

SECTION27 SUBMISSION

Interim Report of the South African Human Rights Commission

Investigative Hearing:

*Monitoring and Investigating the Delivery of Primary Learning
Materials to Schools Countrywide*

14 May 2013

I INTRODUCTION

1. SECTION27 is a public interest law centre that seeks to influence, develop and use the law to protect, promote and advance human rights. One of our priority areas is the right to basic education as guaranteed by section 29 of the Constitution. We advocate for the creation of learning environments that are conducive to learning and development. These learning environments include the physical infrastructure of schools, the quality of teaching and the availability of resources such as textbooks.
2. As such, we welcome the opportunity to make submissions to the South African Human Rights Commission (“SAHRC”) on the interim report of its investigative hearing on the delivery of primary learning materials to schools country-wide (“interim report”).
3. In making this submission we have referred in some detail to the so-called “2012 Limpopo textbooks crisis”. In doing so we make use of the following terms:
 - 3.1. “DBE” in relation to the Department of Basic Education and “Provincial Department” in relation to the Limpopo Department of Education;
 - 3.2. “First court application” or “first application”: this refers to the application launched on 4 May 2012 in the North Gauteng High Court under case number 24565/2012, leading up to the judgment handed down by Kollapen J on 17 May 2012 (“first judgment” and/or “first court order”);
 - 3.3. “Second application”: this refers to the application to the North Gauteng High Court on 5 July 2012 to have the settlement agreement entered into between SECTION27 and the DBE on 21 June 2012 made an order of court (“second court order”); and
 - 3.4. “Third court application” or “third application”: this refers to the application filed in the North Gauteng High Court on 10 September 2012 under the same case number, leading up to the judgment handed down by Kollapen J on 4 October 2012 (“third judgment” and/or “third court order”).
4. Our submissions are not, however, limited to the 2012 Limpopo textbooks crisis. They are made with a view to improving the systems of procurement and delivery of textbooks countrywide, so that the problems identified by the SAHRC and other institutions will not be repeated going forward.
5. We have structured this submission as follows:
 - 5.1. General comments on the interim report;
 - 5.2. The importance of textbooks as a central component of the right to basic education;

- 5.3. Accurate record-keeping as a pre-requisite to complete textbook delivery;
- 5.4. Independent monitoring of complete textbook delivery;
- 5.5. Obstacles to reporting of textbooks shortages and other challenges in schools;
- 5.6. The EduSolutions contracts and allegations of corruption;
- 5.7. Implementation of the recommendations arising from Prof Metcalfe's verification report;
- 5.8. Implementation of the recommendations of the Presidential Task Team; and
- 5.9. Textbook production for special needs learners.

II GENERAL COMMENTS ON THE INTERIM REPORT

- 6. SECTION27 welcomes the investigation by the SAHRC into the issue of procurement and delivery of learner teacher support materials. This is central to the realization of the right to basic education. The systemic problems within the DBE and the provincial education departments, discussed in more detail below, can be addressed through appropriate intervention by institutions that hold powers and responsibilities in relation to the promotion and protection of basic rights.
- 7. We therefore believe that the SAHRC has a fundamental role to play in ensuring compliance by the DBE and the provincial education departments with their obligations in relation to the delivery of learner teacher support materials.
- 8. However, we are concerned about the heavy reliance by the SAHRC on the submissions made by the DBE and the provincial education departments, and the relatively minor role played by other stakeholders. Our reading of the interim report is that these submissions were accepted by the SAHRC without the opportunity for other interested parties to challenge them.
- 9. While we appreciate that the investigation started as a consultation with government around the issue of textbook delivery, **the absence of other stakeholders from this process has compromised the extent to which the submissions by the DBE and the provincial education departments may be tested.**
- 10. Unfortunately, our experience, particularly with the DBE and the Provincial Department, has been that information provided by them cannot always be accepted at face value, and must be evaluated against information provided by other stakeholders with knowledge of these issues and who are independent of the DBE and the provincial education departments.

