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To: THE COMMITTEE ON THE RIGHTS OF THE CHILD
For attention:
Per E-mail:

SUBMISSIONS ON THE RIGHT TO EDUCATION AS SET OUT IN ARTICLE 28 AND 29 OF THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE THIRD TO SIXTH PERIODIC REPORT OF SOUTH AFRICA TO THE COMMITTEE.

INTRODUCTION

This submission on the right to education as set out in Article 28 and Article 29 of the Convention on the Rights of the Child is made by the **Legal Resources Centre, South Africa**, as part of the project on Digital Education and the Right to Education to assist the Committee on the Rights of the Child in its dialogue with the representatives of South Africa during the presentation in January 2024 of the country's combined third to sixth periodic report.

The Legal Resources Centre (LRC) is a public interest non-profit law clinic in South Africa founded in 1979. The LRC uses the law as an instrument for justice for poor and marginalised persons. The LRC pursues equality, access to justice, and the recognition of constitutional rights for all through creative and effective solutions. To this end, we provide legal advice and legal representation that empowers our clients, take on strategic and impact litigation, and participate in multi-pronged advocacy and law reform. This submission is based on the LRC report, [Digital Education and the Right to Learn](#), published in October 2022.

Right to education in South Africa

The "White Paper on Education and Training" published by the South African government in 1995 aimed at addressing the systematic discrimination and inequalities of apartheid educational laws and policies, was aspirational and intended to "build a just and equitable system which provides good quality education and training to learners young and old throughout the country."

Despite the government's aspirations to dismantle the oppressive systems of an apartheid state, inequalities and discrimination on class and racial lines still persist. The disparity between education provision in fee-charging and no-fee schools, with the latter catering for

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majority poor black learners, is illustrative of the notion that we still operate a 'two-system public education structure.' These policies have failed to address the underlying systems of oppression and laws and policies adopted by the apartheid state to oppress poor and black people, such as apartheid spatial planning, which continues to exile poor and black learners from educational opportunities and equal access to quality education. Well-resourced schools in previous white residential areas, although public schools, offer a more privatised education by generating school fees and retaining the status quo of privilege with only a small minority of black middle-class families able to attend.

Digitisation of education

These disparities in accessing equitable and quality education extend also to digital educational resources in no-fee schools (quintile 1, 2 and 3) which means that many previously disadvantaged learners have never had access to the internet and digital forms of schooling unlike most privileged learners in fee-charging schools in previously white suburban areas.

Many of these schools do not have adequate infrastructure such as electricity, which increases the difficulties for the learners to exercise their right to education.

The effect of this is that many of these learners eventually face challenges competing on an equal footing with learners that are digitally literate, causing a ripple effect on attaining access to tertiary education and employment opportunities that demands high levels of competence in the digital environment.

Equitable access to free and accessible digital educational resources, and by extension access to the internet and data, is an integral component of the right to basic education. The non-provision of internet and inequitable access to digital educational resources in the majority of public schools thus violate a learner's right to education, as well as their rights to equality and non-discrimination, dignity and equal protection of the law.

The COVID-19 pandemic laid bare South Africa's inability to provide internet access to most students nationwide, directly impacting their quality of education. Nationally, only 22% of households have a computer and only 10% an internet connection. In the North West and Limpopo provinces, only 3.6% and 1.6% of households, respectively have had access to the internet at home. By contrast, students from wealthier communities with computer access were able to continue their education, particularly through remote learning provided by better resourced schools.

Access to the internet has become essential to achieving the right to education. Unequal access to the internet that disadvantages rural schools and schools that predominately serve poor and black learners, violates not only the right to basic education, guaranteed by the Constitution of the Republic of South Africa, and the right to education in CRC Art. 28, but also the right to equality and non-discrimination (CRC Art. 2), dignity and equal protection of

the law, and denies poor and marginalised children opportunities to develop to their fullest potential as prescribed in CRC Art. 29.

Challenges facing digital education

A 2020 publication by the University of Chicago Law School - Global Human Rights Clinic, "[Access Denied: Internet access and the right to education in South Africa](#)", lists a number of reasons for the failure to provide effective internet access in public schools. These include: the lack of capacity, funding, a comprehensive and coordinated strategy for the implementation of the various policies, Infrastructure and adequate facilities (electricity, overcrowding, shortage of teachers, shortage of devices, data charges and theft), IT infrastructure, software and resources and on-going technical support. The report also listed a lack of teacher training in the use of computers and the internet, teaching digital skills to learners and how to effectively implement online and digital resources into the curriculum. In addition, there was no meaningful access to the internet, digital systems and infrastructure were poorly maintained and there were pervasive misconceptions among teachers and parents about internet use.

While the South African government, as well as private telecommunications and digital companies, have invested in initiatives to provide historically disadvantaged and rural schools with access to the internet and IT infrastructure, including devices, there are criticisms that these efforts are dis-jointed, poorly co-ordinated, and unsustainable. Another critique is that there is an over reliance on the corporate and NGO sector.

Constitution, laws and policies

The right to basic education is envisaged in Section 29(1)(a) of the Constitution of South Africa which provides that "everyone has the right to access basic education ...". The state is accordingly required to protect, promote, respect and fulfil this right, and it must do so through the passing of laws, regulations and policies that are developmental and progressive in nature.

The Constitutional Court in *Governing Body of the Juma Masjid Primary School and Others v Essay N.O. and Others* noted that: "Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be 'progressively realised' within 'available resources' subject to reasonable legislative measures. The right to a basic education in Section 29 (1) (a) may be limited only in terms of a law of general application which is 'reasonable and justifiable in an open and democratic society based on human dignity, equity and freedom'".

