is passed down to learners which results in exacerbating the inequalities that already exist.¹⁷⁷ Thus, based on the test outcomes, Taylor contends that:

The majority of Q5 schools are situated in suburban areas where, under apartheid, they served an exclusively white clientele. While the profile of learners in most of these schools now more accurately reflects the country's racial demographics, by and large, they continue to serve the more privileged classes. At the same time, schools situated in townships and rural areas continue to serve the poorest two-thirds of the population, which are almost exclusively of black African descent.¹⁷⁸

The ability of the teacher to instruct a particular subject plays an important role in promoting teaching and learning. And for learner's performance to improve there is a need for the provision of quality education that will prepare them to cope with learning. Therefore, the proper realisation of the right to basic education also entails the improvement of teacher knowledge. And these improvements according to Taylor focus on the building of necessary competency from university-based teacher educators.¹⁷⁹

b) Teacher development

In addition to the above discussion, teacher development remains vital to the distribution of equality and the realisation of the right to basic education. And this is

¹⁷⁵ As above.

¹⁷⁶ Z Vally 'Educational inequality: The dark side of SA's education system' <https://www.thedailyvox.co.za/educational-inequality-the-dark-side-of-sas-education-system-2/> (2019) (accessed 12 December 2022).

¹⁷⁷ As above.

¹⁷⁸ N Taylor 'Inequalities in teacher knowledge in South Africa' in Spaul & Jansen (n 154) 279.

"The school quintiles were divided in terms of the socioeconomic status where Quantile 1 are schools regarded as the poorest and Q5 are the richest schools."

¹⁷⁹ N Taylor 'Inequalities in teacher knowledge in South Africa' in Spaul & Jansen (n 154) 278-280.

possible if teachers from poor-performing schools are also given sufficient access to learning resources and facilities.¹⁸⁰

Transformative constitutionalism places an obligation on the government to ensure that the education system is based on the principle of equity, where everyone within the schooling system is treated equally.¹⁸¹ This entails that the government needs to continually train teachers to prepare them for their teaching responsibilities.¹⁸² In recent years, there have been various initiatives aimed at addressing inequalities within the schooling system through the training of teachers and changing of curricula.¹⁸³

After the demise of apartheid, as a means of improving education, the government introduced Outcomes-based Education in 1998. The introduction of this initiative was mainly to decentralise the curriculum by introducing ways in which teaching, learning and assessment can be conducted.¹⁸⁴ Research revealed that this approach was not successful, because poorly trained teachers struggled to understand it.¹⁸⁵ As a result, the shortcomings of this initiative created gaps in essential learning, such as in the facilitating of lessons.¹⁸⁶ In 2012, a new initiative was introduced, the Curriculum and Assessment Policy Statement (CAPS).¹⁸⁷ Under this initiative, teachers are required to demonstrate fluent reading and focus on metacognitive abilities to encourage students to assess their reading.¹⁸⁸

As pointed out earlier, the performance of learners is determined by how informed teachers are. Other attempts of teacher development include the establishment of a

¹⁸⁰ Y Shalem & F De Clercq 'Teacher development and inequality in schools: do we now have a theory of change' N Spaul & J Jansen (eds) *South African Schooling: The Enigma of Inequality: A Study of the Present Situation and Future Possibilities* (2019).

¹⁸¹ C Hartell and others 'Towards equality and equity in education: Assessing an initiative to strengthen teacher professional development in South Africa (2015) 17 *Journal of International Cooperation in Education* at 72-73.

¹⁸² Hartell and others (n 181) 75.

¹⁸³ Hartell and others (n 181) 74-76.

¹⁸⁴ Hartell and others (n 181) 78.

¹⁸⁵ S Mboyane (2000) 'Education systems needs a total overhaul' (2002) City Press Plus, 29 October,

¹⁸⁶ Hartell and others (n 181) 78.

¹⁸⁷ South African Government 'what is CAPS' <https://www.gov.za/faq/education/what-caps> (accessed 15 January 2023).

¹⁸⁸ As above.

Continuing Professional Teacher Development (CPTD) system.¹⁸⁹ The primary objective of this is to ensure that teachers maintain, improve, and broaden their teaching skills and knowledge. This system is managed by the South African Council of Educators (SACE) and section 7 of the SACE Code of Ethics stipulates that teachers must “keep abreast of educational trends and development”.¹⁹⁰ Previous research has revealed that challenges faced by poor communities often make it impossible for the proper implementation and management of the CPTD.¹⁹¹ These challenges include the lack of adequate support for schools located in those communities.¹⁹² According to Soebari and Aldridge, teachers in rural areas often struggle to translate the skills and knowledge they receive during the CPTD because of insufficient resources and facilities.¹⁹³

As a result, the main emphasis that emerges is, despite the government’s attempt to reform education that reflects the radical transformation envisioned by the Constitution, teacher development approaches in South Africa appear to be faulty because it does not ensure learning that is meaningful for teachers and learners. These shortcomings emanate from the reality that teachers have limited access to resources necessary for quality education and development.¹⁹⁴ As Hartell and others point out, all the attempts to improve teacher development since 1994 have failed to result in a beneficial impact on instruction and learning in the majority of underfunded and overcrowded black township schools.¹⁹⁵

One of the objectives of sustainable development Goal 4 is increasing the supply of qualified teachers by distributing teachers who are trained in disadvantaged communities.¹⁹⁶ However, South Africa’s current state of teacher training and

¹⁸⁹ South African Council of Educators ‘CPTD system’ https://www.sace.org.za/assets/documents/uploads/sace_56165-2016-08-31-CDTP-Brochure.pdf (accessed 25 November 2023).

¹⁹⁰ As above.

¹⁹¹ B Nhlumayo & V Chikoko ‘Continuing Professional Teacher Development (CPTD) in South Africa in the time of COVID-19: Evidence from a school cluster in a rural context’ (2022) 29 *Alternation Interdisciplinary Journal* at 64.

¹⁹² As above.

¹⁹³ T Soebari & J Aldridge ‘Investigating the differential effectiveness of a Teacher Professional Development Programme for rural and urban classrooms in Indonesia’ (2016) 20 *Teacher Development* at 701-722

¹⁹⁴ N Taylor ‘Inequalities in teacher knowledge in South Africa’ in Spaul & Jansen (n 154) 263.

¹⁹⁵ Hartell (n 181) 79.

