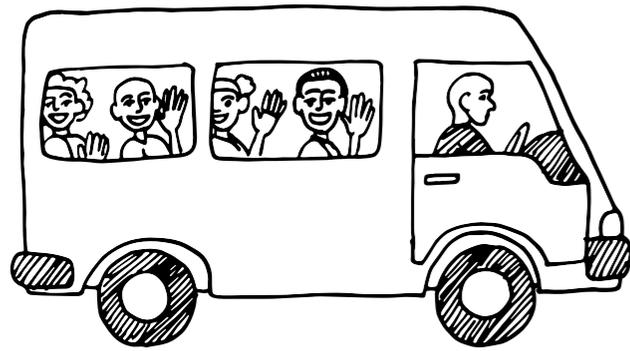


CHAPTER 16
**SCHOLAR
TRANSPORT**
Solminic Joseph and Julian Carpenter



OVERVIEW

Every day, millions of learners hoping to better themselves through education wake up early to get to school. But for learners who have long distances to travel, the journey can be much more difficult.

Scholar transport is a necessary and integral part of the right to basic education, but learners who cannot get transport suffer – particularly those in rural South Africa. In *Juma Masjid* the Constitutional Court described the right to basic education as follows:

[The right to a] basic education is an important socioeconomic right directed, among other things, at promoting and developing a child's personality, talents and mental and physical abilities to his or her fullest potential. Basic education also provides a foundation for a child's lifetime learning and work opportunities. To this end, access to school – an important

component of the right to a basic education guaranteed to everyone by Section 29(1) (a) of the Constitution – is a necessary condition for the achievement of this right.

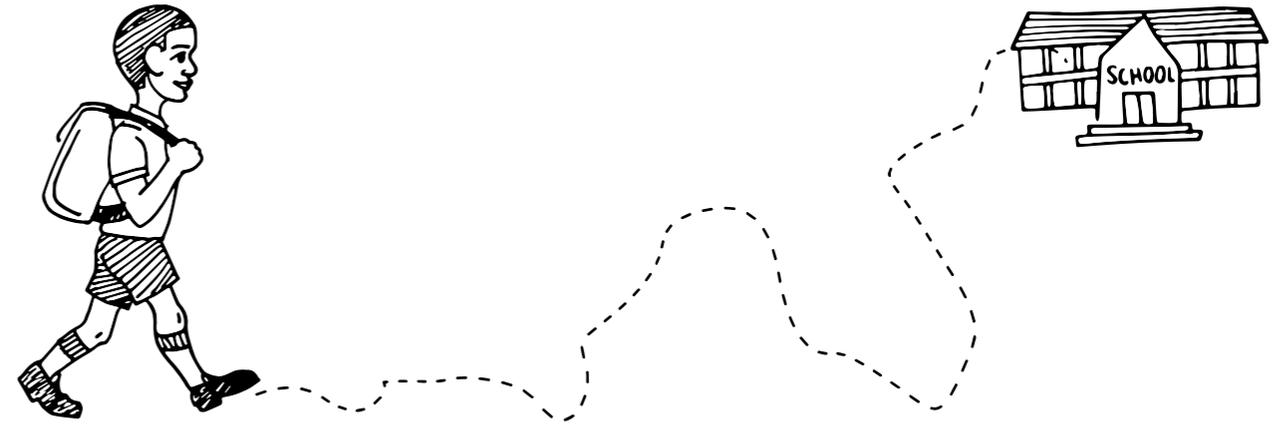
Looking at the backdrop to the scholar transport problem, one can appreciate its scale.

According to the 2013 National Household Travel Survey, published by Statistics South Africa, of the 17.4 million learners who attended educational institutions, about 11 million walked all the way.

In KwaZulu-Natal (KZN) alone, where more learners walk to school

than in any other province, over two million primary and secondary school learners walked all the way to school. Of these learners, more than 210 000 walk for more than an hour in one direction, and 659 000 walk for between 30 minutes and an hour each way.

Learners face serious challenges on their journeys to and from school, all of which can hurt academic performance. They are often faced with long, tiring treks to class, dangerous weather which damages textbooks, and violence which hurts them physically or emotionally.



