

**IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)**

CASE NO:

In the matter between:

BASIC EDUCATION FOR ALL

First Applicant

**SCHOOL GOVERNING BODY,
TLAME PRIMARY SCHOOL**

Second Applicant

**SCHOOL GOVERNING BODY,
MARESELENG SECONDARY SCHOOL**

Third Applicant

**SCHOOL GOVERNING BODY,
ARETHABENG PRIMARY SCHOOL**

Fourth Applicant

**SCHOOL GOVERNING BODY,
GADABI PRIMARY SCHOOL**

Fifth Applicant

**SCHOOL GOVERNING BODY,
MANKOPODI PRIMARY SCHOOL**

Sixth Applicant

**SCHOOL GOVERNING BODY,
SHAKOLENG SECONDARY SCHOOL**

Seventh Applicant

**SCHOOL GOVERNING BODY,
TSWETLANE PRIMARY SCHOOL**

Eighth Applicant

**SCHOOL GOVERNING BODY,
DAVHANA SECONDARY SCHOOL**

Ninth Applicant

SCHOOL GOVERNING BODY, TSOGANG PRIMARY SCHOOL	Tenth Applicant
SCHOOL GOVERNING BODY, SCHOONGEZICHT SECONDARY SCHOOL	Eleventh Applicant
SCHOOL GOVERNING BODY, SEJADIPUDI PRIMARY SCHOOL	Twelfth Applicant
SCHOOL GOVERNING BODY, VHULAUDZI SECONDARY SCHOOL	Thirteenth Applicant
SCHOOL GOVERNING BODY, TSHINAVHE SECONDARY SCHOOL	Fourteenth Applicant
SCHOOL GOVERNING BODY, MOKOBOLA PRIMARY SCHOOL	Fifteenth Applicant
SCHOOL GOVERNING BODY, MASHILOMPANA PRIMARY SCHOOL,	Sixteenth Applicant
SCHOOL GOVERNING BODY, KHUDUGANE SECONDARY SCHOOL	Seventeenth Applicant
SCHOOL GOVERNING BODY, TSHEHLWANENG SENIOR SECONDARY SCHOOL	Eighteenth Applicant
SCHOOL GOVERNING BODY, TSHABADIETLA SECONDARY SCHOOL	Nineteenth Applicant
SCHOOL GOVERNING BODY, MAKALA SECONDARY SCHOOL	Twentieth Applicant

**SCHOOL GOVERNING BODY,
REBONE SECONDARY SCHOOL** Twenty-First Applicant

**SCHOOL GOVERNING BODY,
THOROMETSANE PRIMARY SCHOOL** Twenty-Second Applicant

**SCHOOL GOVERNING BODY,
SEKABA SECONDARY SCHOOL** Twenty-Third Applicant

and

MINISTER OF BASIC EDUCATION First Respondent

DIRECTOR-GENERAL OF BASIC EDUCATION Second Respondent

**MEMBER OF THE EXECUTIVE COUNCIL,
LIMPOPO DEPARTMENT OF EDUCATION** Third Respondent

**ACTING HEAD OF DEPARTMENT, LIMPOPO
DEPARTMENT OF EDUCATION** Fourth Respondent

**HEAD OF THE INTERVENTION TEAM,
LIMPOPO DEPARTMENT OF EDUCATION** Fifth Respondent

SOUTH AFRICAN HUMAN RIGHTS COMMISSION Sixth Respondent

FOUNDING AFFIDAVIT

I, the undersigned

MIRNY TEBOGO SEPHAKGAMELA

hereby state under oath:

1. I am an adult male, residing at Mothobheki Village, Mopani District, Limpopo. I am currently in my third year of my Bachelor of Laws at the University of South Africa. During term time, I reside in Katlehong, east of Johannesburg.
2. I am a member of Basic Education for All (“BEFA”), the first applicant in this application. I am duly authorized to depose to this affidavit. The resolution of the Executive Committee of BEFA authorizing BEFA to bring this application, and authorizing me to depose to this affidavit, is attached as “**MS1**”.
3. I am also an intern at SECTION27. The focus of my work is on the Limpopo education crisis. As such, one of my primary responsibilities is to maintain contact with schools in Limpopo and to follow up on challenges reported to SECTION27 including shortages of textbooks, poor infrastructure, poor sanitation, shortages of furniture and shortages of teachers.
4. I do this work in discharge of my responsibilities as a member of BEFA, as well as an intern at SECTION27.
5. The facts contained in this affidavit are both true and correct and, unless the context indicates otherwise, within my personal knowledge. Where I make legal submissions I do so on the advice of SECTION27, the applicants’ legal representatives.
6. To the extent that I describe facts that are not within my personal knowledge, I attach the confirmatory affidavits of those persons who are able to confirm

these facts. I have also relied on affidavits deposed to on behalf of each of the second to twenty-fourth applicants.

I INTRODUCTION

7. This application seeks to compel the full delivery of textbooks to schools in Limpopo for the 2014 academic year. As I set out in more detail below, and as is clear from the affidavits deposed to on behalf of the second to twenty-fourth applicants, there are still significant shortages of textbooks for 2014.
8. The last day of the first school term in Limpopo is Friday 28 March 2014. On completion of the first quarter of the academic year, there is still a substantial number of textbooks for all grades that have not been delivered. All of these textbooks are those prescribed under the new Curriculum and Assessment Policy Statements (“CAPS”) Curriculum. Under this curriculum, the content and learning materials for each learning area have been revised. As such, no textbooks or workbooks from the previous curriculum can be used. It is therefore essential that the correct textbooks are used to support the CAPS curriculum.
9. The new CAPS curriculum was rolled out on an incremental basis as follows:
 - 9.1. In 2012, learners in Grades 1, 2, 3 and 10 were taught under CAPS for the first time. As I set out in more detail below, delivery of textbooks for this new curriculum was severely delayed, and only commenced in June 2012, after SECTION27, our attorneys of record, secured a court order against the respondents. A copy of this court order is attached as “MS2”. The failure by the respondents to comply with this court order in full led to SECTION27 being forced to approach this Court for two further court orders, attached as “MS3” and “MS4” respectively. Some schools in Limpopo never received all of their CAPS textbooks for Grades 1, 2, 3 and 10.