11. On these grounds we are disappointed with the limited role played by the range of parties with an interest in this matter. We have used this opportunity to try to contextualize the submissions made by the DBE and the provincial education departments, and some of the systemic challenges surrounding textbook procurement and delivery.
12. We submit further that, to realize its full potential, **the role of the SAHRC in this process must be used to build on the findings and recommendations of the verification team led by Prof Mary Metcalfe and the Presidential Task Team appointed to investigate textbook delivery in Limpopo**, both of which are discussed in more detail below. We are concerned about the very limited reference to these findings and recommendations in the interim report.

III THE IMPORTANCE OF TEXTBOOKS AS A CENTRAL COMPONENT OF THE RIGHT TO BASIC EDUCATION

13. The importance of textbooks as a core component of the right to basic education is clearly recognized in policies of the DBE and the Provincial Department.
14. In its Curriculum Strategy, the Provincial Department states:

The availability and retention of learning support materials is a vital ingredient in the delivery of quality learning and teaching. . . . When resources such as learner and teacher support materials are insufficient, teachers experience great difficulty in planning and conducting lessons even if there were enough of other resources. If one takes seriously the observation that in developing countries the availability of textbooks is associated with student performance and pass rate, then lack of learning materials in schools clearly points to our learners not performing well in their learning.

15. The DBE reiterates this in its newsletter, 'Curriculum News: Planning for 2010 and Beyond': *"each learner should have a textbook for each of his/her subjects to take home, do homework, and study from or to prepare for subsequent lessons, tests and exams."*
16. In President Zuma's 2011 State of the Nation address, he stressed that *"[t]he administration must ensure that every child has a textbook on time."*
17. The DBE's 'Action Plan to 2014: Towards the Realisation of Schooling 2025' recognises that proper learning and teaching cannot take place without proper access to textbooks, and notes that the 11% of parents complaining about a lack of textbooks in 2008 is still *"much too high"* and that shortages of textbooks and other learning materials are *"unacceptable"*.
18. **It is the absolute right of every learner to have his or her own textbook for every learning area.** As a core component of the right to basic education, the delivery of

textbooks must be prioritized, in terms of resources, procurement processes and monitoring performance of the provincial education departments' obligations. It follows that putting systems in place to ensure complete textbook delivery to all learners across South Africa going forward is not negotiable: until these systems are in place, it cannot be said that the right to basic education has been realized.

19. These policies were relied on by Kollapen J in his judgment handed down on 17 May 2012, in finding *“correctly in [his] view the unambiguous stance by Government that text books are an essential and vital component in delivering quality learning and teaching.”*
20. He continues, at paragraph 25, *“that the provision of learner support material in the form of text books, as may be prescribed is an essential component of the right to basic education and its provision is inextricably linked to the fulfilment of the right. In fact, it is difficult to conceive, even with the best of intentions, how the right to basic education can be given effect to in the absence of text books.”*
21. **It follows that any failure by the DBE or the provincial education departments to ensure the complete and timeous delivery of textbooks to schools is a violation of the right to basic education.**

IV ACCURATE RECORD-KEEPING AS A PREREQUISITE TO COMPLETE TEXTBOOK DELIVERY

22. One of the primary challenges to effective delivery of basic education is a lack of reliable data as to what is needed and where. It emerged in the course of the 2012 Limpopo textbooks crisis that the DBE and the Provincial Department did not even have accurate data as to the number of schools and learners in Limpopo:
 - 22.1. In the answering affidavit in the first application filed on 14 May 2012, the DBE and the Provincial Department recorded that there are 5 297 schools in Limpopo.
 - 22.2. In the answering affidavit in the third application filed on 21 September 2012, the DBE and the Provincial Department recorded that there are 4 078 schools in Limpopo.
23. This is a dramatic difference of more than 1 200 schools. The impact of these inaccurate statistics goes far beyond textbooks, and affects many aspects of the delivery of basic education, for example:
 - 23.1. The full delivery of desks and chairs for learners depends on accurate statistics as to the number of learners at each school. The DBE has submitted to SECTION27 a plan, a copy of which is attached as **“A”**, to address backlogs in school furniture in Limpopo. However, due to incorrect data as to the number of learners at each school, some schools experiencing furniture

shortages are not reflected on this plan, while other schools' needs are under-reflected.