DISTANCE

Through Equal Education's (EE) work in KZN, we have met learners who commute over 13 kilometres one way to school – a round-trip of 26 kilometres. This requires them to wake up just after 3am to start preparing. For many learners in rural areas, their mornings also include chores such as fetching water and herding cattle to grazing fields.

When walking to school, learners sometimes have to cross dangerous, mountainous terrain, in which they encounter snakes and sharp rocks. Learners must endure torrential downpours and cross rushing rivers to get to class.

The tragic consequence of this became

clear to Equal Education when a learner at Hlubi High School in KZN recounted how she saw a primary school learner drown after being swept away by the river. Her emotions raw, she explained how she was gripped by fear and unable to help the young learner, as she could not swim. She recounted how she imagines

the learner in her silent moments, and how this experience affects her still.

In statements to EE, learners explained that they had limited or no shelter to protect themselves on their commute, and that they feared being struck by lightning every time they walked in the rain.



SAFETY

The safety of learners is also threatened by criminals.

A young female learner told EE of her ordeal one afternoon on the way home.

When we were about an hour and a half away from the school we were walking in an open area when the man grabbed me. The man raped me ... The man was waiting for us close to the river. He grabbed the girl that was walking with me and beat her. She ran away. After he beat my friend, he grabbed me and choked me and then raped me. He didn't rape the other girl. She ran away... [Now] I struggle to concentrate in class. Every time when school is about to end, I am worried and scared, because I have to walk home.

Another female learner explained how she and some friends were offered a lift by a man in a bakkie while walking home. They accepted the lift because

they were tired. The driver dropped her friends off but kept her in the truck. He sped off with her, and she became very scared. She struggled and managed to jump out of the speeding vehicle, waking later in hospital, having suffered a broken arm and other injuries.

Violence against children is a blight on the conscience of South Africa, and an indictment of our society. Children occupy a special place in society. They are the future of a nation, and their protection is key to its future prosperity. But every year, thousands of learners fall victim to neglect or various forms of violence, including rape and murder.

The South African Constitution recognises the special place of

children through specific rights and protections. The Constitution goes so far as to state that in all matters concerning children, their best interest is of paramount importance.

Children who walk long distances to school face very real and ever-present dangers. These dangers can strip them of their identity, their dignity, and possibly their lives.

But they are avoidable dangers. Safe and reliable scholar transport would allow learners to be protected from crime, and give them much-needed peace of mind.

The need for scholar transport cannot be overstated when the safety and security of learners is our chief concern.

ACADEMIC PERFORMANCE

A lack of scholar transport has a very direct and profoundly negative impact on the academic performance of learners. A learner explained to EE:

I try my utmost not to arrive late, but the journey to school is taxing and I arrive late most days of the week. Often, I am late three times in a row. When I arrive late at school, I am already very tired and I struggle to concentrate in class. I even struggle to keep my eyes open in class at times because I am so tired. We are provided with lunch at school and this provides us with energy for the journey home.

Learner, Esikhumbuzweni High School

Another learner explained that:

[T]here are extra classes in the morning, at 7am. Living so far, I am always late for extra class. I have received corporal punishment for being so late at school ... I arrive home around 5pm from school. I then have to do my chores, which includes washing, cooking, and fetching water. I also need to wash my school uniform. It is difficult to do

my homework in the evenings. My chores take time and I am tired and sleepy. I failed Maths and Accounting, because I do not understand the work.

Learner, Nhalakahle Senior Secondary School.

The inability to concentrate in class is a clear and direct result of having to walk unreasonably long distances to school. It places rural learners at a great disadvantage compared to their urban counterparts, and places immense pressure on the educational programme of the school. Teachers must often repeat lessons when learners can't concentrate or are absent due to inclement weather.

Bad weather has other consequences besides high absenteeism and late arrival. It causes learners to be wet

in class and unable to concentrate. Learners also invariably get sick more often. One of the biggest and most serious problems that bad weather causes is damage to textbooks. Books are often ruined and become unusable. Learners have resorted to putting plastic bags in their backpacks and putting the books under their clothes.