- 9.2. In 2013, the CAPS curriculum was introduced to learners in Grades 4, 5, 6 and 11. As I set out in more detail below, while there was an improvement in textbook delivery in 2013 as compared to 2012, delivery of textbooks was still not completed and some schools did not receive all of their textbooks in 2013.
- 9.3. In 2014, the CAPS curriculum was introduced to learners in Grades 7, 8, 9 and 12. Delivery of textbooks to support this new curriculum has still not been completed.
10. As such, all textbooks shortages as detailed in this application impact negatively on the roll-out of the CAPS curriculum, and are severely prejudicial to learners who cannot rely on textbooks from previous curricula. They are therefore forced to do their homework, prepare for their examinations and consolidate what they learn in class without their prescribed materials.
11. The textbooks shortages also have a negative impact on the ability of teachers to discharge their duties, as they cannot do so effectively without the necessary materials. They are forced to teach a new curriculum to learners with outdated textbooks, or with no textbooks at all.
12. As I set out in more detail below, the following schools have still not received all of their textbooks for 2014:
 - 12.1. Rasupi Primary School;
 - 12.2. Tlame Primary School;
 - 12.3. Matsotsosela Primary School;
 - 12.4. Mareseleng Secondary School;

- 12.5. Majane Matlala Secondary School;
- 12.6. Moupo Primary School;
- 12.7. Ranti Secondary School;
- 12.8. Tholong Primary School;
- 12.9. Arethabeng Primary School;
- 12.10. Gadabi Primary School;
- 12.11. Mankopodi Primary School;
- 12.12. Motserereng Primary School;
- 12.13. Shakoleng Secondary School;
- 12.14. Tswetlane Primary School;
- 12.15. Davhana Secondary School;
- 12.16. Nkhumishe Primary School;
- 12.17. Tsogang Primary School;
- 12.18. Schoongezicht Secondary School;
- 12.19. Sejadipudi Primary School;
- 12.20. Lehlakong Primary School;

- 12.21. Kwata Primary School;
- 12.22. Vhulaudzi Secondary School;
- 12.23. Mafumani Secondary School;
- 12.24. AM Mashego Secondary School;
- 12.25. Bekkersdorp Secondary School;
- 12.26. Tshinavhe Secondary School;
- 12.27. Valdezia Higher Primary School;
- 12.28. Mokobola Primary School;
- 12.29. Makhosani Primary School;
- 12.30. Mashilompana Primary School;
- 12.31. Khudugane Secondary School;
- 12.32. Tshehlwaneng Senior Secondary School;
- 12.33. Tshabadietla Secondary School;
- 12.34. Makala Secondary School;
- 12.35. Matime Primary School;
- 12.36. Thorometsane Primary School;

- 12.37. Rebone Secondary School;
 - 12.38. Bopedi Bapedi High School; and
 - 12.39. Sekaba Secondary School.
13. Some of the schools listed in paragraph 12 above are not applicants to this case. The reason for this is that the teachers, principals and members of school governing bodies (“SGB”) fear repercussions by the Department of Basic Education (“DBE”) and the Limpopo Department of Education (“LDoE”) for their involvement in this case. In particular, they have reported threats of disciplinary proceedings if they institute legal proceedings against the DBE and the LDoE. As such, they have declined to act as applicants in this case. However, the textbooks shortages at these schools must still be addressed.
14. This failure to deliver textbooks is in breach of the following:
- 14.1. The right to basic education, in terms of section 29 of the Constitution;
 - 14.2. The right to equality in terms of section 9 of the Constitution;
 - 14.3. The right to dignity in terms of section 10 of the Constitution;
 - 14.4. Section 165(4) of the Constitution, which calls upon organs of state to assist and protect the courts and to ensure their independence, impartiality, dignity, accessibility and effectiveness; and
 - 14.5. Section 195 of the Constitution, which prescribes the basic values and principles that must govern public administration.

15. Accordingly, this application seeks to secure the urgent and complete delivery of CAPS textbooks to all schools listed in paragraph 12 above, and all other schools in Limpopo that have not yet received all of their textbooks.
16. The applicants also seek an order directing the South African Human Rights Commission (“SAHRC”) to monitor compliance with the order granted by this Court. This is dealt with in more detail at paragraphs 144 to 147 below.
17. In establishing the relief sought by the applicants, I have structured this affidavit as follows:
 - 17.1. First, I describe the parties to this application;
 - 17.2. Second, I set out the grounds for urgency,
 - 17.3. Third, I describe the grounds on which the applicants have standing to bring this application;
 - 17.4. Fourth, I describe the background to this case and particularly the problems around textbook procurement and delivery in Limpopo in 2012;
 - 17.5. Fifth, I set out the correspondence between the applicants’ legal representatives and the DBE and the LDoE around the issue of textbook delivery for 2014;
 - 17.6. Sixth, I refer to the legal obligations on the first to fifth respondents to ensure that every learner has a textbook for every learning area;
 - 17.7. Seventh, I set out the relief sought by the applicants; and
 - 17.8. Finally, I deal with the issue of costs.

II PARTIES

18. The first applicant is Basic Education for All (“BEFA”), a voluntary association based in Limpopo. BEFA is made up of principals, teachers, parents, members of SGBs, learners and concerned community members who seek to promote and protect the right to basic education for learners in Limpopo. There are currently 50 members of BEFA throughout Limpopo.
19. One of BEFA’s core activities is to ensure that South African learners are provided with the resources they require in order to learn. The respondents have failed to ensure that these resources are made available to all learners.
20. BEFA was inaugurated at a community meeting held in Giyani on 6 October 2012. The meeting was convened as a direct response to the education crisis in Limpopo. Community members from the Vhembe and Mopani Districts decided to play an active and important role in safeguarding the interests of learners in public schools in Limpopo, and formed BEFA to facilitate their activities.
21. A copy of BEFA’s constitution is attached as “MS5”.
22. The second applicant is the SGB of Tlame Primary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Tlame Primary School is located at Motshadi Village, Glencowie Circuit, Sekhukhune District. I refer to the affidavit of Ntobeng David Mafokwane and the resolution attached thereto.
23. The third applicant is the SGB of Mareseleng Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Mareseleng Secondary School is located at Legolaneng Village,

Rakgwadi Circuit, Sekhukhune District. I refer to the affidavit of Letsogapele Sonnyboy Mokwana and the resolution attached thereto.