The Department of Basic Education adopted *Regulations relating to the Minimum Uniform Norms and Standards for Public School Infrastructure* in 2013, which aims at addressing the uneven development of public schools' infrastructure under apartheid by setting out minimum norms and standards, compliance obligations and timeframes within which school

infrastructure backlogs must be eradicated. This constitutes a crucial legislative intervention to addressing the inequalities in public education and emphasise the need for progressive measures to advance the development of previously disadvantaged public schools.

Regarding the provision of internet facilities in public schools, the regulations provide that this should be phased in over a period of seven years from the date of publication of these regulations. More than 10 years after adoption of the regulations, the government has failed to meet its obligations under the regulations to provide internet access to previously disadvantaged schools, which serve primarily poor and rural communities.

The South African government has recognised the importance of online learning and has embarked on a series of initiatives to grow digital education among young learners in largely remote areas. The three main domestic policies currently in place are a government **White Paper on e-Education, South Africa Connect** and **Universal Service and Access Obligations** which are obligations imposed on telecommunications operators.

The **White Paper on e-Education** published in 2004, sets out the South African government's approach to e-Education and how the government wants to effectively reach its objectives and targets. However, the policy document lacks clear, context-sensitive definitions of objectives. It also lacks an integrative strategy and does not prioritise the importance of the budget. The White Paper also fails to provide for a variety of schools or scenarios, meaning the 'one-size-fits-all' approach is adopted within the strategy. It does not realise the diversity of South African schools and the multitude of factors that need to be considered when trying to provide ICT training and resources to schools across the country.

South Africa Connect is the government's primary policy for broadband access in the country. The policy, first published in 2013, set the goal of connecting all schools to the internet by 2020 at speeds of at least 10 megabits per second, with all schools to be connected at 100 megabits per second by 2030. The SA Connect Policy has fallen short of substantively addressing barriers to digital education for two main reasons: a lack of a comprehensive and coordinated strategy for implementation of the various policies; and lack of funding.

Universal Service and Access Obligations are licensing obligations imposed by the Independent Communications Authority of South Africa on cellular telecommunications operators and are the second main initiative for connecting schools in South Africa. These telecommunications service providers are required to provide internet access to 1,500 schools. Operators are further required to provide each school with three teacher laptops and 24 learner laptops. One of the main concerns is that for this initiative to work it requires high speed connectivity, and under the current specifications the minimum speed required is 1 Mbps, meaning that minimal content could be provided.

Overall assessment of digitisation and the right to education

Notwithstanding the strides government has made to improve internet connectivity for learners in public schools, the legislative and policy reforms have not done enough to address structural inequalities that continue to disadvantage historically excluded learners in public schools, leaving those learners receiving a poorer quality education.

Access to the internet and digital educational resources is an integral component of the right to basic education in Section 29 of the Constitution, and the right to education in Art. 28 of the Convention of the Rights of the Child (CRC). The inequity in accessing digital educational resources discriminates against learners from poorer and historically marginalised communities and violates their rights to equality and non-discrimination, dignity and equal protection of the law.

The current policy framework does not meet the minimum core standards necessary to ensure effective, efficient and reliable implementation of internet connectivity in public schools. These policies have not been supported by a realistic budget, seem disjointed regarding the various stakeholders needed to implement the policy and have not considered factors pertinent to public schools in rural and peri-urban areas such as poor infrastructure.

Significantly, the policy framework appears to have been developed in isolation and without reference to the Regulations relating to the Minimum Uniform Norms and Standards for Public School Infrastructure.

The deadline in the Regulations for internet connectivity of schools has not been met and the government has not made concrete strides to develop a plan to ensure that all public schools have internet connectivity.

United Nations Special Rapporteur on the right to education

The Special Rapporteur's report [Impact of the digitalization of education on the right to education](#) (A/HRC/50/32), 19 April 2022, states "the implementation of the right to education must respond to the needs of all persons to access, master and use technology as an empowering tool for being active members of society.

The digitalization of education should be geared towards a better implementation of the right to education for all, where it is demonstrated that it brings a significant added value. In this regard, it is important to understand the profit-driven agenda of digital technology lobbyists and companies. In addition, the digitalization of education should not increase inequalities and benefit already privileged segments of societies only or lead to violations of other human rights within education, in particular the right to privacy."

South Africa's current report to the CRC

In its report to the Committee, South Africa has not adequately addressed the issue of digitisation of education, in particular, access to the internet for all schools. In para. 247, the

report makes reference to the White Paper on e-Education without presenting any information on the practical steps taken to achieve the policy goals of the White Paper: **“Every South African learner in the general and further education and training bands will be ICT capable (that is, use ICTs confidently and creatively to help develop the skills and knowledge they need to achieve personal goals and to be full participants in the global community) by 2013”**. In particular, the government does not provide any information on the implementation of its national policy, South Africa Connect, and why it has missed its targets of providing internet in schools by 2020.

The only other reference to digitisation and education is in para. 248 in reference to learners with disabilities, again without any details on implementation and achievement of goals and targets.

Recommendations

The Legal Resources Centre urges the Committee to:

1. Raise the issue of digitisation and the right to education during its dialogue with the representatives of the South African government, in particular the lack of a coherent plan for providing internet access to all public schools, and allocation of sufficient resources to implement the plan.
2. Include in its final recommendations, a recommendation that the government must adopt a transparent and effective plan and policy to implement internet connectivity in all public schools that is aligned with the [Regulations relating to the Minimum Uniform Norms and Standards for Public School Infrastructure](#).

Kind Regards,



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