Not having safe and reliable transport to school has a detrimental effect on learners' access to education, and many are being denied access to schooling altogether. Many learners who don't have transport do not finish school.

The state recognises this problem, and has tried to address it by policy intervention.

NATIONAL SCHOLAR TRANSPORT POLICY

On 23 October 2015 the Department of Transport (the DOT) promulgated the National Learner Transport Policy (the National Policy).

[It] was developed in collaboration with the Department of Basic Education (DBE) and other stakeholders, and aims to address the challenges of accessibility and the safety of learners. This (National) Policy recognises the need to have a uniform approach to the matter of transportation of learners, and the fulfilment of the constitutional mandate of the Department to provide a safe and efficient transport system.

The creation of this National Policy was necessary to set minimum norms and standards for the creation of transport for learners and the facilitation of access to schools for many thousands of learners around South Africa, particularly in rural areas.

APPLICATION FOR SCHOLAR TRANSPORT ASSISTANCE

Schools can apply for scholar transport. The National Policy lays out the guidelines in Section 3.3.1.

After consultation with the School Governing Body (SGB), principals must identify beneficiaries of subsidised learner transport services, in line with the following criteria:

- Beneficiaries must be needy learners from grade R to 12 'as prescribed'
- Learner transport will be subsidised to the nearest appropriate school only, and not to a school of parental choice (parental choice means when parents prefer to enrol their child at a school other than the nearest suitable school)
- Priority must be given to learners with disabilities, taking into considering the nature of the disability
- Priority must be given to primary school learners who walk long distances to schools
- Existing learner transport services must be taken into account when identifying beneficiaries, as no learner transport services will be provided in areas where public transport is

available. This is in order to avoid duplication of services and resources.

At first glance, the criteria seem to be adequate. However, there are deficiencies in the National Policy.

The criteria state that beneficiaries must be 'needy' learners from grade R to 12 'as prescribed', but it does not define who a 'needy' learner is.

A favourable aspect of the criteria is that primary school and learners with disabilities 'who walk long distances' are to be prioritised, as they are the most vulnerable and in the most desperate need. Existing learner transport services must be taken into account, and no learner transport services will be provided where 'public transport is available'. Many families struggle to afford public transport; and as a result, learners make long and unsafe journeys to school on foot.

A lot of the responsibility rests with the principal and the SGB to ensure that an application is made on behalf of all learners

who require transport. This can be a good or a bad thing. It may be good because principals and SGBs may know the needs of their school better than a department official.

But it may instead be bad, because principals may be overwhelmed and the SGB inadequately trained.

Principals have also told EE that they have stopped applying, because they get no acknowledgement from the department of receipt of their applications, and no action is ever taken.

National and provincial transport policies do not expressly provide learners or parents the ability to approach district offices or other department officials to discuss scholar transport needs.

However, the constitutional and education legislation that we work under should allow parents and learners to do this. When transport is lacking and parents attempt to raise the issue with the authorities, investigations rarely take place, and it is normally only under the threat of litigation that progress is made.

IN THE MINISTER OF TRANSPORT'S WORDS

The National Policy seeks to 'ensure that **even learners in disadvantaged communities and deep in rural areas of the country will have access to schools** and become part of the active economy in the near future.' (*Foreword to the Policy by the Minister of Transport, Ms Dipuo Peters*) [Authors' emphasis]



TRANSPORT FOR LEARNERS WITH DISABILITIES

The National Policy requires that all vehicles used for school transport must comply with the principles of ‘universal design’. This means they must be accessible to all learners who need to use them including learners with disabilities. It is important that this is properly considered when provinces, principals and SGBs make plans to implement the National Policy.

Different sets of guidelines drafted by the Department of Basic Education for Special Schools (2007) and Full Service Schools (2010) set out specific criteria for transport policies in these schools.

The significant challenges faced by learners with disabilities in getting to

school are detailed in SECTION27’s 2016 ‘Too Many Children Left Behind: Exclusion in the South African Inclusive Education System’ report. Learners with disabilities are particularly affected by the long distances they have to travel.

The report details problems

caused by distances travelled to and from school, inappropriate and inaccessible vehicles, safety and the impact on children with disabilities’ health and academic performance. Many learners with disabilities stop attending school because of these significant challenges.