- 23.2. The construction of sanitation facilities will require accurate numbers as to the number of male and female learners at each school to determine how many toilets and hand-washing facilities should be constructed. If this data is incorrect, then insufficient sanitation facilities will be constructed.
- 23.3. Teacher post provisioning and the correct payment of norms and standards funds for the day-to-day operation of schools depends on accurate numbers of learners at each school, as these are directly dependent on learner enrolment.
24. **It is impossible to achieve 100% textbook delivery – or complete delivery of any other aspect of basic education – if it is not known how many schools and how many learners require these services.**
25. Therefore, the first step to complete textbook delivery, and ensuring smooth systems of procurement and delivery going forward, is to ensure that accurate and up-to-date records are kept as to the number of schools in each province, the number of learners at each school, the number of learners in each grade, the number of learners per learning area, and accurate estimates as to future enrolment at the school.
26. Much of this information is contained in the 10th school day head count required to be submitted by each school to the relevant provincial education department every year. To the extent that this does not cover all of the information required, however, reliable systems must be put in place to ensure that accurate information about schools' needs is kept.
27. **We recommend that the SAHRC request information on the monitoring systems used by the DBE and the provincial education departments, to enable a full assessment of their accuracy, quality and efficacy.**

V INDEPENDENT MONITORING OF COMPLETE TEXTBOOK DELIVERY

28. SECTION27 submits that, until efficient systems are put in place to ensure accurate monitoring of textbook delivery, progress in textbook delivery should be monitored independently, particularly in those provinces where problems with procurement and delivery systems have emerged.
29. The need for independent monitoring of textbook delivery has emerged through discussions with the DBE and the Provincial Department around textbook delivery in 2012 and 2013.

- 29.1. In June 2012, leading up to the court-imposed deadline for complete textbook delivery of 15 June 2012, there were claims by the DBE that textbook delivery was on track, and that this deadline would be met.
- 29.2. When we alerted the DBE to the fact that, by 14 June 2012, none of the 15 schools we had visited during a site visit to Limpopo had received its textbooks, we were told that textbook delivery had started and would be complete by 20 June 2012.
- 29.3. When this deadline was not met, a settlement agreement (the second court order) was concluded between SECTION27 and the DBE, indicating that all textbooks would be delivered by 27 June 2012. The progress reports furnished to us leading up to this deadline confirmed significant progress in textbook delivery, with close to 100% delivery on 27 June 2012. Copies of these progress reports are attached as annexure "B".
- 29.4. On 28 June 2012, despite the progress reports confirming almost 100% textbook delivery, we continued to receive reports from schools that they had not received all of their textbooks. Some of these schools had not received any textbooks at all.
- 29.5. SECTION27 and the DBE therefore agreed to appoint Prof Mary Metcalfe to conduct an independent verification as to the state of textbook delivery (see below). Despite reports provided to us by the DBE on 28 June 2012 that textbook delivery was almost 100% complete, Prof Metcalfe and her team made the following findings:
 - 29.5.1. On 27 June 2012, only 15% of textbooks had been delivered to schools, and not 99% as reported by the DBE;
 - 29.5.2. On 3 July 2012, 48% of schools had received their textbooks; and
 - 29.5.3. On 11 July 2012, 22% of schools were awaiting delivery of textbooks.
- 29.6. The information provided to SECTION27 by the DBE regarding the progress in textbook delivery was therefore grossly inaccurate.
- 29.7. Despite Prof Metcalfe's findings, the DBE continued to issue public statements indicating that the situation was "completely fine" and that all textbooks shortages had been addressed. Even after these claims were made, SECTION27 continued to receive reports from schools of textbooks shortages. These shortages were all communicated to the DBE.
- 29.8. We therefore resolved to file the third court application. In its answering affidavit in the third court application, the DBE recognized that there were still shortages of textbooks and undertook to address these.