24. The fourth applicant is the SGB of Arethabeng Primary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Arethabeng Primary School is located at Jane Furse, Vergelegen B Village, Mmashadi Circuit, Sekhukhune District. I refer to the affidavit of Mmakwale Nelson Malata and the resolution attached thereto.
25. The fifth applicant is the SGB of Gadabi Primary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Gadabi Primary School is located at Mandiwana Village, Vhembe District. I refer to the affidavit of Mulalo Mercy Makatu and the resolution attached thereto.
26. The sixth applicant is the SGB of Mankopodi Primary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Mankopodi Primary School is located at Manoge Village, Mhlaletsi Circuit, Sekhukhune District. I refer to the affidavit of Mmafolle Frans Kodibona and the resolution attached thereto.
27. The seventh applicant is the SGB of Shakoleng Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Shakoleng Secondary School is located at Rheinland Village, Bochum East Circuit, Capricorn District. I refer to the affidavit of Matome Barnard Ramaphakela and the resolution attached thereto.
28. The eighth applicant is the SGB of Tswetlane Primary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Tswetlane Primary School is located at Ga-Matodi Village, Sekhukhune District. I refer to the affidavit of Mohlaleng David Mohlala and the resolution attached thereto.

29. The ninth applicant is the SGB of Davhana Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Davhana Secondary School is located at Ha-Davhana Village, Boronga-1, Vhembe District. I refer to the affidavit of Justice Dakwa Mathaba and the resolution attached thereto.
30. The tenth applicant is the SGB of Tsogang Primary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Tsogang Primary School is located at Ramodumo Village, Molototsi Circuit, Mopani District. I refer to the affidavit of Matome Phillip Maake and the resolution attached thereto.
31. The eleventh applicant is the SGB of Schoongezicht Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Schoongezicht Secondary School is located at Schoongezicht Village, Bochum-West Circuit, Capricorn District. I refer to the affidavit of Lehlokwa Alex Ngwepe and the resolution attached thereto.
32. The twelfth applicant is the SGB of Sejadipudi Primary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Sejadipudi Primary School is located at Atok Village, Sekhukhune District. I refer to the affidavit of Dipuo Raisibe Mmola and the resolution attached thereto.
33. The thirteenth applicant is the SGB of Vhulaudzi Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Vhulaudzi Secondary School is located at Tshihlavha Village, Nzelele Circuit, Vhembe District. I refer to the affidavit of the Chairperson of the SGB and the resolution attached thereto.

34. The fourteenth applicant is the SGB of Tshinavhe Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Tshinavhe Secondary School is located at Khavhuani Village, Vhuronga-2 Circuit, Vhembe District. I refer to the affidavit of Tshimangadzo Catherine Ragimane and the resolution attached thereto.
35. The fifteenth applicant is the SGB of Mokobola Primary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Mokobola Primary School is located at Mokobola Village, Sekhukhune District. I refer to the affidavit of Maletse Esther Mafane and the resolution attached thereto.
36. The sixteenth applicant is the SGB of Mashilompana Primary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Mashilompana Primary School is located at Senaabarwama Village, Capricorn District. I refer to the affidavit of Sebule George Mohlapi and the resolution attached thereto.
37. The seventeenth applicant is the SGB of Khudugane Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Khudugane Secondary School is located at Roerfontein Village, Sekhusesse East, Mopani District. I refer to the affidavit of Madidimalo Muzrael Makoro and the resolution attached thereto.
38. The eighteenth applicant is the SGB of Tshehlwaneng Senior Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Tshehlwaneng Senior Secondary School is located in Schoonoord Circuit, Sekhukhune District. I refer to the affidavit of Sekgothe Piet Mawela and the resolution attached thereto.
39. The nineteenth applicant is the SGB of Tshabadietla Secondary School, a juristic person established under the provisions of section 16(1) and section 23

of the Schools Act. Tshabadietla Secondary School is located at Dithlabaneng Village, Schoonoord Circuit, Sekhukhune District. I refer to the affidavit of Morela Julia Mohlala and the resolution attached thereto.

40. The twentieth applicant is the SGB of Makala Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Makala Secondary School is located at Mamaila Village, Sekhusese East Circuit, Mopani District. I refer to the affidavit of Motlatso Solomon Matlhatlha and the resolution attached thereto.
41. The twenty-first applicant is the SGB of Rebone Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Rebone Secondary School is located at Riverside Village, Glencowie Circuit, Sekhukhune District. I refer to the affidavit of Thelela Jack Magoga and the resolution attached thereto.
42. The twenty-second applicant is the SGB of Thorometsane Primary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Thorometsane Primary School is located at Phiring Village, Leboweng Circuit, Sekhukhune District. I refer to the affidavit of Enos Ralekwa Mokgwatsane and the resolution attached thereto.
43. The twenty-third applicant is the SGB of Sekaba Secondary School, a juristic person established under the provisions of section 16(1) and section 23 of the Schools Act. Sekaba Secondary School is located at Moime Village, Thabina Circuit, Mopani District. I refer to the affidavit of Mohale Malatji and the resolution attached thereto.
44. The first respondent is the Minister of Basic Education (“Minister”), in her capacity as head of the DBE. The Minister bears obligations in terms of determining education policies and administering funds appropriated for education. The Minister bears an obligation to ensure compliance with the

obligations of the DBE and the LDoE. In addition, I am advised that due to the continued intervention in the LDoE in terms of section 100(1)(b) of the Constitution, the Minister holds direct responsibility for the obligations of the LDoE, including the obligation to ensure full delivery of textbooks. I am advised that this will be addressed during legal argument to the extent that this is necessary.

45. The Minister's principal place of business is at Sol Plaatje House, 222 Struben Street, Pretoria. Service on the Minister is effected care of the State Attorney, Pretoria.
46. The second respondent is the Director-General of Basic Education ("Director-General"), in his official capacity as such. The Director-General bears ultimate responsibility for the administrative implementation of measures to ensure realization of the right to basic education and as such bears direct responsibility for the full delivery of textbooks to schools in Limpopo. The Director-General's principal place of business is at Sol Plaatje House, 222 Struben Street, Pretoria. Service on the Director-General is effected care of the State Attorney, Pretoria.
47. The third respondent is the Member of the Executive Council in the LDoE ("MEC"). The LDoE is ordinarily responsible for the provision of education in Limpopo, including the procurement and delivery of textbooks. I am advised that although the Minister has now assumed direct responsibility for the provision of basic education in Limpopo through the intervention in terms of section 100(1)(b) of the Constitution, this does not absolve the MEC of her responsibilities.
48. The MEC's principal place of business is at corner 113 Biccard and 24 Excelsior Street, Polokwane. Service on the MEC is effected care of the State Attorney, Pretoria.