KEY DEFICIENCIES IN THE NATIONAL POLICY

The criteria are ultimately broad and vague.

The terms ‘needy learners’ who walk ‘long distances’ are not defined. In addition, the distance that learners walk should not be the only determining factor in deciding who is entitled to scholar transport. The kind of ground and natural obstacles that learners face are also important, as is weather, terrain and safety.

Further, the criteria don’t emphasize that plans need to account for the best interest of each individual learner.

The National Policy also only provides that school principals must select learners who qualify for scholar transport. It does not allow for parents and learners themselves to take their cases to the department, in instances where they are unfairly left out by principals.

Principals are often overworked, and do not have enough time or resources to look at each child individually. For that reason, they sometimes perform

a general assessment of distance from the school to the centre of a village, and use that as the distance for all learners who call that village home. This does not take into account that villages can be quite large, adding kilometres to learners’ walks. Even if transport is provided for the village, learners often have to walk long distances to get to the village centre in order to catch a ride.

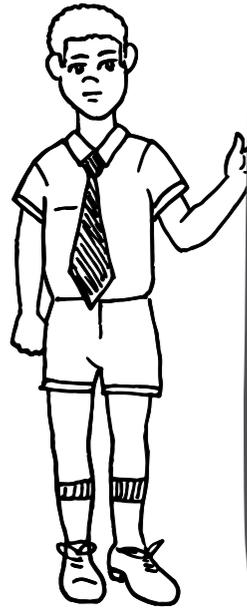
The National Policy also only seeks to provide transport to the nearest grade-appropriate school, and will not pay if parents choose a different school. In certain circumstances this could be problematic, especially when there is a valid reason for walking past the closest school, such as overcrowding, lack of resources or poor performance.

Furthermore, the National Policy seems to be strict about not providing scholar transport in areas where public

transport is available, completely ignoring the role of poverty. It excludes learners who live in areas where public transport is available but come from poor households unable to afford public transport. This prohibition is also problematic because it overlooks the fact that public transport, though theoretically ‘available’, might be inappropriate for or inaccessible to learners.

The National Policy envisions multi-stakeholder collaboration (dialogue between the provinces and different government departments). This is positive in principle, but the National Policy does not provide a sufficiently clear framework for coordination between departments.

According to the Policy, a National Interdepartmental Committee (NIDC) must be established consisting of representatives from the national Departments of Transport and Basic



As it stands, the National Learner Transport Policy remains very much a work in progress, and the learners of South Africa continue to wait.

Education, and the provinces. The NIDC is to report to the Ministers of Transport and Basic Education on the implementation of learner transport programmes.

The benefits of multi-stakeholder collaboration between the Departments of Transport and Basic Education and other stakeholders can only be fully realised once the National Policy is clear in its allocation of the various roles and functions to each department, as well as regarding what the funding commitments and contributions from each department must be.

The National Policy does not do this fully. Instead, it offers to produce another 'national policy advocacy programme that clearly defines the roles of the DOT and other stakeholders'. The National Policy is also not clear on the time frames for the development of the additional policy. It merely states that the government will establish a time frame in a future document that has yet to be produced.

The National Policy recognises that planning is fundamental to the success of learner transport provision. According to

the National Policy, learner transport plans will be developed at the provincial level.

- Implementing departments (including provinces and municipalities) in consultation with relevant stakeholders are responsible for learner transport planning
- A 'joint planning committee' will be established with representatives of the provincial departments of transport and education, as well as representatives of municipalities
- Provinces will develop provincial learner transport 'implementation plans and strategies' in line with the National Policy.

However, the provisions of the National Policy relating to planning are deficient in a number of respects:

- It is not clear who is primarily responsible for initiating planning at the provincial level, and establishing the 'joint planning committees'.
- As with many other aspects of the National Policy, there are no specific timelines for development of provincial plans, or for the

approval or review of such plans.

- The National Policy provides insufficient guidance as to the content of the provincial plans. This allows for significant variance between provinces.
- The National Policy simply provides that Learner Transport Planning must 'start with determination of transport needs', which includes safety, infrastructure and drop-off/pick-up points. Apart from safety, there is no further guidance in the National Policy on the basic requirements or considerations that should be taken into account in respect of transport-planning needs.