- 29.9. To avoid a similar situation in 2013, the third court application included a prayer for the delivery of CAPS textbooks for 2013 by 15 December 2012.
- 29.10. The DBE agreed to a deadline of 12 October 2012 for the complete delivery of textbooks for 2012, and 15 December 2012 for the complete delivery of textbooks for 2013. The DBE further undertook to file affidavits in the North Gauteng High Court confirming that it had met these deadlines.
- 29.11. On 17 October 2012, the DBE filed an affidavit in the North Gauteng High Court confirming that all outstanding CAPS textbooks for 2012 had been delivered. However, SECTION27 continued to receive reports from schools that they were still awaiting textbooks. Indeed, at the time of making this submission, there are still some schools that did not receive their full complement of textbooks for 2012.
- 29.12. The DBE filed a further affidavit on 14 December 2012 confirming that all textbooks for 2013 had been delivered to schools. This was repeated in numerous public statements made by the DBE that all textbooks had been delivered for 2013 well in time for the commencement of the school year.
- 29.13. However, we continue to receive reports of textbooks shortages for 2013, with some schools still having received no textbooks at all.
- 29.14. We addressed correspondence to the DBE in February 2013 recording these shortages, and were informed that these outstanding textbooks were all *“en route to the schools”*. Many of these schools are still awaiting their textbooks.
- 29.15. A letter of demand addressed to the DBE and the Provincial Department indicating these shortages as at 16 April 2013 is attached as annexure **“C”**.
30. It is clear from this brief summary that there is a history of incorrect information as to the state of textbook delivery being provided to SECTION27 and to members of the public and now, we believe, to the SAHRC. In our view, this justifies the appointment of an independent entity to verify the state of textbook delivery going forward, until reliable systems are put in place to ensure that accurate information as to the state of textbook delivery each year is reported. This should be the case for all provinces that have not achieved 100% textbook delivery.
31. In the third application to the North Gauteng High Court, SECTION27 argued that it was necessary to appoint an independent entity to verify the state of textbook delivery through Limpopo.
32. Judge Kollapen did not see fit to grant the order for an independent verification. The basis for this decision was the issue of timing: given that the third court order was only granted on 4 October 2012, there would not be sufficient time to conduct an independent verification as to the state of delivery in all Limpopo schools and to complete delivery to these schools before the end-of-year examinations.

33. However, we believe that independent verification of textbook delivery going forward is crucial to ensuring that this core component of basic education is realized in full and on time. We submit that the SAHRC would be the appropriate institution to manage this process.
34. The SAHRC has in previous cases been used as an independent institution to monitor compliance with court orders. In this regard we refer to the decision of the Constitutional Court in *Government of the Republic of South Africa and others v Grootboom and others* 2001 (1) SA 46 (CC) in which the SAHRC was called upon to monitor compliance by the State with its obligations arising from the right to access adequate housing.
35. We therefore submit that the SAHRC should be tasked with monitoring progress in textbook delivery going forward, until systems are put in place to ensure reliable and accurate monitoring and reporting by the provincial education departments themselves.
36. SECTION27 submits further that due to the history of incorrect facts being provided to the public in relation to textbook procurement and delivery, it is essential that other stakeholders, including the Publishers' Association of South Africa, are given an opportunity by the SAHRC to be heard and to respond to these facts. This will ensure that the full set of correct facts is furnished to the SAHRC as part of its investigation.

VI OBSTACLES TO REPORTING OF TEXTBOOKS SHORTAGES AND OTHER CHALLENGES TO BASIC EDUCATION

37. Intimidation
- 37.1. The problem of intimidation of teachers, principals and even parents and learners has permeated all of our work on basic education.
- 37.2. We receive numerous reports from our client schools that they have been threatened with disciplinary proceedings if they approach SECTION27 for legal assistance. One of the teachers at one of our client schools reported that a principals' meeting was called by the Minister of Basic Education in August 2012. At this meeting, the Minister told the principals that if they value their careers, they will not report textbooks shortages to SECTION27. A copy of this report is attached as annexure "D".
- 37.3. On 8 March 2012, we referred a complaint to the Limpopo Provincial Office of the Public Protector. The complaint related to teachers who were threatened by officials in the Limpopo Department of Education that they would face disciplinary proceedings if they reported textbook shortages in their schools. The teachers were however, reluctant to provide their personal particulars for the purposes of the investigation of the complaint because

they feared further victimisation. The investigation therefore could not continue.