49. The fourth respondent is the Acting Head of Department in the LDoE (“HOD”). The HOD is ordinarily responsible for the administrative implementation of measures to promote the right to basic education in Limpopo, including the procurement and delivery of textbooks. The HOD’s principal place of business is at corner 113 Biccard and 24 Excelsior Street, Polokwane. Service on the HOD is effected care of the State Attorney, Pretoria.
50. The fifth respondent is the Head of the Intervention Team in the LDoE (“Administrator”). I am advised that the Administrator is the Minister’s representative in the LDoE for the duration of the intervention in terms of section 100(1)(b) of the Constitution. As such, he bears direct responsibility for the delivery of textbooks to Limpopo schools.
51. The Administrator’s principal place of business is at corner 113 Biccard and 24 Excelsior Street, Polokwane. Service on the Administrator is effected care of the State Attorney, Pretoria.
52. The sixth respondent is the SAHRC. The SAHRC is cited by virtue of its interest in the matter. In particular, I am advised that the SAHRC is currently preparing a report on the procurement and delivery of learner teacher support materials across South Africa. This investigation was initiated after the crisis in Limpopo with textbook delivery in 2012, an issue to which I turn below.
53. In addition, the relief sought by the applicants includes an order directing the SAHRC to monitor the delivery of textbooks to schools across Limpopo in terms of the order of this Court. I am advised that the SAHRC bears a duty under section 184(1)(c) of the Constitution to “*monitor and assess the observance of human rights in the Republic.*” This aspect of the relief sought by the applicants is described in more detail below.

III URGENCY

54. This application has been brought on an urgent basis. The applicants contend that the continued delay in ensuring the full delivery of textbooks to all Limpopo schools constitutes a serious and continued violation of learners' rights to basic education, dignity and equality.
55. The failure by the respondents to ensure complete textbook delivery to all learners attending public schools in Limpopo causes harm to these learners that intensifies with each day that textbook delivery remains incomplete. For each day that learners do not have access to textbooks for each of their school subjects, there are gaps in their prescribed curricula that cannot be closed. If this breach is allowed to continue, the harm suffered by these learners may become irreversible.
56. The continued failure by the respondents to ensure full textbook delivery has lasted for the entirety of the first school term, which will end on 28 March 2014. During this time, the applicants have repeatedly engaged the respondents through SECTION27 as their legal representatives in an attempt to resolve the shortages reported to the respondents promptly. Our legal representatives have provided whatever information has been requested by the respondents in an effort to facilitate complete textbook delivery. Despite this, at the completion of the first school term, textbook delivery remains incomplete.
57. The second school term is due to commence on 7 April 2014. The continued violation of the rights of learners attending public schools in Limpopo cannot be allowed to continue into the second school term. It is imperative that they have all of their prescribed learning materials by the time schools reopen.
58. Learners will be expected to commence preparations for their mid-year examinations in the second school term. They cannot do so without their prescribed learning materials.

59. If the breach by the respondents of learners' rights to basic education, equality and dignity is allowed to continue unabated, the resulting impact on the education of these learners will be severe and irreversible.
60. The applicants further submit that the urgency of this matter justifies the circumstances under which the application was filed. Given the remote locations of the second to twenty-fourth applicants, and the long distances between each of these schools, it was not possible to have the affidavits for each of these applicants signed prior to this matter being set down on the urgent court roll in terms of the rules of this Court.
61. As such, the applicants seek the indulgence of this Court in condoning the delivery of unsigned copies of some affidavits, and submit that this could not be avoided in the circumstances. We submit that the urgency of this matter justifies the delivery of unsigned copies on 27 March 2014, to enable this matter to be heard in time for an order to be made directing delivery of textbooks before the commencement of the second school term. The signed copies of these affidavits will be delivered as soon as they are available, and the original signed affidavits will be handed up at the hearing of this matter.

IV STANDING

62. The applicants bring this application in several capacities:
 - 62.1. First, in their own interest. As I set out more fully above, BEFA is a voluntary association established, *inter alia*, to address the ongoing education crisis in Limpopo. One of its objectives is to ensure the full delivery of learner teacher support materials to learners in line with their right to basic education.
 - 62.2. The second to twenty-fourth applicants are all school governing bodies of schools that have not received their full complement of

textbooks for 2014. They seek to ensure that the learners at their schools are provided with their prescribed learning materials.

62.3. Second, in terms of sections 38(b) and (c) of the Constitution, this application is brought in the interests of the learners, educators and parents at Limpopo schools. The learners have a right to basic education, which includes the provision of all of their textbooks. The first to fifth respondents are in breach of their corresponding obligations. The learners concerned cannot individually bring these proceedings against the first to fifth respondents: they lack the necessary resources and knowledge of their rights. They are young and do not all have access to legal services. This application is brought in their interests.

62.4. In addition, some of the educators at Limpopo schools have expressed their reluctance to take steps to ensure full textbook delivery at their schools, given that they have been threatened by officials in the LDoE with disciplinary proceedings if they do so. However, these educators cannot and should not continue to teach a new curriculum without the prescribed materials. Because the threats against them have precluded them from taking steps to enforce their rights directly, this application seeks to protect their interests as well.

62.5. As such, this application seeks to compel full textbook delivery to all schools whose shortages have been drawn to the attention to the first to fifth respondents by SECTION27, as well as all other schools in Limpopo that have not yet received all of their textbooks.

62.6. Finally, the provision of textbooks and the enforcement of the right to basic education is a matter that falls in the public interest. The state of education in Limpopo is a grave concern to the public. The extent to which learners receive a quality basic education has a direct impact on

their ability to contribute to their communities. It is therefore in the public interest that breaches of the right to basic education, such as the failure to deliver textbooks to learners, are remedied.

63. I submit on these grounds that the applicants have standing to bring this application.

V BACKGROUND TO THIS CASE

64. The issue of incomplete textbook delivery to Limpopo schools is by no means a new issue. It was the subject of proceedings launched in this Court in 2012 under case number 24565/2012.

65. That case, which was launched on 4 May 2012, involved the failure by the first to fifth respondents to deliver CAPS textbooks to all learners in Grades 1, 2, 3 and 10 across Limpopo. Following a series of undertakings to deliver textbooks, the details of which are not directly relevant to this application, SECTION27, Hanyani Thomo Secondary School and Tondani Lydia Masiphephethu approached this Court for an order compelling full textbook delivery and the development and implementation of a catch-up plan for Grade 10 learners.