As it stands, the National Learner Transport Policy remains very much a work in progress, and the learners of South Africa continue to wait.

In the absence of proper government intervention, it currently falls to a few civil society organisations and community activists to bang on the doors of the departments and the courts, to ensure that learners who deserve and have a right to scholar transport are provided with it.



PROVINCIAL POLICIES ON SCHOLAR TRANSPORT

Some provincial governments, including that of the Western Cape, have created their own policies on transport. However, the Western Cape's policy has some of the same problems as the National Policy.

The Western Cape's policy states that for transport to be provided, there must be at least ten learners who require transportation. This policy could leave out students who come from particularly sparsely populated areas.

It also states that scholar transport will not be provided if there is public transport available. However, this does not consider whether or not the child can afford the public transport.

On the positive side, the Western Cape's policy does make allowance

for grade R learners to be transported, stating that 'Learner transport will be provided, as far as is reasonably practical, to Grade R learners enrolled in an ordinary public school in rural areas in the Western Cape, where there are existing learner transport schemes operating...'

The Gauteng provincial government's policy has unique wording which allows that 'in cases where other compelling matters prevail, fully motivated requests must be provided

for consideration'. This means that even when a student is not entitled to transportation, if they present a strong case, they may be able to receive it.

In other provinces, the situation is less easily defined. KwaZulu-Natal, for example, has an official, published policy on learner transport; but in correspondence with Equal Education, has asserted that it does not. The reality in KZN is that the policy has been largely ignored, and transport is not available to learners who need it.

APARTHEID AND SCHOLAR TRANSPORT

The echoes of apartheid are felt in many aspects of life in South Africa, including scholar transport. Under apartheid, the government forcibly located many South Africans in inaccessible areas. Now, accessing school from these previously segregated communities is ‘hampered by the long distances [learners] have to travel to get to school, threats to their safety and security, and the cost of transport’.

The segregated history of communities in South Africa also means that some areas have seen greater infrastructure investment than others. The racist policies of Apartheid Special Planning mean that, to this day, poor communities are often served by inadequate infrastructure.

Equal Education’s work in KwaZulu-Natal has shown that gravel roads and weak bridges are commonplace. Addressing problems with infrastructure is an important part of addressing issues of scholar transport, but requires significant government work, and cooperation between different departments.

To fix roads and bridges would certainly be a large challenge for the government, but it would help communities and ensure that scholar transport is safer and more effective.

THE FOUR A’S OF EDUCATION

- AVAILABILITY
- ACCESSIBILITY
- ACCEPTABILITY
- ADAPTABILITY

*See table 12.2 on page 225 for a more comprehensive description.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS RELEVANT TO SCHOLAR TRANSPORT

South Africa’s international obligations support an argument that the right to education requires schools to be easily accessible.

In a report on the cost of education in South Africa, Brian Ramadiro, the deputy director of the Nelson Mandela Institute for Education and Rural Development at the University of Fort Hare, argues that ‘

there is a difference ... between the right to basic education and other socio-economic rights. In theory, this right is not conditional on the state’s capacity to deliver on it. In concrete terms, this means: schools must be accessible...

ARTICLE 13 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (THE ICESCR) PROTECTS THE RIGHT OF EVERYONE TO EDUCATION

The Committee on Economic, Social and Cultural Rights (CESCR), which clarifies the nature and scope of the rights under the ICESCR, has adopted the ‘4 As’ approach in its interpretation

of the right to education. This is found in Article 6 of General Comment 13, which states that subject to conditions found in each State Party (a country that has agreed to the covenant), education shall exhibit four essential features: availability, accessibility, acceptability, and adaptability.

In terms of these essential features, ‘availability’ and ‘accessibility’ provide strong support for interpreting the right to education as including access to schools through the provision of scholar transport.

Section (a) of ‘availability’ states that ‘all institutions and programmes are likely to require buildings or other protection from the elements’. This could include providing protection from the elements to children travelling to school via scholar transport, as many learners are subjected to dangerous weather conditions and rough or dangerous terrain on their long journeys to and from school.