¹⁹⁶ Sustainable Development Goal 4 <https://www.sdg4education2030.org/the-goal> (accessed 02 January 2023).

development appears to be improbable, mainly due to the nature of our education system, which is deeply rooted in apartheid disparities. As a result, there is a need for an urgent response by the government to address these inequalities that teachers from poor communities face.¹⁹⁷

3.3 Digital Inequalities

As part of unequal resource distribution in schools, digital inequalities appear to be prevalent, particularly in communities allocated in remote areas. The importance of technological advancements in South Africa as a whole remains fundamental for interaction, which proves beneficial for learners within these schools, as well as educators.¹⁹⁸ In terms of General Comment No. 25, the digital environment has the ability to improve the quality of learners receive and encourage inclusive education.¹⁹⁹ In this section, digital inequalities will be discussed to demonstrate how, before the emergence of COVID-19, schools were already struggling with technology.

3.3.1 Information and Communications Technology (ICT)

ICT is ubiquitous both nationally and internationally, and includes computers, internet connectivity and other delivery systems and these are also used in the education field.²⁰⁰ Within the education system, the development and use of ICT are perceived to be essential tools for the system's change and reform.²⁰¹ This transformation entails an expansion of learning not only for learners but also for teachers. For instance, ICT has the power to prepare learners for their place in society by improving their skills and it also improves the pedagogy of teachers.²⁰² It is clear that the provision of education that is of quality also rests on the enhancement and development of ICT in

¹⁹⁷ This study was conducted with specific reference to the Department of Education as a whole, which also covers the functions and contributions of both District and Regional offices. The issue of skilled teachers choosing urban areas over rural areas is not new. There are numerous issues that lead to this, among them includes poor infrastructure and facilities. This requires an urgent response and investment from the government to improve working conditions in rural areas. See Du Plessis & Mestry (n 209).

¹⁹⁸ Duma and others (n 155) 1.

¹⁹⁹ UN Committee on the Rights of the Child 'General comment No. 25 (2021) on children's rights in relation to the digital environment' <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation> (Accessed 26 November 2023).

²⁰⁰ n 198 above.

²⁰¹ J Fu 'ICT in Education: A critical literature review and its implications' (2013) 9 *International Journal of Education and Development using Information and Communication Technology* at 112.

²⁰² Duma and others (n 155) 2.

schools. It is therefore not surprising that most schools located in disadvantaged communities still do not have the necessary ICT equipment and digital literacy training.²⁰³

3.3.2 Digital Divide

The digital divide is simply defined as a social inequality that exists between people in terms of who has access to ICT, how often they use it, and how they can utilise it for various things.²⁰⁴ In South Africa, these digital inequalities are more apparent and became more visible during the pandemic. These are some of the reasons why the digital divide remains prominent in schools that serve black and/or poor communities in South Africa. It is without a doubt that the digital divide is deepening, mainly because digital literacy and infrastructure co-exist. Put differently, the provision and access to ICT infrastructure do not warrant that a learner possesses the necessary skills to utilise the provided ICT infrastructure.²⁰⁵ Therefore, the government's effort of rolling out infrastructure such as computers to some schools located in poor communities does not directly address digital inequalities if both teachers and learners lack digital literacy.

3.3.2.1 Digital development

Digital development refers here to the provision of necessary tools and infrastructure like personal computers, internet, and mobile devices across South African schools. General Comment No. 25, provides that:

States parties should invest equitably in technological infrastructure in schools and other learning settings, ensuring the availability and affordability of a sufficient number of computers, high-quality and high-speed broadband and a stable source of electricity, teacher training on the use of digital educational technologies, accessibility and the timely maintenance of school technologies.²⁰⁶

²⁰³ Duma and others (n 155) 3.

²⁰⁴ Chisango & Marongwe (n 43) 150.

²⁰⁵ Chisango & Marongwe (n 43) 151.

²⁰⁶ UN Committee on the Rights of the Child 'General comment No. 25 (2021) on children's rights in relation to the digital environment' <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation> (accessed 26 November 2023).

However, in South Africa, there is a huge difference between digital development in schools located in urban and rural areas.²⁰⁷ Schools located in rural areas receive little or no attention from the government concerning either funding or resource provision. According to Du Plessis and Mestry, the level of poverty faced by certain communities in South Africa results in schools located in such communities being neglected and not receiving sufficient funding and resources to support their teaching and learning.²⁰⁸ According to the National Education Infrastructure Management System Standard Report in 2021 only 41,80% of schools had computer centres which means that about 58.16% of schools did not have access to computers.²⁰⁹ In addition, about 90 schools in the Eastern Cape did not have electricity.²¹⁰ These are some of the challenges that act as barriers to having access to effective basic education that is of quality. Consequently, these disparities indeed lead to the question regarding what the Constitution dictates with regard to equal access to learning and teaching which compromises equal educational opportunities, where access to technology is scattered.²¹¹

3.3.2.2 Digital literacy

The term 'digital literacy' is not only limited to learners' ability to operate a computer. In addition, learners further need relevant knowledge for appropriate usage.²¹² Gilster's understanding of digital literacy is based on the ability to understand and use the information in different ICT sources.²¹³ The lack of distribution of digital infrastructure constitutes digital illiteracy, where learners lack the skills and the understanding necessary for navigating the transformative landscape of ICT.²¹⁴

²⁰⁷ Duma and others (n 155) 5.

²⁰⁸ P Du Plessis & M Mestry 'Teachers for rural schools – A challenge for South Africa' (2019) 39 *South African Journal of Education* at 50.

²⁰⁹ Department of Basic Education 'National Education Infrastructure Management System Standard Report August 2021' (2021) <https://www.education.gov.za/Portals/0/Documents/Reports/NEIMS%20standard%20reports%202019.pdf?ver=2019-09-27-150623-250> (accessed 25 November 2023).

²¹⁰ As above.

²¹¹ Duma and others (n 155) at 6.

²¹² E Meyers and others 'Digital literacy and informal learning environments: Learn media technology' (2013) 38 *Language Learning & Technology* at 355. See also 'General comment No. 25 (n 199)' States parties should ensure that digital literacy is taught in schools, as part of basic education curricula, from the preschool level and throughout all school years"

²¹³ P Gilster *Digital literacy* (1997) 1.

²¹⁴ Meyers (n 209) 356-357.

Therefore, from the above discussion, when closely assessing the current situation in South Africa when it comes to the use of ICT, one can observe that little or no attention is paid to the development of technology in poor schools and those located in remote areas. This indeed is concerning, because if basic education is meant to prepare learners with that basic knowledge, and there are no efforts made towards ending the digital divide and disparities, this further deprives learners of the potential to become competent and active citizens.²¹⁵

3.4 Reproduction of apartheid in schools

Following a detailed discussion of the state of education before the advent of South Africa's democratic dispensation, one of the major questions that arises is where the state of education under transformative constitutionalism and democracy currently stands. Can it be concluded that within this democratic dispensation educational inequalities have been substantially ameliorated?