66. The matter was heard by Kollapen J on 15 May 2012. On 17 May 2012, Kollapen J delivered his judgment. He held that the failure by the respondents in that matter to deliver textbooks was in breach of the right to basic education, as well as the rights to equality and dignity, and ordered the respondents, *inter alia*, to effect full textbook delivery by no later than 15 June 2012 (“first court order”).

67. The first to fifth respondents failed to comply with the first court order. By 15 June 2012, despite public claims by the Minister that textbook delivery was complete, very few Limpopo schools had received their textbooks.

68. On 21 June 2012, to avoid further litigation on the issue, the parties to the application brought under case number 24565/2012 entered into a settlement agreement in terms of which full delivery of CAPS textbooks would be complete by 27 June 2012. The respondents in that case also undertook to provide daily progress reports on its efforts to SECTION27.
69. A copy of this settlement agreement, which was made an order of court on 5 July 2012 (“second court order”), is attached as **“MS3”**.
70. In terms of the progress reports provided to SECTION27, full delivery of textbooks for the CAPS curriculum appeared to have been close to completion. However, SECTION27 continued to receive reports of non-delivery of textbooks. The parties to that application therefore became concerned about the accuracy of the progress reports provided by the DBE.
71. To avoid over-burdening the Court, copies of these progress reports have not been attached. They will be made available at the hearing of this matter if necessary.
72. The parties agreed to appoint an independent person to verify the progress reports, and the state of textbook delivery as at 27 June 2012. Prof Mary Metcalfe was appointed to lead this process, and worked off a sample of 411 schools across Limpopo. Prof Metcalfe found that –
 - 72.1. On 27 June 2012, only 15% of textbooks had been delivered to schools, and not 99% as reported by the DBE;
 - 72.2. On 3 July 2012, 48% of schools had received their textbooks; and
 - 72.3. On 11 July 2012, 22% of schools were still awaiting delivery of their textbooks.

73. Based on her findings Prof Metcalfe made sixteen recommendations regarding textbook procurement and delivery. One of these recommendations was that the DBE conduct a full audit of the delivery process to enable them to ensure the complete delivery of textbooks to all schools in Limpopo.
74. To avoid over-burdening this Court, a copy of the verification report has not been attached. This report will, however, be made available at the hearing of this matter if necessary.
75. I am informed that the DBE never conducted a full audit of textbook delivery. It was also not clear at that stage whether any further delivery of textbooks took place after 11 July 2012, despite the fact that there were still significant shortages. Instead, the DBE made numerous public statements denying that there were any textbooks shortages. An example of one of these statements is attached as “MS6”.
76. Accordingly, the applicants in the case launched under case number 24565/2012 resolved to approach this Court once more, to secure full textbook delivery for 2012, as well as an order compelling full textbook delivery for 2013 by 15 December 2012.
77. The matter was heard before Kollapen J on 2 October 2012. Before the commencement of the court hearing, the parties agreed as follows:
 - 77.1. Textbook delivery for grades 1, 2, 3 and 10 for 2012 would be completed by no later than 12 October 2012;
 - 77.2. Textbook delivery for grades 4, 5, 6 and 11 for 2013 (for the new CAPS curriculum) would be completed by no later than 15 December 2012;
and

- 77.3. The DBE would lodge affidavits with this Court confirming that these deadlines had been met.
78. In recording this settlement as an order of court, Kollapen J held that the respondents were in breach of the first and second court orders.
79. I attach a confirmatory affidavit deposed to by Nikki Stein, who deposed to the affidavits in the applications brought under case number 24565/2012.
80. Although textbook delivery in 2013 saw an improvement from 2012, the first to fifth respondents failed to comply with the deadline of 15 December 2012. Indeed, not all Limpopo schools received their textbooks for 2013. SECTION27 continued to engage the first to fifth respondents on these shortages. While some of the shortages were addressed, some schools never received their full complement of textbooks for 2013.
81. It is clear from the current textbooks shortages, as detailed in the attached affidavits deposed to by the second to twenty-fourth applicants, that the first to fifth respondents did not comply in full with the third court order; had they done so, there would be no shortages of textbooks for Grades 1 – 6 and 10 – 11 this year.
82. As a result, the shortages of textbooks in 2014 do not relate only to those grades that commenced the CAPS curriculum in 2014; they relate to all CAPS textbooks for all grades.

VI FACTS GIVING RISE TO THIS APPLICATION

83. Against this background, and in the light of the importance of textbooks as a core component of the right to basic education, SECTION27 and BEFA considered it necessary to monitor textbook delivery for 2014 and to ensure

that all schools had the materials they needed prior to the commencement of the academic year.

84. This process has involved extensive engagement between Nikki Stein and Ariane Nevin of SECTION27 and Allan Subban of the DBE. Confirmatory affidavits deposed to by Ms Stein and Ms Nevin will be attached.
85. On 15 September 2013, in the attached article marked **"MS7"**, it was reported that the DBE *"put its head on a block, promising to deliver textbooks for the 2014 academic year to all schools before the break for the December holidays."* It was anticipated that this would be a *"smooth and friction free process."*
86. In that regard, Phuti Seloba, the then spokesperson for the DBE, was quoted as saying that *"[t]he plans are there and the logistics are there and I don't see why we will not be able to accomplish the task. . . . Our logistics are super-reliable and they are tried and tested"*.
87. On 11 October 2013, in the attached article marked **"MS8"**, the first respondent confirmed that textbooks would be delivered to all Limpopo schools by mid-November 2013.
88. The acting Director-General made similar claims. I attach as **"MS9"** an article in which the acting Director-General indicated that all textbooks would be delivered by the end of November 2013, and any unforeseen shortages addressed by January 2014.
89. On 14 January 2014, in the attached article marked **"MS10"**, Panyaza Lesufi, the spokesperson in the DBE stated that most textbooks had already been delivered, and that any shortages due to increased learner enrolment would be addressed soon after the academic year commenced on 16 January 2014. He indicated that 99% of schools had received their textbooks.