- 37.4. This victimization has unfortunately intensified. The principal at one of our client schools has been called to a disciplinary hearing for a seemingly unrelated but minor issue. Another principal was telephoned after we reported his textbooks shortages to the DBE, and reprimanded for reporting these shortages to SECTION27.
 - 37.5. Prior to the launch of the third textbooks application, we also received reports from some school principals that they were being forced by service providers to sign proof of delivery slips, despite the fact that their textbooks had not all been delivered.
 - 37.6. We met with the Public Protector in February 2013 to discuss strategies to address this intimidation and victimization. We hope that these discussions go some way towards addressing the problem.
 - 37.7. In this context, it is difficult to obtain accurate information from schools as to the state of delivery of textbooks, or any other challenges they may encounter. **We strongly believe that the widespread intimidation of teachers and principals by officials in the DBE and the Provincial Department results in significant under-reporting of textbooks shortages.**
 - 37.8. This problem further illustrates the need for an independent monitoring system to be put in place to ascertain the state of textbook delivery going forward.
38. *Non-payment and under-payment of norms and standards funds*
- 38.1. **The impact of textbook shortages, and the obstacles school face in reporting these shortages, are intensified by the non-payment or under-payment of provincial education departments of the “norms and standards funds” for operational day-to-day expenses.** This is a problem we have identified in the Limpopo context, but it may well be problematic in other provinces as well.
 - 38.2. Allocations of funding for schools’ operational day-to-day expenses have recently been cut by the DBE and the Provincial Department, in some cases by as much as 50%. Payments by the Provincial Department are also usually made late, or not at all. Schools cannot afford to operate on the funding they receive. This affects their ability to purchase chalk, paper and toner for their printers. They are also unable to pay for the maintenance and servicing of photocopy machines, fax machines and printers. Schools have reported that they cannot pay their electricity accounts and many of them have therefore had their electricity cut.

- 38.3. What this means is that where there are textbooks shortages, schools are unable to mitigate the impact of this by photocopying relevant portions of textbooks for their learners, or printing worksheets that deal with the same subject matter.
- 38.4. For example, one of our client schools has not received any geography textbooks for 2013. Because the school cannot afford paper or toner, they cannot produce worksheets for learners. The teacher therefore writes all of the work on the chalkboard. She cannot draw maps on the chalkboard, however. She therefore does not teach maps to her class as part of their geography curriculum.
- 38.5. The non-payment and under-payment of norms and standards funds further affects the ability of schools to report their textbooks shortages to the DBE and the Provincial Department.
- 38.6. On 6 February 2013 the DBE issued a circular to all Limpopo schools encouraging them to report textbooks shortages. A copy of this circular is attached as annexure "E". The circular calls upon schools to provide information regarding textbook delivery, including shortages experienced by schools, on a prescribed template, in triplicate, to be faxed or e-mailed to the DBE.
- 38.7. In the light of the fact that schools cannot afford to cover their day-to-day expenses, this is an unreasonable request. The 26 schools that SECTION27 is assisting in Limpopo cannot afford paper or electricity. Most of these schools do not have a functional fax machine. Most of these schools do not have access to the internet. It is therefore not possible for them to comply with the demands by the DBE to submit the information about the textbooks shortages in the prescribed manner.
- 38.8. This non-payment and under-payment of norms and standards funds is one example of the interrelated elements of the Limpopo education crisis, all of which must be addressed in order to establish a level of quality basic education in the province.
39. Poor communication infrastructure
- 39.1. The obstacle of poor communication infrastructure is closely-linked to the obstacle of non-payment and under-payment of norms and standards funds.
- 39.2. The report of the verification process led by Prof Metcalfe paints a bleak picture of lack of the necessary infrastructure to ensure effective communication between the Provincial Department and schools. At paragraph 11.6 of her report, Prof Metcalfe states the following:

*The mechanisms for communication between the provincial head office and districts, and between district offices and schools are completely inadequate and an **immediate investment must be made in improving the technology available for communication**. In 2009/10, only 2.7 % of Schools in Limpopo in 2010 had an email address, only 23.6% had a fax, only 28.4% had a landline (see Table 4 below). These are the lowest percentages in the country. Communication is largely dependent on the completely resource intensive delivery of hard copy of circulars. It is as a consequence of this that the province with highest percentage (71%) of Principals in the country with cell phones is Limpopo. It is unacceptable for Principals to subsidise from their personal income the communication deficiencies of the Department. (Our emphasis)*

- 39.3. **In this context it is difficult to imagine how schools can effectively communicate textbooks shortages through the right channels to ensure that they are addressed, or to be sure that communications to schools are being properly received.**

VII THE EDUSOLUTIONS CONTRACTS AND ALLEGATIONS OF CORRUPTION

40. The SAHRC makes no mention in its interim report of corruption and irregular expenditure.
41. SECTION27 is concerned about the fact that these issues appear not to have been dealt with in the proceedings. In particular, we believe that the allegations of an irregular contract between the Provincial Department and EduSolutions, which was valued at R320 million, are relevant to the questions surrounding systems of textbook procurement and delivery. In this regard SECTION27, together with the National Association of School Governing Bodies, the Centre for Applied Legal Studies and Khulumani Support Group, addressed a request to Corruption Watch to investigate the appointment of EduSolutions by the Provincial Department to manage the procurement and delivery of textbooks in Limpopo. A copy of this request is attached as annexure "F".
42. EduSolutions was appointed to manage textbook procurement and delivery in Gauteng, KwaZulu-Natal and Mpumalanga. The questions around the appointment of EduSolutions in Limpopo may well apply to these other provinces as well.
43. **SECTION27 submits that any investigation into textbook procurement and delivery must necessarily include an investigation into the relationships between EduSolutions, the DBE and the provincial education departments and the impact that this has on service delivery.**

VIII IMPLEMENTATION OF THE RECOMMENDATIONS ARISING FROM PROF METCALFE'S VERIFICATION REPORT

44. On 28 June 2012, SECTION27 and the DBE agreed to appoint Prof Mary Metcalfe to conduct an independent verification as to the progress in textbook delivery to Limpopo schools.
45. Prof Metcalfe's findings included that the system had collapsed due to pressure to comply with the first court order. She found that, on the appointment of EduSolutions to manage the procurement and delivery of textbooks, the book unit in the Provincial Department had been disbanded. There were accordingly no systems in place to support the procurement and delivery of textbooks within the short time frame available.
46. Prof Metcalfe also found that the warehouses in Limpopo held volumes of textbooks from previous years that were not delivered. She emphasized the importance of auditing these books and ensuring their delivery to schools, as well as investigating the circumstances under which they were never delivered to schools.
47. Based on her findings, Prof Metcalfe made further recommendations that extend beyond the 2012 Limpopo textbooks crisis, towards ensuring more sustainable systems in place to ensure smooth processes of textbook procurement and delivery going forward.
48. Prof Metcalfe's recommendations included the following:
 - 48.1. There should be further auditing of the delivery process, and government reports should be double-checked for accuracy and completeness.
 - 48.2. An investigation must be conducted on the over-ordering of textbooks by schools.
 - 48.3. There must be better communication between the LDE and stakeholders and Limpopo schools.
 - 48.4. All officials involved in the procurement process must undergo training to capacitate them to handle this process properly.
 - 48.5. More work must be done to improve the entire chain of Learner teacher support material ("LTSM") delivery. Billions of Rands are spent on LTSM annually, and such a budget deserves the application of appropriate resources and competencies to ensure that the education system reaps the maximum benefit of this investment.
 - 48.6. Proper records of the procurement of LTSM must be kept, even in the case of outsourcing certain functions under this system. Where functions are outsourced, the performance of service providers must be closely monitored.
 - 48.7. All energies must be directed to ensuring that all learners have adequate access to LTSM.