Numerous studies have been conducted that point out that regardless of the political transition, the entanglement of race and class remains.²¹⁶ Nonetheless, the African National Congress during the early transition period noted that:

Apartheid education and its aftermath of resistance have destroyed the culture of learning within large sections of our communities, leading to the worst-affected areas to a virtual breakdown of schooling and conditions of anarchy in relations between students, teachers, principals, and the education authorities.²¹⁷

The above analysis supports the notion that South African schools are a tale of two systems, namely, the "dysfunctional" and "functional".²¹⁸

3.4.1 Functional schools

²¹⁵ As above.

²¹⁶ Hartell and others (n 181) 79.

²¹⁷ K Moloi 'Learners and educators as agents of social transformation in dysfunctional South African schools' (2019) 39 *South African Journal of Education* at 1-7.

²¹⁸ N Taylor 'School reform and skills development' in S Brown(ed) *Money and Morality: 2006 transformation audit* (2006) at 73.

According to Townsend, functional schools are all schools that are of excellence.²¹⁹ The schooling conditions of the learners in these schools are good. That is to say, the leadership and management in these schools are in order, and even the outcomes the learners produce are excellent.²²⁰ It is undoubtedly the case that the excellence and order behind these schools emanates from the fact that these schools have adequate resources.²²¹ About 20% of schools that are classified as functional accommodate learners coming from wealthy families and communities.²²² As a result, this creates a huge gap between learners from poor families and communities and those from wealthy backgrounds.

3.4.2 Dysfunctional schools

Dysfunctional schools are those schools located in townships and rural areas that are in a state of chaos, where learners often fail.²²³ Numerous factors lead to these schools being considered dysfunctional.²²⁴ For instance, Christie points out that this chaos and failure are mainly caused by weak teaching approaches together with a lack of provision from the government.²²⁵ On the other hand, it is believed that these schools are usually overcrowded, and their teachers are not well developed and possess a low content knowledge.²²⁶

As it stands, about 80% of South African schools are considered dysfunctional,²²⁷ and black children are still struggling to obtain proper education. It is then evident that black and/or poor South Africans are still far from fully enjoying their rights to education. Indeed, education is in a “state of crisis” that requires a rapid response from the government.

3.5 Conclusion

²¹⁹ T Townsend *Effective schooling for the community* (1994) at 15.

²²⁰ Hartell (n 181) 77.

²²¹ As above.

²²² As above.

²²³ As above.

²²⁴ P De Vos 'Basic education: Democratic South Africa has failed the children' (2015) *Daily Maverick* Available at <https://www.dailymaverick.co.za/opinionista/2015-12-03-basic-education-democratic-south-africa-has-failed-the-children/> (accessed 30 January 2022).

²²⁵ P Christie 'Schools as (dis) organisations: The breakdown of the culture of learning and teaching in South African schools' (1998) 28 *Cambridge Journal of Education* at 283-284.

²²⁶ Molo (n 216) 2.

²²⁷ As above.

The main objective of this chapter was to provide a detailed analysis of the educational inequalities that have been in existence before the emergence of COVID-19. It sought to examine disparities in respect of the distribution of resources in schools. Firstly, it has been established that in addition to the allocation of teachers based on relevant legislation and the post-provisioning formula, the distribution of trained teachers with good content knowledge is essential in schools that were previously disadvantaged during apartheid.

Secondly, within the same vein of unequal distribution of resources, the issue of digital inequality continues to worsen for poor schools. This brings out the notion that the education system is 'a tale of two systems'. This emanates from the fact that almost 80% of schools are characterised by poor physical and social facilities, while other schools are well-resourced and well-managed. This is nothing but the reproduction of the apartheid system in schools, revealing the State's failure to effect transformation as envisioned by the Constitution.²²⁸ Therefore, educational disparities existed before COVID-19, despite the 'radical transformation' anticipated in the Constitution devised nearly three decades ago.

²²⁸ De Vos (n 220).

Chapter 4: The impact of COVID-19 on the right to basic education

4.1 Introduction

The spread of the novel coronavirus began in 2019 in Wuhan, China, and it became a devastating global pandemic.²²⁹ The symptoms of this virus include high fevers, sore throats, coughing and sneezing. Given the number of infections and deaths, the governmental infrastructure and healthcare systems had to operate differently as a result of this epidemic.²³⁰ With the redefined ways in which the government operated, the educational system was no exception.²³¹ Numerous strategies and approaches were implemented to curb the spread of the virus. For instance, restrictions were put in place like the banning of alcohol and national lockdown as means of curbing the exponential spread of COVID-19.

This chapter seeks to demonstrate how the strategies and approaches implemented by the government exacerbated the already existing educational inequalities. The first part of this chapter provides a brief overview of the history of COVID-19 in South Africa. This is done by discussing the recording of the first case in South Africa that eventually led to a national lockdown and further providing a detailed discussion of the Department of Basic Education's response to COVID-19 and education. The second part then analyses the impact of COVID-19 on basic education. In general, COVID-19 had numerous impacts on basic education, but in this section, learning loss and learning through family assistance will be discussed. In the third part, educational inequalities that were widened and deepened will be discussed. Emanating from the previous chapter, this section provides a detailed analysis of unequal resource distribution, covering both the technological content knowledge of teachers and digital inequality. The fourth part of this chapter demonstrates how inequality proceeded when schools were reopened. Finally, in the last part of this chapter, the human right-based approach is used to ascertain if the right to basic education was fully realised during the pandemic.

4.2 History of COVID-19 in South Africa

²²⁹SA Corona Virus Online Portal 'Contextualizing Lockdown' (2020)
<https://sacoronavirus.co.za/2020/07/20/contextualizing-lockdown/> (accessed 01 February 2023)

²³⁰ As above.

²³¹ As above.

4.2.1 The first case of COVID-19

On March 5th, 2020, the first coronavirus case was documented in South Africa. Since then, a deliberate effort has been made by all levels of government to ensure that the virus's spread was stopped, and the number of infections was kept as low as possible.²³² The protection of the general populace was the main objective of this operation. To accomplish this, certain policies and procedures were then implemented. The four phases of readiness, containment, mitigation, and recovery were used strategically in all planning efforts to stop the spread of the virus.²³³ On March 15, 2020, the president announced a state of disaster. Several measures were then implemented, including the instant lockdown of the nation.²³⁴ In addition, alcohol and cigarette products were actively prohibited, and the Level 5 lockdown resulted in deserted streets and a halt to commercial activity throughout South Africa.²³⁵

4.2.2 National lockdown

As already mentioned above, the other measure adopted by the government was a national lockdown. This lockdown was in accordance with the Disaster Management Act.²³⁶ Lockdown is defined as

a set of measures aimed at reducing transmission of COVID-19 that are mandatory applied indiscriminately to a general population and involve some restrictions on the established pattern of social and economic life.²³⁷

In South Africa, the implementation of the lockdown entailed that all services that were considered not essential operated from home and interactions ceased.²³⁸ To illustrate, there were closures of schools, restaurants, and more.²³⁹ Nonetheless, other

²³² As above.