90. However, there remained substantial textbooks shortages at schools throughout Limpopo.
91. On 15 January 2014, Ms Stein contacted Mr Subban via e-mail (a copy of which is attached as **"MS11"**) indicating that approximately 40 schools had reported textbooks shortages to SECTION27. While these shortages had been reported to the DBE and/or the LDoE directly, Ms Stein indicated that SECTION27 had compiled a consolidated list of shortages.
92. Mr Subban responded on 16 January 2014, in the attached e-mail marked **"MS12"**. He indicated that the textbooks shortages reported to the DBE and the LDoE were being remediated, either through the delivery of existing stock or, where stock was not available, through additional orders placed with publishers. Mr Subban indicated that the outstanding textbooks were at that stage being delivered to the warehouse, and that *"the delivery agent will package and deliver to schools asap."* Mr Subban further encouraged SECTION27 to report textbooks shortages to him directly, so as to ensure that all schools received their textbooks.
93. Ms Stein accordingly sent a list to Mr Subban on 16 January 2014 of schools in Limpopo that had reported textbooks shortages to SECTION27. A copy of this list is attached as **"MS13"**. According to this list –
- 93.1. 21 schools had reported their textbooks shortages to SECTION27; and
- 93.2. All grades were affected by the failure by the DBE and the LDoE to effect full delivery of textbooks for 2014.
94. Mr Subban responded on the same day, in the attached e-mail marked **"MS14"**. He stated that procurement of the textbooks for the CAPS curriculum for Grades 7, 8, 9 and 12 were being prioritized. A decision would then be made whether to procure top-up textbooks for the remaining grades.

95. Ms Stein responded to Mr Subban on the same day, in the attached e-mail marked "**MS15**". She indicated that, although textbooks for Grades 1 – 6 and Grades 10 – 11 were, strictly speaking, considered to be top-up textbooks, some schools did not receive their full complement of textbooks when the CAPS curriculum was phased in in 2012 and 2013, and so some schools did not have access to these textbooks at all. It was therefore essential that textbooks shortages for all grades were addressed.
96. Mr Subban did not respond to this e-mail.
97. On 17 January 2014, Ms Stein submitted a further list of textbooks shortages to Mr Subban, following reports of textbooks shortages from three additional schools in Limpopo: Schoongezicht Secondary School, Sejadipudi Primary School and Muthurwana Secondary School.
98. A copy of this list is attached as "**MS16**".
99. Mr Subban responded on 20 January 2014, in the attached e-mail marked "**MS17**", requesting assistance from SECTION27 with the EMIS number, district, and circuit for each school included on the list of textbooks shortages. He stated that this would assist in the verification and remediation processes.
100. This information was sent to Mr Subban on the same day, in the attached e-mail marked "**MS18**". A further e-mail including the EMIS number, district and circuit of one additional school – Mareseleng Secondary School – was sent to Mr Subban on the following day, in the attached e-mail marked "**MS19**". To avoid over-burdening the court, only the latter list, containing the full set of information requested, has been attached to this affidavit.
101. Mr Subban's acknowledgements of receipt of this information are attached as "**MS20**".

102. While it is appreciated that this information is necessary for the efficient verification and remediation of textbooks shortages, it is of concern that the neither the DBE nor the LDoE appears to have this information readily available. Accurate details of each school in Limpopo are crucial to ensuring the effective discharge of obligations in relation to each of these schools. Without this information, the respondents are not in a position to ensure that all of the needs of these schools are met.
103. In any event, this information was provided to the respondents by our legal representatives in an effort to ensure that the reported textbooks shortages could be addressed as soon as possible.
104. On 31 January 2014, Ms Stein sent an updated list of textbooks shortages to Mr Subban. As is clear from this list, three additional schools had reported textbooks shortages to SECTION27: Vhulaudzi Secondary School, Lehlakong Primary School and Kwata Primary School. A copy of this list is attached as **“MS21”**.
105. Mr Subban responded on the same day, again thanking SECTION27 for its assistance in the matter and undertaking to investigate and remediate the textbooks shortages. A copy of his response is attached as **“MS22”**.
106. On 6 February 2014, in the attached article marked **“MS23”**, the South African Democratic Teachers’ Union Secretary-General in Limpopo stated that learners in both primary schools and secondary schools in Limpopo were affected by the late delivery or non-delivery of textbooks. He stated that *“matrics are the hardest hit, with textbooks missing in numerical subjects like science and accounting.”*
107. Raphasha also expressed concern about the intimidation of school principals. He stated *“[w]e want to take very strong umbrage and exception to the*

intimidation of school principals by the overzealous MEC which does not take into consideration both objective and subjective factors.”

108. On 11 February 2014, Ms Nevin sent an updated list of textbooks shortages to Mr Subban. A copy of this list is attached as **“MS24”**. It is clear from this list that some of the textbooks reported to the DBE to be missing had been delivered: for example, Sekwala Primary School and Kanana Primary School reported that they had received their outstanding textbooks. Arethabeng Primary School had also received some, although not all, of its outstanding textbooks. In this regard I refer to the affidavit of Mmakwale Nelson Malata.
109. However, more schools approached SECTION27 with complaints of textbooks shortages. SECTION27 therefore added the following schools to its list: Mafumani Secondary School, Lamdzvadvo Secondary School, AM Mashego Secondary School, Bekkersdorp Secondary School, Tshinavhe Secondary School, Valdezia Higher Primary School, Lehlaba Secondary School, Moloko Secondary School, Seripa Secondary School, Ximunwana Secondary School and Mokobola Primary School.
110. In the attached e-mail to Ms Nevin dated 11 February 2014 and marked **“MS25”**, Mr Subban once again undertook to *“immediately investigate and resolve”*.
111. On 20 February 2014, in his State of the Province address, the Premier of Limpopo described problems with the delivery of textbooks as *“a thing of the past”*. He stated that *“[b]y the time schools re-opened in January this year we had distributed Learner Teacher Support Materials to all the schools in Limpopo.”*
112. A copy of the relevant extract of this address relating to education is attached as **“MS26”**.

113. On 25 February 2014, however, there were still significant textbooks shortages. Ms Stein sent an updated list to Mr Subban, a copy of which is attached as “**MS27**”. It is clear from this list that while some shortages had been addressed, there were still 30 schools that had not yet received all of their textbooks. Ms Stein requested an indication as to when these shortages would be addressed.

114. No response to this e-mail was received.

115. On 9 March 2014, there were further media reports of textbooks shortages in the North West, Limpopo and the Northern Cape. I attach as “**MS28**” an article from the City Press detailing textbooks shortages at six schools in the Mopani and Capricorn Districts in Limpopo: Moleketla Primary School, Khethapoye Primary School, Thaphane Primary School, Modumela Secondary School, Kabelo Secondary School and Moremotse Secondary School.