INTERNATIONAL LAW RELEVANT TO DISTANCE, SAFETY AND INEQUALITY

In terms of ‘accessibility’, Section 6(b) of General Comment 13 states that ‘educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State Party’. In addition, Section 6(b) states that accessibility has overlapping dimensions, which include the following, among others:

- Non-discrimination – education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds.
- Physical accessibility – education must be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school), or via modern technology (e.g. access to a ‘distance learning’ programme).



These essential features from the General Comment show that the right to education should be understood to include a learner's right to physically accessing schools.

Learners who are forced to walk long distances to school are not in safe physical reach of education. The long distances travelled expose learners to dangerous weather conditions, terrain, rivers and wildlife. It also puts these vulnerable learners at risk of being assaulted, raped and robbed.

With this interpretation, the lack of safe and reliable transport to schools could be a violation of a learner's right to basic education.

In addition, Article 19(1) of the Convention on the Rights of the Child (CRC) states that:

State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Many children have suffered injury

and harm as a result of walking in bad weather conditions, on dangerous terrain, or by being exposed to violent and abusive people. This article may show that the state has a duty to take measures to protect a child from the harm that many children suffer when walking long distances to school.

In addition, Article 28 of the CRC protects the child's right to education. In particular, Article 28(1)(a) requires that State Parties recognise the right of the child to education, and aim to achieve this right progressively and on the basis of equal opportunity. States must make primary education compulsory and available to everyone, free of charge.

This could add further support to the suggestion that the right to education should include the right to learner transport. South Africa signed and ratified the CRC, and is therefore bound to act in accordance with it.

The right to education is also protected in Article 26(2) of the Universal Declaration of Human Rights (UDHR) and the African Charter on Human and Peoples' Rights. Article 17 of the Charter states that 'every individual shall have the right to education'.

INTERNATIONAL LAW RELATING TO LEARNERS ARRIVING LATE FOR CLASS, IRREGULAR ATTENDANCE AND HIGH DROPOUT RATES

Article 11(1) of the African Children's Charter states that 'every child shall have the right to an education'.

Furthermore, Article 11(3) states that:

State Parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of this right, and shall in particular:

(d) take measures to encourage regular attendance at schools and the reduction of dropout rates;

(e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

Insufficient scholar transport places difficulties on learners to such an extent that learners are unable to attend class regularly, and/or drop out prematurely. In addition, the above provisions may lend support to the fact that the state has a duty to take steps to address the obstacles learners face while travelling to school, such as dangerous terrain.



CASE STUDY

TRIPARTITE STEERING COMMITTEE AND ANOTHER V MINISTER OF BASIC EDUCATION AND OTHERS - LRC CASE

This case dealt with three schools that were denied scholar transport under the Eastern Cape Learner Transport Policy and a fourth that was approved for transport but never saw it in reality.

The question the court had to determine was whether the right to a basic education contained the right to state-funded scholar transport for learners who live a certain distance away from school.

Justice Clive Plasket held that:

The right to education is meaningless without teachers to teach, administrators to keep schools running, desks and other furniture to allow scholars to do their work, text books from which to learn, and transport to and from school at State expense in appropriate cases.

And:

[I]n instances where scholars' access to schools is hindered by distance and an inability to afford the costs of transport, the State is obliged to provide transport to them in order to meet its obligations, in terms of Section 7(2) of the Constitution, to promote and fulfil the right to basic education.

Like most provinces, the Eastern Cape's policy contains an arbitrary distance requirement of a minimum number of kilometres that learners must have to walk to qualify for scholar transport.

