

PREFACE

Faranaaz Veriava and Tasneem Kathrada

Education rights law and advocacy is an area of dynamic activism that is continuously growing and being developed.

The *Basic Education Rights Handbook*, now in its second edition, reflects this growth and development, charting the struggles and victories of education rights activism, both since the advent of the constitutional era, and since publication of the first edition in 2017. In the past five years, the realm of education rights activism has seen a plethora of new or expanding cases and campaigns that have advanced the legal landscape as it relates to basic education and the rights of learners. It is with this in mind that the editorial team at SECTION27 chose to update the first edition of the *Handbook*. This new edition is thus an update of the current jurisprudence, law and policy around education.

To our delight, the first edition was circulated and used widely by an array of actors involved in the world of education rights and law in South Africa. It has been of particular use as a teaching aid in several law schools and education departments at universities. It has been quoted in case law (see *NM v John Wesley School*) and similarly in postgraduate student academic essays. Activist communities and organisations have used it as a reference tool, to know when learners' rights have been violated and what steps

are required to protect those rights. But most importantly, this *Handbook* demonstrates a commitment to the expansion of civic education. On literacy and education, Kofi Annan poignantly stated that "[l]iteracy is a bridge from misery to hope ... For everyone, everywhere, literacy is, along with education in general, a basic human right." Legal literacy is no different. Empowering communities, school governing bodies, principals, teachers and learners to understand their right to education and its connection to other human rights, as stipulated in the Constitution, is fundamental to enhancing civic participation in the political processes that govern our lives. It is an exercise not only in the right to education itself, but in democracy and citizenship.

Each chapter of this *Handbook* provides an overview of the law, policy and case law on a particular issue, and uses real-life examples that give context to the issue under discussion. The *Handbook* is further broken down into sections made up of chapters that include a framework chapter, followed by chapters detailing specific issues relating to that framework. For example, the 'School Violence' chapter precedes

the chapters on 'Sexual Violence in Schools' and 'Corporal Punishment'. Finally, each chapter provides the user with tools for remedying issues that may arise in respect of the area under discussion. The *Handbook* was conceptualised and edited by the SECTION27 team but is the result of collaboration between many civil-society organisations involved in education-rights activism, litigation and advocacy. Each author has contributed based on their personal and professional experience and expertise – through either research or litigation – in a particular area.

Excitingly, this edition introduces two new chapters: the first on 'Admissions' and the second on 'Comprehensive Sexuality Education'. The impact of COVID-19 on basic education has also featured prominently in the revised chapters, as we brace ourselves for a world faced more and more with the rise of pandemics and ecological destruction.

The SECTION27 editorial team included several members of our Education Rights Programme: Faranaaz Veriava, Tasneem Kathrada, Mila Harding, Demichelle Petherbridge, Motheo Brodie and Julia Chaskalson; as well as the following members of our Communications team:



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- Kofi Annan

Patience Phiri, Nontsikelelo Mpulo, Boitumelo Masipa and Faith Fikizolo. We would further like to acknowledge all our partner organisations who continue to collaborate on this ongoing legal literacy project and our joint cases and campaigns. These organisations include Equal Education (EE), the Equal Education Law Centre (EELC), the Centre for Child Law (CCL), the International

Commission of Jurists (ICJ) and the Legal Resources Centre (LRC). We would also like to acknowledge and thank our external editors, Karin Schimke and Dave Buchanan, for their efforts in editing and simplifying technical legal jargon to make this edition as accessible as possible.

The state of the education sector in South Africa remains a site of struggle for many. Brazenly unsafe school

infrastructure, violence perpetrated against learners, austerity cuts to basic education budgeting – these are all issues that continue to threaten the education system's ability to provide equal access to quality education for all learners. It is hoped that this *Handbook* will assist and strengthen learners, educators, activists and policymakers alike in their crusade for educational reform.

As we have said before, so we will say again: let us educate to liberate.

Faranaaz Veriava is the Head of the Education Rights Programme at SECTION27. She is also a part-time lecturer in the Law Faculty at the University of Pretoria.

Tasneem Kathrada is an intern at SECTION27, working in the Education Rights Programme. She is a final year LLB student at the University of the Witwatersrand.



FOREWORD

Sandra Liebenberg

Justice Khampepe powerfully highlights the transformative nature of education as follows:

There are few things as important for the flourishing of a society and its people as education. Through education, doors are opened to opportunities that were only ever dreamt of before. I am not exaggerating when I say that education changes lives. It enriches and develops our children so that they may reach the height of their potential. And, as our citizens are empowered through education to improve their future and achieve their dreams, our nation will undoubtedly prosper too.

South African constitutional jurisprudence and international law recognises that education is an indispensable vehicle not only for individual empowerment and fulfilment, but also for enabling effective participation in all spheres of life – politics, the economy, cultural and scientific activities, and society in general.

The UN Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, has highlighted the importance of education to disrupting inter-generational patterns of poverty and inequality. He cites several studies demonstrating that public investments in education

are vital to closing the gaps between disadvantaged children and their wealthier peers.

This is particularly significant in a context such as South Africa, given its entrenched patterns of intersecting inequalities based on race, gender, gender identity, class and disability.



As former Deputy Chief Justice Justice Moseneke notes:

Apartheid has left us with many scars. The worst of these must be the vast discrepancy in access to public and private resources. The cardinal fault line of our past oppression ran along race, class and gender. It authorised a hierarchy of privilege and disadvantage. Unequal access to opportunity prevailed in every domain. Access to private and public education was no exception ... That is why perhaps the most abiding and debilitating legacy of our past is an unequal distribution of skills and competencies acquired through education.

Given the foundational importance of education in personal, social and economic flourishing and in overcoming the legacies of poverty and inequality, it is fitting that our courts have affirmed basic education as a right that is "immediately realisable". Various components of this right have been affirmed and protected in a range of judgments delivered by courts at every level of our judicial system. I will not rehearse these judgments here, as they are lucidly described and analysed in various chapters of this handbook.

And yet, multiple obstacles impede the realisation of quality, equal education

for all in South Africa. These barriers include: inadequate financing; poor infrastructure; insufficient, well-trained educators; a lack of access to learning materials; violence in schools; exclusionary, inefficient or corrupt school governance; and discriminatory policies on a variety of issues such as nationality, language, pregnancy, religion and culture, sexual orientation and gender identity. These and other themes are comprehensively considered in the various chapters of this handbook.

For far too many impoverished black children in South Africa, a good education and the manifold fruits it bears over a lifetime remain a distant dream. As is the case with all human rights, the right to education will only be converted into a lived reality for these children through adequate resource allocations; inclusive, accountable, and well-run institutions; appropriate legislation and policies; and well-organised social movements and civil society organisations to mobilise for the realisation of all aspects of the right.

This handbook, now in its second edition, charts the key struggles, policies, legislation, and cases that have shaped the terrain of basic education in South Africa. It is written in clear and accessible language. The rich information and practical case studies show how the law can be used to support a variety of struggles to realise the right to education. It provides all participants in the education system with rich information and a set of legal tools that can be wielded to advance the practical realisation of the right to education.

At its heart, transformative constitutionalism implies that the law should be an ally and not an obstacle in struggles to transform conditions of inequality and injustice. This handbook vividly demonstrates that education as a fundamental human right has rich potential to challenge the injustices and inequalities that pervade our education system. For this, we owe Section 27, the editors, and all the contributors a profound debt of gratitude.

Sandra Liebenberg, Distinguished Professor and H.F. Oppenheimer Chair of Human Rights Law, University of Stellenbosch Law Faculty.