116. This article reported that the schools rejected claims of full delivery of textbooks, and were struggling to mitigate the damage caused by the failure to effect full delivery of all of their textbooks:

116.1. The principal of Moleketla Primary School indicated that *“[t]hey are making noises all over the radio saying books have been delivered, but they are not and it’s a problem.”*

116.2. A mathematics teacher at the same school reported that teachers were forced to write the textbooks out in full on the blackboard because there were no books for learners to work from.

116.3. At Khethapoye Primary School, one of the teachers described the challenges of having to photocopy textbooks as follows: *“Sometimes there is no electricity and we can’t photocopy. Sometimes the copier is*

broken. The most important thing is that we can't even give them homework. We spend a fortune on ink and paper."

- 116.4. A Grade 12 learner at Modumela Secondary School reported that learners at his school had to use Grade 11 textbooks for Sepedi because the Grade 12 textbooks had not yet been delivered. He states, *"Our teachers said we should use Grade 11 ones while we wait for ours. They are holding us back and we could fail. What if the books don't come at all? What is going to happen to us?"*
117. The spokesperson for the DBE, Elijah Mhlanga, stated in this article that the shortages would be addressed. However, there are still significant textbooks shortages throughout Limpopo.
118. Ms Stein sent a further updated list to Mr Subban on 10 March 2014. A copy of this list is attached as **"MS29"**. In her covering e-mail, Ms Stein indicated that yet more schools had come forward to report textbooks shortages for 2014. These were Makhosani Primary School, Mashilampana Primary School, Khudugane Secondary School, Tshehlwaneng Senior Secondary School, Tshabadietla Secondary School, Makala Secondary School and Matime Primary School.
119. At this stage, almost two months into the academic year, a number of schools had been on the list of textbooks shortages since 16 January 2014, without their outstanding books being delivered. Indeed 17 of the 21 schools initially reported to the DBE had not yet received all of their textbooks. These are Rasupi Primary School, Tlame Primary School, Matsotsosela Primary School, Mareseleng Secondary School, Moupo Primary School, Ranti Secondary School, Tholong Primary School, Arethabeng Primary School, Gadabi Primary School, Majane Matlala Secondary School, Mankopodi Primary School, Motserereng Primary School, Skaholeng Primary School, Tswetlane Primary School, Dhavana Secondary School, Nkhumishe Primary School and Tsogang Primary School.

120. Ms Stein also recorded the concern of reports of threats and intimidation by officials in the LDoE in response to reports of textbooks shortages.
121. Ms Stein requested an urgent response from Mr Subban to these issues.
122. Mr Subban responded to Ms Stein on the same day, in the attached e-mail marked "**MS30**". In this e-mail he stated the following:

"Hi Nikki

Frankly, I am shocked when schools claim not to have received any textbooks. Various processes have been put in place to close the gap for 2014 textbooks. I will immediately engage the team to investigate and respond. Appreciated.

Allan Subban."

123. In response to this e-mail, Ms Stein requested details of the processes referred to by Mr Subban so as to be able to identify where problems are occurring and how they can be addressed. A copy of this e-mail is attached as "**MS31**".
124. Mr Subban's response, received on 10 March 2014 and attached as "**MS32**", indicated that *"the submission and letter to advise you has been prepared and is awaiting signature of the Administrator. I will follow up with this while I am in Limpopo tomorrow."*
125. The letter referred to in this e-mail was never sent to SECTION27. As such, it is still not clear what processes, if any, are in place to address the textbooks shortages.
126. On 12 March 2014, Ms Stein addressed a further e-mail to Mr Subban. A copy of this e-mail is attached marked "**MS33**". In this e-mail Ms Stein again relayed concerns that, more than two months into the academic year, not all

textbooks have been delivered. She further expressed her concern about claims in the media by the third respondent, the MEC, on the morning of 12 March 2014, that textbook delivery to Limpopo schools is complete and that reports of textbooks shortages are misleading. These claims were inconsistent with SECTION27's engagement with the DBE and the LDoE since the start of the 2014 academic year.

127. The statement that gave rise to these concerns was made by the third respondent on Thobela FM on 12 March 2014, indicating that all textbooks had been delivered. This claim has been questioned by the schools that continue to report their textbooks shortages.

128. No response to this e-mail was received.

129. On 20 March 2014, SECTION27 addressed a letter of demand to the DBE and the LDoE, a copy of which is attached as "**MS34**". This letter included a list of 39 schools that had reported textbooks shortages to SECTION27.

130. In that letter, the DBE and the LDoE were requested to provide an undertaking, by no later than 26 March 2014, to deliver the outstanding textbooks to the 39 schools included on the list, by no later than 7 April 2014, the start of the second school term.

131. Acknowledgements of receipt from the Minister and the HOD are attached as "**MS35**" and "**MS36**" respectively.

132. While no direct response to this letter was received from either the DBE or the LDoE, Ms Stein received an e-mail on 24 March 2014 from Emile Damon in the DBE, requesting the list of textbooks shortages in word format. A copy of this e-mail is attached as "**MS37**". Ms Stein sent the document in word format, in the attached e-mail marked "**MS38**". The attachment to this e-mail has been omitted, as it is identical to Annexure "A" to the letter of demand.

133. No substantive response, and no undertaking to effect full delivery of textbooks to the schools contained in Annexure A to the letter of demand by 7 April 20214, was received.
134. On 25 March 2014, the South African Democratic Teachers Union marched to the LDoE to express their dissatisfaction at, *inter alia*, incomplete textbook delivery. In this regard I refer to the attached article marked “MS39”.
135. It is clear from the above that the applicants have made every effort to engage the first to fifth respondents to facilitate the prompt delivery of outstanding textbooks. However, these attempts have not succeeded in securing full textbook delivery.
136. As a result, the second to twenty-fourth applicants are forced to take steps to mitigate the impact of the failure to deliver textbooks. These steps are, however, inadequate and cannot give full effect to the learners’ rights to basic education, dignity and equality:
- 136.1. Some teachers borrow textbooks from neighbouring schools so that they can write up notes for learners on the blackboard. This is unsatisfactory for the following reasons:
- 136.1.1. It is not possible to write all of the relevant content in detail on the blackboard for each lesson.
- 136.1.2. It is difficult for all of the learners in class to see clearly what is written on the blackboards, in the way that they would if they were reading a textbook.