49. Following publication of Prof Metcalfe's verification report the DBE indicated that it accepted the recommendations made.
50. SECTION27 is concerned that the findings and recommendations of the verification team are not referred to in the SAHRC's interim report. We believe that the SAHRC should build on the important findings made by Prof Metcalfe, so that these parallel processes can be used to reinforce each other rather than risk undermining one another. In this regard we submit that Prof Metcalfe's recommendations would be of benefit to all of the provinces in which there are difficulties with smooth procurement and delivery of textbooks. **We believe that the SAHRC should have questioned the DBE as to what steps have been taken to implement these recommendations in the ten months since they were made.**

IX IMPLEMENTATION OF RECOMMENDATIONS OF THE PRESIDENTIAL TASK TEAM

51. In July 2012, The President appointed a Presidential Task Team ("the Task Team") to investigate the non-delivery and delays in the delivery of LTSM to Limpopo schools in the 2012 school year. The Task Team submitted a report in which the following findings were recorded:

51.1. The causes of the non-delivery and delays in delivery of LTSM were:

51.1.1. On the part of the Provincial Department:

51.1.1.1. Poor planning and management;

51.1.1.2. The failure to place orders timeously;

51.1.1.3. Negligent abdication of its responsibilities regarding the management and maintenance of the procurement process and data necessary therefor; and

51.1.1.4. Failure to prioritise the procurement of textbooks

51.1.2. Once the Province was placed under administration, the Director-General of Basic Education and the string of successive Administrators failed to act decisively to alleviate the problem. The DBE:

51.1.2.1. Failed in its oversight role of the Provincial Department's fulfillment of its obligations;

51.1.2.2. Failed to prioritise the ordering and delivery of textbooks once the Provincial Department was placed under administration;

- 51.1.2.3. Failed to provide the appointed administrators with sufficient support to enable them to fulfill their obligations in terms of the section 100(1)(b) intervention; and
 - 51.1.2.4. Refused to order textbooks from alternative suppliers on the basis of a fictitious court order barring them from doing so.
 - 51.1.3. EduSolutions suspended the procurement of textbooks prior to the intervention because the Provincial Department could no longer pay them. Due to a dispute with the DBE after the intervention, the service provider failed to procure further textbooks and dragged its heels in handing over data needed by the DBE to commence further procurement of textbooks.
- 51.2. There was sufficient funding available for the procurement of LTSM for the 2012 academic year both before and during the national intervention in the Limpopo province. However, other factors impacted negatively on the timely procurement of LTSM, including:
 - 51.2.1. A tendency on the part of the Provincial Department to disregard legislation;
 - 51.2.2. The lack of an ethos of accountability within the Provincial Department coupled with lack of recourse, response and action when corruption or irregularities were reported;
 - 51.2.3. Poor financial planning and management on the part of the Provincial Department, due in part to a lack of competence, skills and capacity in conjunction with a general lack of monitoring or oversight by the provincial treasury; and
 - 51.2.4. Poorly defined roles and mandates between the Provincial Department and the service provider.
- 51.3. The provincial treasury failed to manage its cash flow and to monitor expenditure of the province.
- 51.4. The Office of the Premier failed in its oversight role, which is its political and legal mandate, and did not effectively monitor the planning, budgeting and implementation of the Provincial Department's programmes.
- 51.5. The intervention team put in place to address the failures by the Provincial Department has identified the following weaknesses that need to be addressed:
 - 51.5.1. Systemic corruption and financial mismanagement;