²³³ As above.

²³⁴ 'Statement by President Cyril Ramaphosa on escalation of measures to Combat Covid-19 Epidemic' (2020) <http://www.dirco.gov.za/docs/speeches/2020/cram0323.pdf> (accessed 1 February 2023).

²³⁵ As above.

²³⁶ 57 of 2002.

²³⁷ N Haider and others 'Lockdown measures in response to COVID-19 in nine Sub-Saharan African countries' (2020) 5 *BMJ Global Health* at 2.

²³⁸ SA Corona Virus Online Portal 'Contextualizing Lockdown' (2020)

<https://sacoronavirus.co.za/2020/07/20/contextualizing-lockdown/> (accessed 01 February 2023)

²³⁹ It also included prohibition of gatherings of >100 people. closure: (i) schools, colleges and universities. 27/3 – closures: (i) non-essential shops; (ii) restaurants, bars, and cafes; (iii) recreational parks and facilities. Prohibition of all gatherings accompanied the country moving to Level 4. Certain industries reopened and more workers were allowed to go to work. More shops opened. Sales of alcohol

categories of individuals were exempt from this measure, for instance, health workers, and those working in the banking sector.²⁴⁰ The impact of these restrictions did not only affect South Africans economically, but studies revealed that even psychologically people were affected.²⁴¹ According to Adebisi and others, other effects of COVID-19 included an increase in violence against women and children.²⁴² For the purpose of this analysis, the impact caused by the pandemic on the education system will be explored further below.

4.2.3 Response of the Department of Education

Emanating from the national lockdown measures, the Minister of Basic Education announced the closures of schools from the 18th of March to resume on the 14th of April 2020, subject to the success of measures in curbing the spread of the virus.²⁴³

The school closures greatly interrupted learning for the majority of South African learners. As means of ensuring continuous learning, the Department of Basic Education introduced numerous initiatives to ensure continuous learning.²⁴⁴ In addition to the Department's effort, stakeholders within the educational sectors collaborated to optimise learning outcomes and guarantee that learning is continued in homes.²⁴⁵ Learners were provided with education programmes and other curriculum support resources through the use of various methods and media platforms for various subjects and grades.²⁴⁶ The plan adopted by the Department of Education can be summarised as follows:

and cigarettes remained prohibited. Restaurants, bars, cafes and recreational parks and facilities remain closed. Schools, colleges and universities remain closed except for controlled return of final year medical students. Haider (n 206) at 5.

²⁴⁰ 'Statement by President Cyril Ramaphosa on escalation of measures to combat Covid-19 Epidemic' (2020) <http://www.dirco.gov.za/docs/speeches/2020/cram0323.pdf> (accessed 1 February 2023).

²⁴¹ See T Greyling and others 'The good, the bad and the ugly of lockdowns during Covid-19' (2021) 16 *PLoS ONE*.

²⁴² B Adebisi and others 'The Negative Impacts of COVID-19 Containment Measures on South African Families - Overview and Recommendations' (2021) 14 *The Open Public Health Journal* 233.

²⁴³ Media Releases 'Statement by the Minister of Basic Education, Mrs, Angie Motshekga at the inter-ministerial media briefing on the Covid-19 following the announcement by President Cyril Ramaphosa' (16 March 2020).

<https://www.education.gov.za/Newsroom/MediaReleases/tabid/347/ctl/Details/mid/9134/ItemID/7907/Default.aspx> (accessed 3 February 2023).

²⁴⁴ Statistics South Africa 'Education Series Volume VIII COVID-19 and barriers to participation in education in South Africa' (2020) <https://www.statssa.gov.za/publications/Report-92-01-08/Report-92-01-082020.pdf> (accessed 3 February 2023).

²⁴⁵ As above.

²⁴⁶ As above.

A) Under the COVID-19 Learner Support, a multi-media learner support initiative in collaboration with the public radio and television broadcaster (SABC). In addition to 12 national and eight regional radio stations, it also offered lessons on three public television stations. B) Lessons that support the curriculum were made available online, students have access to textbooks and teacher manuals, and agreements were made with telecommunications platforms to waive subscription fees and data expenses in order to make educational resources available to learners. C) The DBE updated its web profile. This website uploaded the necessary study material for all grade levels. And parents were advised on how to support their children's learning. D) Multimedia materials supported by mobile applications were made available on the DBE website. E) Email and WhatsApp feeds were sent to teachers who were responsible for teaching, reading and for the management of their schools with advice about how to manage their children's learning challenges. F) Advice for how to resume school feeding in contexts where this was needed.²⁴⁷

With South Africa's struggles of development and inequality, not all learners had access to these programmes and school support materials.²⁴⁸ The consequent impact of COVID-19 is further discussed below.

4.3 Impact of COVID-19 on basic education

4.3.1 Learning loss due to school closures

When schools were closed during Level 5 lockdown, there were two ways in which learning was set to proceed, namely, via online learning, or learners had to be assisted by their families to ensure continuous learning.²⁴⁹ The effectiveness of this approach was, however, minimal given that the majority of teachers and learners were unprepared for this online teaching and learning.²⁵⁰ As a result, the subsequent

²⁴⁷ C Soudien and others 'The impact of COVID-19 on a fragile education system: The case of South Africa' in Reimers (n 17) 309-310.

²⁴⁸ Statistics South Africa 'Education series Volume VIII COVID-19 and barriers to participation in education in South Africa' (2020) <https://www.statssa.gov.za/publications/Report-92-01-08/Report-92-01-082020.pdf> (accessed 3 February 2023).

²⁴⁹ C Soudien and others 'The impact of COVID-19 on a fragile education system: The case of South Africa' (n 17) 312.

²⁵⁰ As above.

paragraphs provide a comprehensive analysis of the two major issues that hindered the effectiveness of online learning and self-learning within families.

4.3.1.1 Online learning

As already mentioned above, online learning was one of the measures that the Department of Basic Education resorted to during the lockdown. The effectiveness of this measure largely rested on the proper provision and availability of ICT. In addition to this, teachers and learners needed sufficient knowledge and skills on how to operate digital tools. These skills remain important skills during this period of the Fourth Industrial Revolution.²⁵¹ Soudien and others indicate that both teachers and learners were immediately placed into a paradigm of education with which few had previous experience.²⁵² Apart from this, most public schools in South Africa did not have enough resources and could not respond well to this new way of teaching and learning.²⁵³ To illustrate, the 2021 report by the National Education Infrastructure Management System indicated that out of 23 876 schools in South Africa, only 4 738 schools had internet connections for teaching and learning this entails about 19 138 schools did not have internet connections for teaching and learning.²⁵⁴

The study that was conducted by Chisango and Marongwe, proved that teachers had limited ICT skills.²⁵⁵ The lack of skills among teachers is caused by not receiving sufficient training, some obtained their qualifications almost 25 years ago when universities did not have all the relevant ICT equipment.²⁵⁶ In addition to teachers' unpreparedness, previous studies have indicated that in the majority of South African homes, there is very little access to computers and the internet.²⁵⁷

a) *Challenges of online learning*

²⁵¹ Chisango & Marongwe (n 43) 150.