- 136.1.3. Because learners cannot take their learning materials home, they cannot complete their homework, prepare for lessons or consolidate what they learn in class.
- 136.1.4. Requiring teachers to write out the content of lessons in full on the blackboard is unduly burdensome.
- 136.2. As such, this is not a satisfactory replacement for full textbook delivery.
- 136.3. Teachers borrow textbooks from neighbouring schools to photocopy the relevant content for learners. However, this is expensive and cannot be sustained.
- 136.4. Schools use outdated textbooks from the previous curriculum. However, the CAPS curriculum contains both new content and a new way in which the content is organized. This is therefore not an appropriate solution.
137. As such, the harm caused to learners by the continued failure to deliver textbooks cannot be remedied unless and until these outstanding textbooks are delivered in full. Attempts to engage the first to fifth respondents to ensure full delivery have not been effective.
138. The applicants are left with no choice but to approach this Court for urgent relief. This is so that learners may commence the second school term with the necessary learning materials.

VII THE FIRST TO FIFTH RESPONDENTS' LEGAL OBLIGATIONS IN RELATION TO TEXTBOOK DELIVERY

139. The first court order granted by Kollapen J confirmed the centrality of textbooks in the realization of the right to basic education. He held that it is “unambiguous” that textbooks are an “essential” and “vital” component in delivering basic education. As such, the failure to deliver these essential learning materials is in breach of this right.
140. This is supported in the DBE’s own policy documents. I attach as “**MS40**” an extract of the DBE’s Action Plan to 2014. Goal 19 of this Action Plan, which is one of five priority goals identified by the Minister, indicates that every learner must have access to a minimum set of textbooks and workbooks in terms of national policy. It is clear that the first to fifth respondents have failed to achieve this goal.
141. The applicants submit that the failure by the first to fifth respondents to ensure full textbook delivery is also in breach of the following:
- 141.1. The right to basic education as guaranteed in section 29 of the Constitution;
- 141.2. The right to equality, as guaranteed in section 9 of the Constitution;
- 141.3. The right to dignity, as guaranteed in section 10 of the Constitution;
- 141.4. Section 165(4) of the Constitution, which requires organs of state to assist and protect the courts and to ensure their independence, impartiality, dignity, accessibility and effectiveness; and
- 141.5. The basic values and principles governing public administration in terms of section 195 of the Constitution.
142. I am advised that these violations will be dealt with in full in legal argument.

VIII RELIEF

143. The applicants seek compliance by the first to fifth respondents with their constitutional obligations to ensure that every learner has his or her own textbook for every learning area. Specifically, we seek an order –

143.1. Declaring that the failure by the first to fifth respondents to ensure the complete delivery of textbooks to all schools in Limpopo is a violation of the rights to basic education, dignity and equality, as well as sections 165(4) and 195 of the Constitution;

143.2. Directing the first to fifth respondents to deliver all outstanding textbooks to the schools listed in Annexure A to the notice of motion on an urgent basis and by no later than 7 April 2014;

143.3. Directing the first to fifth respondents to lodge an affidavit with this Court by no later than 7 April 2014 confirming full delivery of textbooks to the schools listed in Annexure A to the notice of motion;

143.4. Directing the first to fifth respondents to lodge with this Court a plan indicating how they intend to address textbooks shortages at schools throughout Limpopo, such plan to be lodged by no later than 10 April 2014; and

143.5. Granting leave to the applicants to approach this Court on the same papers, supplemented as the circumstances may require, for further relief if necessary.

144. The applicants further seek an order calling upon the SAHRC to monitor the complete delivery by the first to fifth respondents of textbooks to the schools listed in Annexure A to the notice of motion, as well as monitoring compliance with the plan to be lodged with this Court by 10 April 2014.

145. The applicants submit that given the history of this matter, independent monitoring of compliance with the court order sought by the applicants, and with the plan to be delivered by the first to fifth respondents, is appropriate. In particular, the applicants have had regard to the failure by the first to fifth respondents to comply with three previous court orders and their misleading public statements confirming full textbook delivery for 2014.

146. I am advised that the SAHRC has a specific mandate under section 184 of the Constitution monitor and assess the observance of human rights in the Republic. I am further advised that the SAHRC has been called upon in previous cases to monitor compliance with court orders. In this regard I refer the Court 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 obligations arising from the right of access to adequate housing.

147. The applicants therefore submit that the SAHRC is in a good position to monitor compliance by the first to fifth respondents with the order we seek, as well as with the plan to be lodged by the first to fifth respondents on 10 April 2014.

148. I am advised that the relief sought by the applicants will be addressed in more detail during legal argument.

IX COSTS

149. This matter has been brought by the applicants in the public interest as a measure to ensure that learners and teachers have access to their prescribed materials. The complete delivery of textbooks will ensure that proper teaching and learning can take place.

150. The applicants have made every effort to engage the first to fifth respondents through their legal representatives, in order to have this matter resolved without resorting to litigation. However, given that there are still substantial textbooks shortages, it has now become necessary for the applicants to approach this Court for relief, in the form of an order directing the first to fifth respondents to comply with their constitutional obligations.

151. The applicants have established a pattern of continued breaches of the rights to basic education, dignity and equality. The respondents have continued to act in disregard of the rights of the applicants, and learners attending public schools in Limpopo whose right to basic education includes at its core a right to prescribed textbooks.

152. I am advised that in circumstances such as these, where state respondents disregard the rights set out in the Constitution, and in a way that frustrates their own obligation to respect the courts and ensure their effectiveness, a court has discretion to make a punitive costs order against such respondents.

153. The applicants submit that a punitive costs order is appropriate in these circumstances, where the respondents have obstructed – rather than facilitated – access to justice.

154. The applicants therefore contend that the respondents should be ordered to pay the costs of this application on an attorney and client scale.

155. Further submissions on the issue of costs will be addressed in legal argument.

X CONCLUSION

156. The continued failure by the DBE and the LDoE to provide prescribed textbooks to learners across Limpopo is in breach of their constitutional obligations. This

failure is a continuing breach of the rights to basic education, equality and dignity, as well as the provisions of sections 165(4) and 195 of the Constitution.

157. In the circumstances, the applicants submit that we have made out a case for the relief we seek. As such, the applicants pray for the relief as set out in the notice of motion.

DEPONENT

SIGNED AND SWORN BEFORE ME AT _____ ON THIS THE
___ DAY OF _____ 2014, THE DEPONENT HAVING ACKNOWLEDGED THAT
S/HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT S/HE
HAS NO OBJECTION TO TAKING THE OATH AND THAT S/HE CONSIDERS THE SAME AS
BINDING ON HIS/HER CONSCIENCE.

COMMISSIONER OF OATHS