- 51.5.2. Ineffective leadership, strategic planning and oversight;
 - 51.5.3. Poor contract and project management;
 - 51.5.4. Unqualified and/or untrained staff in the Provincial Department; and
 - 51.5.5. The inability of the DBE's Provincial Oversight Unit effectively to monitor and oversee the procurement and delivery of textbooks.
- 51.6. Proposed legislation regulating section 100(1)(b) interventions will facilitate a greater degree of cooperation between provincial and national government, allowing for the more effective monitoring and support by national government. However, the absence of such legislation is no excuse for the ineffective intervention in Limpopo, as there is sufficient precedent from previous section 100 interventions as well as legislative prescripts in other legislation that provide a framework for interventions.
52. Based on these findings the Presidential Task Team recommended that the Public Service Commission investigate the role of:
- 52.1. The Director-General of Basic Education, specifically with regard to:
 - 52.1.1. His failure to respond to and act on the reminder from the publishers in December 2011 that the Provincial Department had not ordered textbooks for the 2012 academic year;
 - 52.1.2. His failure to provide adequate support to the Administrators to ensure the implementation of the section 100(1)(b) intervention;
 - 52.1.3. His alleged reluctance to delegate the procurement function to the first two Administrators, further delaying the procurement process for the 2012 academic year.
 - 52.2. The Head of Department of Education and the Chief Financial Officer of the Provincial Department in respect of:
 - 52.2.1. Their failure to fulfill their responsibilities to ensure the timeous procurement and delivery of LTSM for the 2012 academic year;
 - 52.2.2. Their alleged failure in the procurement process to conduct a cost-benefit analysis or to consider the human resource capacity and administrative implications of their decision, amounting to a contravention of supply management principles;
 - 52.2.3. The province's failure to manage effectively the budget, costing and procurement of LTSM.

- 52.3. The Head of Department in the provincial treasury with regard to the provincial treasury's:
- 52.3.1. failure to monitor and remedy the cash flow problems that led to the financial crisis in the Limpopo Province, which ultimately impacted the Provincial Department's ability to order and pay for LTSM;
 - 52.3.2. ability to manage the budget and to collect data relevant for the costing and procurement of LTSM;
 - 52.3.3. alleged contravention of the Public Finance Management Act 1 of 1999 in awarding the textbook tender to a service provider without completing the prerequisite cost-benefit analysis.
53. Given the importance of textbooks in the provision of quality education, the Presidential Task Team emphasized the importance of appropriate oversight by government to ensure the efficient and timeous delivery of textbooks. This includes the implementation of effective risk management mechanisms.
54. They also highlighted the importance of standardized systems across all provinces to ensure efficient and timeous delivery of learner teacher support materials to learners each year. This is urgent, and must be prioritized to ensure that the textbooks crisis does not repeat itself in 2014.
55. **SECTION27 is concerned that the findings and recommendations of the Presidential Task Team are not referred to in the SAHRC interim report. We believe that these recommendations are key to addressing the Limpopo textbooks crisis of 2012, and should therefore be included in the steps forward identified by the SAHRC.**

X TEXTBOOK PRODUCTION FOR SPECIAL NEEDS LEARNERS

56. Reference is made in the interim report to textbooks and workbooks in Braille, for use by blind and partially-sighted learners. This is key to the realization of the right to basic education.
57. SECTION27 has been working with the South African National Council for the Blind in its engagements with the DBE to develop capacity to produce and distribute Braille textbooks and workbooks. While we are concerned that there has been little movement on this issue to date, we are encouraged by recent positive steps taken by the DBE to develop the necessary capacity to ensure that blind and partially-sighted learners have equal access to learning materials.
58. We submit that this system must be monitored closely to ensure appropriate adaptation of learning material (format and content) where necessary, as well as

teacher training to ensure that these resources are used to their maximum potential.

59. It is also important to continue to engage with publishing houses and publishers to secure their cooperation and support for this process, and to overcome the challenge of texts not being provided in a format that can be easily converted into Braille.
60. **In the light of the fact that the considerations surrounding procurement and delivery of Braille textbooks and workbooks are unique, we believe that the SAHRC should undertake a separate investigation into this issue.** There are approximately 6 000 learners with visual impairments in the mainstream education system. We believe that a full investigation into their educational needs, and the extent to which these are met, would be of great benefit to the realization of these learners' rights to basic education.

XI CONCLUSION

61. The importance of textbooks as a core component of the right to basic education cannot be understated. SECTION27 accordingly welcomes the investigation by the SAHRC into this issue countrywide as part of its mandate to ensure compliance by the DBE and all provincial education departments with the Constitution.
62. We believe that the 2012 Limpopo textbooks crisis was not unique to Limpopo, nor was it unique to 2012. As such, the lessons learned and the recommendations made in addressing this crisis are, in our view, useful in ensuring more sustainable systems of textbook procurement and delivery throughout South Africa going forward.