²⁵² As above.

²⁵³ J Monareng and others 'The rise in online learning in South African schools due to the coronavirus pandemic' (2020) 18 *Gender & Behaviour* at 16753

²⁵⁴ Department of Basic Education 'National Education Infrastructure Management System Standard Report August 2021' (2021)
<https://www.education.gov.za/Portals/0/Documents/Reports/NEIMS%20standard%20reports%202019.pdf?ver=2019-09-27-150623-250> (accessed 25 November 2023).

²⁵⁵ Chisango & Marongwe (n 43) 158.

²⁵⁶ As above.

²⁵⁷ N Spaull & S Van der Berg 'Counting the cost: COVID-19 school closures in South Africa and its impact on children' (2020) 10 *South African Journal of Childhood Education* at 8.

Having to switch from a normal and traditional way of learning in a classroom to virtual learning changed the entire learning and teaching experience.²⁵⁸ One of the challenges in this regard is that learners were not provided with the necessary tools for learning, which resulted in them failing to catch up with other learners, with some lacking basic digital literacy.²⁵⁹ Furthermore, learners come from different backgrounds, meaning that they all responded differently to this paradigm. This is to say, learners that come from less privileged backgrounds were left behind, because there was no stable internet connection, nor tools to assist them in their homes. Not to mention that the prices of data in South Africa are high which severely curtailed online teaching and learning.²⁶⁰

The approach to online teaching and learning was opposed by numerous people because they foresaw the reality of it exacerbating inequalities in schools since digital learning was not going to be equally available to all learners.²⁶¹ This to a certain extent turned out to be a reality because some learners suffered greatly during the lockdown, and some were left out. Therefore, these challenges collectively indicated that the progression of online learning was not successful. Instead, it contributed to exposing the digital divide and inequality amongst South African schools. From this, it can be deduced that learners from disadvantaged backgrounds and communities could not proceed with learning and the majority of these learners are from dysfunctional schools that serve mostly black learners.

4.3.1.2 Self-learning with family support

The first form of education that a child encounters is generally the one received from home through family support.²⁶² As a result, a home learning environment is defined as “the context in which children first acquire the literacy and numeracy skills that equip them to make sense of, describe and participate in the world”.²⁶³ This entails that for

²⁵⁸ Monareng and others (n 253) 16755.

²⁵⁹ Monareng and others (n 253) 16756.

²⁶⁰ Monareng and others (n 253) 16757.

²⁶¹ T Mukeredzi and others ‘Student bodies day E-Learning Is unaffordable and elitist’ (*University World News* 22 April 2020)

<https://www.universityworldnews.com/post.php?story=20200422075107312> (accessed 5 February 2022).

²⁶² C Moodley and others ‘Learning at home for Grade 1 learners in disadvantaged communities: Insights from the Sandbox@Home COVID-19-response intervention’ (2022) 12 *South African Journal of Childhood Education* at 1.

²⁶³ F Niklas ‘The sooner, the better: early reading to children’ (2016) 6 *SAGE Open* at 1-2.

a home to be a conducive environment for learning, resources, activities, and parental engagement are essential.²⁶⁴ However, for some learners, home was not a conducive environment for their learning. This is evident from the study conducted by StatsSA which revealed that:

Most households did not have digital assets such as laptops and tablets at home that would allow learners to learn remotely using digital tools. While cellphone ownership was high (91,3%) in 2020 among all households with children aged 5–24, computer ownership has remained relatively low (24,7%). Furthermore, seven out of ten (70,5%) children attending Grade 7 did not own mobile phones. In 2020, close to seven per cent of households with individuals aged 5–24 had access to the internet at home while most households accessed the internet via smartphones (66,8%).²⁶⁵

From this, it is clear that home was not a conducive environment for certain learners, mainly because home lacked relevant resources that could properly facilitate virtual learning. Furthermore, it has been revealed that the quality of support learners received at home was dependent on the occupational status and educational level of parents, that is to say, learners from poor backgrounds with uneducated parents received minimal or no support for their learning.²⁶⁶ This was not a surprise because already the type of education a child receives is now determined by the socio-economic status of parents.

4.4 School closures: Deepening and widening inequalities

4.4.1 Unequal resources

One of the most visible inequalities that COVID-19 exacerbated was unequal resources available to support continuous learning during the lockdown. The previous chapter already provided a detailed account of how unequal distribution of resources remains prevalent in most schools, which reveals how the right to basic education as

²⁶⁴ Moodley and others (n 230) 2-3.

²⁶⁵ Statistics South Africa, 'How COVID-19 Changed the Way We Learn.' (2022) <https://www.statssa.gov.za/?p=15197> (accessed 5 February 2023).

²⁶⁶ E Treviño and others 'Socioeconomic status, parental involvement and implications for subjective well-being during the global pandemic of Covid-19' (2021) 6 *Frontiers in Education* at 2.

contemplated in the Constitution is not fully realised for learners from poor communities.

4.4.1.1 Technological pedagogical content knowledge

One of the major concerns raised in Chapter 3 is the inequality that exists in the distribution of trained teachers with good content knowledge. The use and knowledge of technology being central to the developments brought about by the Fourth Industrial Revolution makes technological literacy an important part of basic education.

However, the success and effectiveness of digital learning also rests on the improved technological content knowledge that teachers possess.²⁶⁷ The main idea of this knowledge, according to Mishra and Koehler, entails the understanding of the concepts through the use of technology and relevant pedagogical techniques to teach content through technology.²⁶⁸

Already, the inequality that exists as part of a teacher's content knowledge has been a great concern for the past decades. This inequality becomes more evident when one closely observes the output of children after receiving the so-called "quality education" envisioned by the Constitution. In the same vein, how teachers teach online profoundly affects how learners will learn during the pandemic.²⁶⁹

Therefore, against this background, when teachers and learners were forced to online learning, this widened the extant learning gap. This became an issue for the schools located in regions that have socioeconomic issues such as high unemployment rates and lack of access to resources and the majority of its residents live below the poverty line.²⁷⁰ Furthermore, Moodley and others²⁷⁰ revealed that during online learning:

limited ICT skills might be a hindrance to the adoption and use of instructional technology, and some of the teachers relied on the learners when using technology due to their limited ICT skills. Participants felt uncomfortable talking about the challenge of limited ICT skills since they viewed this as an

²⁶⁷ M Skhephe 'Teachers' Readiness for E-Learning during the COVID-19 Pandemic, South Africa' (2022) *Massive Open Online Courses* 1-5.