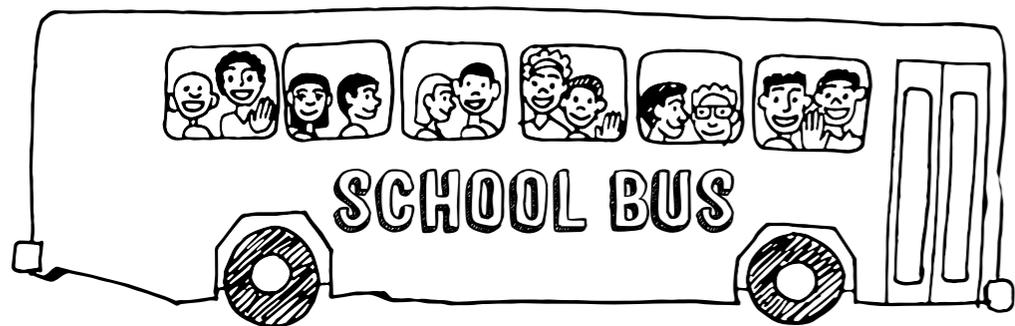
Justice Plasket held that:

[T]he distance requirement is a guideline which has to be applied flexibly in order to achieve the ultimate purpose of providing scholar transport to all of those who need it. Precisely the same considerations apply

to all of the other aspects of the [Eastern Cape] policy. In its application, it must be borne in mind that the [Eastern Cape] policy is not an end in itself, but a means to the department's end of meeting its obligations in terms of Section 29 of the Constitution.

This case was a significant victory for scholar transport by the Legal Resources Centre (LRC), and will inform all future litigation on this issue. It speaks perfectly to the problems facing learners who have to walk unreasonably long distances to school, and to the failure of the provincial governments to address these issues efficiently and appropriately.

The LRC ensured these learners no longer have to face arduous and dangerous journeys to school. This case also highlighted the need for uniform standards for scholar transport by way of a national policy.



CONCLUSION

Scholars face serious challenges on their commute to and from school, including long distances, the environment, personal safety, worse academic performance due to fatigue, and damage to textbooks.

The right to education is an integral part of South Africans' constitutional rights, which cannot be realised without adequate scholar transport. The national and provincial transport policies contain some limited helpful sections, but should largely be considered works-in-progress

which can sometimes put learners in difficult or dangerous situations.

Finally, international legal instruments show that South Africa has an obligation to provide learners with adequate transport due to the dangers and travel distances they face.

Scholar transport is an important

right for every learner. The policies put in place by provincial and national government provide a starting point for the creation of an effective transport strategy, but there are still many difficulties to overcome to ensure that transport is available for every child who has trouble getting to and from school.

Solminic Joseph is a lawyer and activist with the Equal Education Law Centre.

Julian Carpenter is a JD student at Osgoode Hall Law School in Toronto, Canada, and an alumnus of Dalhousie University. He interned with the Equal Education Law Centre for three months in 2016.

CASES

Governing Body of the Juma Masjid Primary School v Essay NO 2011 (8) BCLR 761 (CC); 2011 ZACC 13.

Tripartite Steering Committee and Another v Minister of Basic Education and Others 2015 (5) SA 107 (ECG); 2015 ZAECGHC 67.

CONSTITUTION AND LEGISLATION

Constitution of the Republic of South Africa, 1996.

POLICY AND GUIDELINES

Department of Basic Education & Department of Transport 'National Learner Transport Policy', 2015.

Department of Basic Education 'Guidelines for Full Service/Inclusive Schools' 2010.

Department of Basic Education 'Guidelines to Ensure Quality Education and Support in Special Schools and Special School Resource Centres', 2007.

INTERNATIONAL AND REGIONAL INSTRUMENTS

The Universal Declaration of Human Rights (UDHR), 1948.

The International Convention on Economic, Social and Cultural Rights (ICESCR), 1966.

The Convention on the Rights of the Child (CRC), 1989.

The African Charter on the Rights and Welfare of the Child (ACRWC), 1990.

The African Charter on Human and Peoples' Rights (African Charter), 1981.

FURTHER MATERIALS AND READING

MJ Rogan 'Dilemmas in Learner Transport: An Impact Evaluation of a School Transport Intervention in the Ilembe District, KwaZulu-Natal' (2006).

Statistics South Africa 'General Household Survey 2013', 2014.

UN Committee on Economic, Social and Cultural Rights 'General Comment No. 13: The Right to Education (Art. 13 of the Covenant)', 1999.

TF Hodgson & S Khumalo 'Too Many Children Left Behind: Exclusion in the South African Inclusive Education System', 2016.