²⁶⁸ P Mishra & Koehler 'Technological pedagogical content knowledge: A framework for integrating technology in teachers' knowledge' (2006) 108 *Teachers College Record* at 1029.

²⁶⁹ M Sari & H Keser 'Classroom teachers' online teaching experiences during COVID-19 pandemic: the perspective of the technological pedagogical content knowledge' (2021) 5 *Journal of Pedagogical Research* at 250-252.

²⁷⁰ Chisango & Marongwe (n 43) at 154.

embarrassing situation. Teachers and school principals all agreed that inadequate ICT skills among teachers were a hindrance to the use of ICT in teaching and learning. As a result, they reiterated that some of them had inadequate ICT skills. It also became apparent that in some of the schools, only Grades 10 to 12 teachers were trained on how to use ICT in teaching and learning, and the rest of the teachers were not.²⁷¹

One of the questions that emerge is whether teachers from schools that are classified as “functional” encountered the same problem. It proved instead to be much easier for these learners and teachers to migrate to online learning, because they were well-equipped, where even the teachers possess good technological content knowledge.²⁷² This highlights the severity of the digital divide in South Africa and within the schooling system in general.

4.4.1.2 Digital Inequality during lockdown

In addition to the teacher's knowledge of technology, one of the inequalities that became more visible is digital inequality. Chapter 3 highlighted how schools located in poor communities suffer, especially with technology and its development. One of the major contributory factors that exacerbated this inequality was the limited or lack of access most learners coming from underprivileged communities experienced. When online teaching and learning became prevalent, learners had to rely on their resources.²⁷³ According to StatsSA, in South Africa, less than 10% of households had a proper internet connection in 2020, with Limpopo Province being the least connected. In addition to not having an internet connection, most learners had no digital devices to facilitate online learning.²⁷⁴ It is without a doubt that these learners were at risk of falling behind. Therefore, during lockdown, the government failed to ensure that all learners received education equally and timeously. It remains clear that previously disadvantaged and vulnerable groups remain side-lined through policies like they used to under the apartheid regime.

²⁷¹ Chisango & Marongwe (n 43) 158.

²⁷² L Le Grange 'Covid-19 pandemic and the prospects of education in South Africa' (2020) 51 *Prospects* at 432.

²⁷³ Statistics South Africa 'How COVID-19 Changed the Way We Learn.' (2022) <https://www.statssa.gov.za/?p=15197> (accessed 5 February 2023).

²⁷⁴ As above.

4.5 Reopening of schools without sufficient resources

The Department of Education announced the reopening of schools and one of the essential obligations that rest on the government is to guarantee that learners continue to enjoy their right to education in schools and that everyone on the school grounds is safe.²⁷⁵ To keep up with this obligation, the United Nations provides a framework that was used to determine states' readiness to reopen schools and took into account the policy, financing, safe operations, learning, reaching the most marginalised and well-being/protection.²⁷⁶

Upon the reopening of schools, numerous protective measures were adopted to ensure the safety of learners, such as the provision of water and sanitation throughout South Africa.²⁷⁷ The sudden reopening of schools was not welcomed by some stakeholders, due to existing disparities that form the basis of the schooling system in South Africa. This is because the schools with bathrooms and running water were going to be opened first, while the ones without, waited for government to provide for water and sanitation.²⁷⁸ However, if the government failed to address the digital teaching and learning gap exacerbated by COVID-19, chances of providing a safe learning environment were also minimal. This is evident from the issues that arose when the school opened, when the government could not keep the promise of reopening the meal programme, which further required the Court to intervene to enforce its mandate.²⁷⁹

4.6 Human rights obligations

Emanating from previous chapters, the right to basic education still places an obligation on the state to immediately realise it. That is to say, irrespective of the

²⁷⁵ Amnesty international, 'Document' (www.amnesty.org February 2021)

<https://www.amnesty.org/en/documents/afr53/3344/2021/en/> (accessed 7 February 2023).

²⁷⁶ UNESCO, UNICEF, the World Bank, the World Food Programme and UNHCR, 'Framework for Reopening Schools' (www.unicef.org June 2020) <https://www.unicef.org/documents/framework-reopening-schools> (accessed 7 February 2023).

²⁷⁷ 'Minister Angie Motshekga: Coronavirus Covid 19 Preparations for Re-Opening of Schools | South African Government' (www.gov.za May 2020) <<https://www.gov.za/speeches/minister-angie-motshekga-coronavirus-covid-19-preparations-re-opening-schools-19-may-2020>> (accessed 7 February 2023).

²⁷⁸ M Baloyi 'The paradox of the reopening of schools under the lockdown – An exposure of the continued inequalities within the South African educational sector: A theological decolonial view' (2021) 77 *HTS Teologiese Studies/Theological Studies*.

²⁷⁹ *Equal Education and Others v Minister of Basic Education and Others* 2021 1 SA 198 (GP).

emergence of COVID-19, the government is not exempted from this obligation.²⁸⁰ Due to the nature of this right, a human right-based approach is necessary in order to determine whether indeed the State tried to uphold this right amid the pandemic.

4.6.1 Human right approach

The right to basic education is one of the fundamental rights that are comprehensively protected in terms of both South African law and international law. Emerging from the framework outlined in Chapter 2, this analysis commences by highlighting that section 29 of the Constitution guarantees everyone the right to basic education which is immediately realisable.²⁸¹ In addition to this, the international human rights treaties also protect this right, for instance, Article 13 of the International Covenant on Economic, Social and Cultural Rights.²⁸² As a result, through the application of the 4 A Scheme as contained in General Comment No. 13, the contents of this right can easily be understood and analysed.²⁸³

4.6.1.1 UN Special Rapporteur on the right to education

Following the impact COVID-19 was having on states, the Special Rapporteur on the right to education undertook to examine issues that are important in terms of human rights. This examination served to ensure that the States' responsive measures to the pandemic did not lead to the violation of the right to education and/or exacerbate inequalities.²⁸⁴ The human right-based approach to the crisis as recommended by the Special Rapporteur included the integration of the policy framework as a response to the pandemic with the 4A scheme framework (availability, accessibility, acceptability

²⁸⁰ S Fredman 'A human rights approach: The right to education in the time of Covid-19' (2021) 92 *Child Development* at 901.

²⁸¹ See Chapter 2.

²⁸² International Covenant on Economic, Social and Cultural Rights (OHCHR1976) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights#:~:text=Article%2013> (Accessed 21 February 2023).

²⁸³ UN Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education (1999) [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d\)GeneralCommentNo13Therighttoeducation\(article13\)\(1999\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d)GeneralCommentNo13Therighttoeducation(article13)(1999).aspx) (accessed 21 February 2023).

²⁸⁴ Special Rapporteur, 'A/HRC/44/39: Right to Education: Impact of the Coronavirus Disease Crisis on the Right to Education – Concerns, Challenges and Opportunities Report of the Special Rapporteur on the Right to Education' <https://www.ohchr.org/en/documents/thematic-reports/ahrc4439-right-education-impact-coronavirus-disease-crisis-right> (accessed 21 February 2023).

and adaptability).²⁸⁵ Furthermore, the report recommended the establishment of emergency education readiness within national education systems and the provision of training for all educational planners. These plans ought to be founded on ensuring the right to education for everyone, as well as the 4A scheme framework.²⁸⁶

4.6.2 Application of the Human right based approach

4.6.2.1 Availability

This calls on the government to establish adequate numbers of operational educational institutions within the state party's territorial authority.²⁸⁷ This will require numerous infrastructure and resources to be made available to these educational institutions. This further extends to the distribution of trained teachers and all relevant teaching materials. If the realisation of the right to basic education requires this, it follows that, even during the pandemic and the transition to online learning, the government ought to have ensured that resources are available to everyone. From the above discussion, it is apparent that not everyone fully enjoyed the right to basic education, because some learners did not have an internet connection, and some did not have relevant devices.

4.6.2.2 Accessibility

The government is further required to ensure educational institutions that are accessible to everyone and free from any form of discrimination.²⁸⁸ Accessibility of education broadly covers the provision of education to everyone equally and affordably.²⁸⁹ One of the main reasons for opposing the transition to online learning was due to the fact that mobile data in South Africa is expensive, and some could not afford data to support their digital learning. During the pandemic, education was provided unequally amongst learners, and some could not afford education during that time.

²⁸⁵ As above.

²⁸⁶ As above.

²⁸⁷ UN Committee on Economic, Social and Cultural Rights 'General Comment 13: The Right to Education' (1999)

[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d\)GeneralCommentNo13TheRighttoEducation\(article13\)\(1999\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d)GeneralCommentNo13TheRighttoEducation(article13)(1999).aspx) (accessed 20 February 2023).

²⁸⁸ As above.

²⁸⁹ As above.

4.6.2.3 Acceptability

The government is required to provide education in substance, which means that it must be appropriate and of good quality.²⁹⁰ One cannot conclude that during COVID-19 learners were given an education that was of quality if most teachers from dysfunctional schools lacked the relevant technological content knowledge.

4.6.2.4 Adaptability

The policies and programmes that are adopted by the government need to be in line with the transformative needs of societies and also respond well to the needs that diverse learners have.²⁹¹ The government's response during the pandemic did not embody the component of adaptability, instead, it indicated how the poor and or black communities continue to be side-lined by government policies.

The government did not prioritise human rights when it responded to the pandemic. This is visible from its failure to provide the necessary resources to facilitate continuous learning for all. This alone is evidence that the government often neglect fundamental human rights when adopting policy. Therefore, it is without a doubt that the government failed to promote, fulfil, and protect the right to basic education during the pandemic, especially for vulnerable individuals. To illustrate, in the case of *Equal Education and Others v Minister of Basic Education and Others*, after reopening schools and promising to resume the nutrition scheme, the government failed to do so which amounted to a violation of its constitutional duty.²⁹²

4.7 Conclusion

In conclusion, this chapter sought to provide an analysis of strategies and approaches implemented by the government that exacerbated the already existing educational inequalities. This analysis began with a historical overview of COVID-19 in South Africa ranging from the first case that was reported to national lockdown. Within the same vein, the Department of Basic Education's response was discussed. Furthermore, the impact on basic education was also discussed and analysed through the assessment of learning loss and self-learning through family assistance. Following

²⁹⁰ As above.

²⁹¹ As above.

²⁹² 2021 1 SA 198 (GP).

the impact of COVID-19, educational inequalities that were widened and deepened were discussed by taking into account unequal resource distribution covering both technological content knowledge of teachers and digital inequality. Finally, this chapter demonstrated how inequality proceeded when schools were reopened and provided a human right based approach in analysing if indeed the Department's response to the pandemic did uphold the right to basic education as one of the fundamental human rights.

This chapter discussed the deleterious impact of COVID-19 on the South African fragile education system and the inequalities that remain in South African education. This further revealed how human rights are neglected, and that such failures hinder the proper development of a child.²⁹³

²⁹³ *AB and Another v Pridwin Preparatory School and Others* 2020 ZACC 12.

Chapter 5: Conclusion

5.1 Introduction

The main aim of this study was to provide insight into the impact of the pandemic on the realisation of the right to basic education as one of the fundamentally protected rights. This insight focused on inequalities in the educational systems that arose as a result of the emergence of the pandemic. It is believed that this study will contribute to the ongoing research on addressing pre-existing inequalities in accessing education. Drawing from this aim, this dissertation has been divided into five chapters. The first chapter addressed the historical development of the right to basic education within three different eras (colonial, apartheid, and democratic eras). The second chapter examined the existing educational inequalities. The last chapter addressed the impact of COVID-19 on the right to basic education. The summary of these chapters is provided below.

5.2 Background of the right to basic education

Chapter 2 provided a detailed analysis and examination of the right to basic education and its realisation. This analysis is based on the historical development of basic education during three different eras namely the colonial, apartheid, and democratic eras. This analysis is essential because it will assist in tracing the development of inequalities and how they proceed to find their way into the current education system.

This analysis traced the introduction of education in 1658, which was aimed at indoctrinating slaves with Christianity and Dutch languages.²⁹⁴ The introduction of this education system taught and prepared slaves to submit to and respect the ones in authority.²⁹⁵ The issue of inequality found its way in 1663 when the second school was opened mainly for children of the colonists which was separate from that of slaves.²⁹⁶ The establishment of this schooling system institutionalised inequality that was based on race and class.

²⁹⁴ Arendse (n 53) 24.

²⁹⁵ As above.

²⁹⁶ Molteno (n 51) 22.

During apartheid, the patterns of inequality were further perpetuated through the enforcement of certain policies. After 44 years of struggle and oppression brought on by apartheid, the education system finally was reformed through the provision of education that was free from any form of segregation.²⁹⁷ This chapter concluded that, irrespective of education reform that took place during the apartheid era, the aftermath of apartheid is still in existence within our education system and other social structures. That is to say, the majority of black and/or poor South Africans still receive poor education that is characterised by colonial and apartheid disparities.

5.3 Pre-COVID-19 crises and the realisation of the right to basic education

Chapter 3 of this dissertation sought to examine pre-existing and persistent educational inequalities within democratic South Africa. This examination focused mainly on the unequal distribution of resources. The full realisation of the right to basic education also entails a proper provision of learning inputs such as teachers and textbooks.²⁹⁸ Therefore, section 29 requires the distribution of well-trained teachers who possess good discipline knowledge but that is not the case in most South African schools. Further, technology has been another resource essential for teaching and learning, however, the strong division that exists between rich and poor learners exacerbates educational inequalities.

5.4 The Impact of COVID-19 on the right to basic education

Chapter 4 of this dissertation provided a detailed analysis of the impact that COVID-19 had on the right to basic education. This analysis begins by tracing the first case that was reported in South Africa and how lockdowns were implemented to curb the spread of the virus. As a result, the governmental infrastructure and healthcare systems had to operate differently because of this epidemic.²⁹⁹ With the ways in which the government redefined its mandate, the educational system was no exception.³⁰⁰ Following this, the Department of Education sought ways to ensure continuous education for all, however, the measures taken did not accommodate the majority of

²⁹⁷ Simbo (n 3) 168

²⁹⁸ F Veriava 'Basic education provisioning' in Veriava and others (n 146) 220.

²⁹⁹ As above.

³⁰⁰ As above.

learners. This led to learning loss for most learners from poor communities, since education was only accessible through digital platforms or learning with family assistance.

Emanating from the pre-existing inequalities that were discussed in **Chapter 3**, the impact of COVID-19 analysis involves the examination of unequal resource distribution covering both the technological content knowledge of teachers and digital inequality. Finally, this chapter demonstrated how inequality proceeded when schools were reopened and provided a human right based approach in analysing if indeed the Department's response to the pandemic did uphold the right to basic education as a fundamental human right.

Following this analysis, **Chapter 4** concluded that the impact of COVID-19 was severe on the South African fragile education system. This impact went as far as unveiling what is believed has been put to an end, namely inequalities in education. This further revealed how human rights are neglected and that such failures hinder the proper development of a child.

5.5 The contribution of this mini-dissertation

One of the major goals that most democratic states often strive to achieve is upholding and maintaining the principle of equality. And the application of this principle extends further to social institutions like schools. In this dissertation, the right to basic education was briefly examined and it became evident that South African education is deeply rooted in the past injustices of apartheid, which became exacerbated upon the emergence of COVID-19.

Following long suffering and oppression during the colonial and apartheid eras, one of the earnest expectations that South Africa had was a transformed society as promised by the democratic government and the Constitution. This transformation involves nothing other than the process of undoing all the aftermath effects that were brought on by apartheid and colonialism. To illustrate, the above analysis revealed how during the apartheid era, the content of education received by learners differed between races and further extended to the training and distribution of teachers. Therefore, the transformative nature of the Constitution promises the provision/realisation of basic education that is based on equal distribution and allocation of learning inputs

regardless of social status and race. Approaching almost three decades of formal democracy, only minimal change can be seen within the education system, which means that the majority of South African learners are still clinging to the promise of transformation that is centred on equality as envisioned in the Constitution. This is more visible when closely analysing the schooling conditions of learners located in poor communities. As a result, this dissertation contends that the South African schooling system is based on two different systems, whereby learners from disadvantaged communities receive a poorer education than the privileged few. It is clear that the South African education system is still deeply rooted in apartheid policy and that the democratic government is continuously failing to give effect to the transformative nature of the Constitution.

When COVID-19 was declared a global pandemic, this dissertation revealed how this pandemic exacerbated inequalities that were already in existence with respect to the distribution of resources. To date, the resources necessary for the provision of basic education are still distributed unequally amongst learners from poor communities despite having the quantile system that is aimed at ensuring that schools from poor communities receive preference.³⁰¹ These resources further extend to the provision of all the ICT equipment to keep up global technological advancement in teaching and learning. With all these issues identified within our basic education system, the adoption of a socially inclusive learning approach is recommended, which is discussed further below.

5.6 Social inclusive learning approach

An inclusive learning approach is defined as a process and strategy that seeks to strengthen the education system to ensure that all learners receive an education.³⁰² This entails a proper identification of educational barriers that may be encountered in the proper provisioning of basic education and the allocation of relevant resources.³⁰³

³⁰¹ See n 174 above.

³⁰² M Magambi 'Approaches to Inclusive Education and Implications for Curriculum Theory and Practice' (2017) 4 *International Journal of Humanities Social Sciences and Education* at 93.

³⁰³ As above.

Alternatively, this approach also takes into account the quality, nature, and consequences of the type of education provided to learners.³⁰⁴

During COVID-19 education was distributed unequally amongst learners and some were left behind. As a result, the adoption of this approach considers inclusive access to education as a fundamental right, not as a privilege.³⁰⁵ With the identified issues of pre-existing inequalities that were exacerbated by the emergence of COVID-19, this approach seeks to provide what is referred to as reformation from the grassroots level.³⁰⁶ Irrespective of the circumstances, the government needs to consider teachers and learners as they are the ones who face the direct realities of policy decisions made by the government when realising the right to basic education.³⁰⁷

To properly address inequalities within the education system, the reform process must be inclusive of teachers and learners. To illustrate, during apartheid, the segregated education system regulated the schooling system based on the apartheid policy, for instance, the content to be taught, the distribution of resources and the salaries received by teachers. The scope and application of apartheid policy never took into account the educational needs of black learners and teachers, in fact where these were considered, they were actively oppressed. In analysing the impact of COVID-19 it became more visible that when it comes to the realisation of the right to basic education, the government did not take into account those who are from poor communities. And did not fully consider if teachers and learners are well equipped for the sudden transition to online learning. The fundamental right to basic education was not properly realised during this pandemic. Furthermore, the schooling system was already cluttered with disparities that emanated from the unequal distribution of resources that includes limited resources, and untrained teachers who possess poor content knowledge. Therefore, the radical change envisioned by the Constitution rests on the adoption of approaches that are purposeful and committed to building constructive social change.³⁰⁸

³⁰⁴ R Connell 'Just education' (2012) 27 *Journal of Just Education* at 381.

³⁰⁵ B Dube 'Rural online learning in the context of COVID-19 in South Africa: Evoking an inclusive education approach (2020) 10 *Multidisciplinary Journal of Educational Research* at 135-157.

³⁰⁶ K Oloruntegbe 'Teachers' involvement, commitment and innovativeness in curriculum development and implementation' (2011) 2 *Journal of Emerging Trends in Educational Research and Policy Studies* at 443-449.

³⁰⁷ Dube (n 305) 150.

³⁰⁸ As above.

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