

**THE LEGAL ANALYSIS OF THE IMPACT OF INADEQUATE SCHOOLS  
INFRASTRUCTURE ON THE RIGHT TO BASIC EDUCATION IN SOUTH  
AFRICA**

by

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## **SUMMARY OF THE STUDY**

This mini dissertation undertakes a comprehensive legal analysis to examine the ramifications of inadequate schools' infrastructure on the right to basic education in South Africa. The Constitution of the Republic of South Africa, 1996, explicitly guarantees every individual the right to basic education, emphasizing the state's obligation to ensure accessible, quality education for all. Persistent challenges in schools' infrastructure across the country pose a significant threat to the realization of this constitutional right. The analysis begins by delineating the legal framework underpinning the right to education in South Africa. The judicial pronouncements underscore the state's duty to progressively realize the right to education and provide a normative foundation for evaluating the impact of inadequate infrastructure.

This research delves into the multifaceted repercussions of inadequate infrastructure on learners, educators, and the broader educational ecosystem. Insufficient classrooms, lack of sanitation facilities, inadequate libraries, and unsafe learning environments undermine the quality of education, exacerbate inequalities, and impede students' ability to access education effectively. The disproportionate impact on marginalized communities, including rural areas and historically disadvantaged schools, amplifies existing socio-economic disparities, contravening the constitutional imperative of equality in education. The analysis scrutinizes the policy frameworks and government interventions aimed at addressing infrastructural deficiencies in South African schools. Despite various initiatives and budget allocations, persistent challenges persist due to issues of mismanagement, corruption, and inadequate implementation. This raises pertinent legal questions regarding the accountability of state actors and the justiciability of socio-economic rights, specifically the right to education, within the South African legal framework.

The research evaluates international legal instruments and comparative jurisprudence to contextualize South Africa's obligations in ensuring adequate infrastructure for the realization of the right to education. Insights from international treaties such as the International Covenant on Economic, Social, and Cultural Rights and case law from jurisdictions grappling with similar issues provide valuable perspectives for advancing

the discourse on this critical matter. The comparison of South Africa and Germany is laid out very nicely.

This legal analysis underscores the imperative for urgent, comprehensive measures to address the systemic challenges of inadequate schools' infrastructure in South Africa. It advocates for a holistic approach that integrates legal, policy, and socio-economic considerations to fulfill the constitutional promise of quality, accessible education for all, thereby ensuring the effective realization of the right to basic education in the country.

## LIST OF ABBREVIATED TERMS

ANA	Annual National Assessment
ARV-T	Antiretroviral Treatment
ASIDI	Accelerated Schools Infrastructure Delivery Initiative
BELAA	Basic Education Laws Amendment Act
BELLA Bill	Education Laws Amendment Bill
BoR	Bill of Rights
DoBE	Department of Basic Education
LMS	Learning Management Systems
NDP	National Development Plan
NEIMS	National Education Infrastructure Management System
NPSI	National Policy on School Infrastructure
SAFE	Sanitation Appropriate for Education
SANEIMS	South African National Education Infrastructure Management System
SASA	South African Schools Act
SISSG	School Infrastructure Safety and Security Guidelines
TAC	Treatment Action Campaign
ISCED	International Standard Classification of Education (ISCED)

## **DECLARATION**

I declare that the mini-dissertation hereby submitted to the University of Limpopo, for the degree of Master of Laws in Development and Management Law has not previously been submitted by me for a degree at this or any other university; that it is my work in design and in execution, and that all material contained herein has been duly acknowledged.

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**Surname, Initials (title)**

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**Date**



## **ACKNOWLEDGEMENTS**

The completion of this study was not easy, without the help of some special people I do not think I would have completed this study. Firstly, allow me to thank God the Almighty, for granting me the serenity throughout everything that I have been through with this research. He made it look possible and doable. Secondly, I would like to thank myself for being patient with myself and not giving in when I felt it was no longer possible.

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To my entire family I am grateful for all your financial, emotional, and physical support throughout my study.

## **DEDICATION**

I dedicate this mini dissertation to my late mom, thank you for being my pillar of strength.

## CHAPTER 1: INTRODUCTION AND BACKGROUND OF THE STUDY

### 1.1 Introduction

Education stands as a cornerstone of societal development and progress, serving as a fundamental right for every individual, recognized and protected by various national and international legal frameworks. In South Africa, the Constitution explicitly enshrines education as a fundamental right, ensuring every citizen's access to quality education equitably.<sup>1</sup> The realization of this right face's significant challenges, particularly concerning the inadequacy of schools' infrastructure across the nation.<sup>2</sup>

The provision of quality education is not merely confined to the dissemination of knowledge but extends to the environment in which learning takes place. Schools' infrastructure plays a pivotal role in shaping the quality of education imparted to students. Yet, the reality faced by many learners in South Africa is one marked by dilapidated buildings, insufficient facilities, inadequate sanitation, and a lack of essential resources, severely compromising the quality of their education and hindering their right to a basic and equitable learning experience.<sup>3</sup>

According to the South African Schools Act (SASA),<sup>4</sup> it is mandatory for all South African children to attend both primary and secondary schools at age seven (7), starting with an early grade, until they reach 15 years of age or complete the ninth (9) grade.<sup>5</sup> Parents who prevent their children from attending school or hinder their education are subject to penalties according to this legislation.<sup>6</sup> These penalties are expected to become more severe as a result of amendments to the SASA.<sup>7</sup> As per the provisions outlined in section 3(6)(a) of SASA, parents can face penalties such as fines or a maximum imprisonment of 6 months if they obstruct or discourage their children

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<sup>1</sup> Section 29 of the Constitution of the Republic of South Africa, 1996 (herein referred to as the Constitution).

<sup>2</sup> DBSA, 'The effects of poor infrastructure in education, transport, and communities' <<https://www.dbsa.org/>> Accessed on 20 June 2023.

<sup>3</sup> Highway Mail, 'What every parent should know about the South Africa Schools Act' <<https://highwaymail.co.za/every-parent-know-sa-schools-act/>> Accessed on 20 June 2023.

<sup>4</sup> No 84 of 1996.

<sup>5</sup> Section 3(1) of the South African Schools Act 84 of 1996.

<sup>6</sup> Ibid.

<sup>7</sup> Highway Mail, 'What every parent should know about the South Africa schools Act' <<https://highwaymail.co.za/every-parent-know-sa-schools-act/>> Accessed on 20 June 2023.

from attending school during the mandated educational period.<sup>8</sup> The problem of parental incarceration worsens due to the Basic Education Laws Amendment Bill B2-2022 (BELA B), which not only allows for the imprisonment of a parent but also intensifies penalties for unexcused school absences by extending the potential duration of imprisonment to 12 months.<sup>9</sup>

The Komape case,<sup>10</sup> demonstrates the terrible effects of substandard school's facilities on the right to basic education in South Africa. Five (5) year, Michael, perished in a pit latrine in his school in the Province of Limpopo in 2014.<sup>11</sup> This tragedy brought to light how poorly maintained school infrastructure is in some areas of the nation, especially in rural areas. Poor school infrastructure in South Africa is a major impediment to the delivery of good quality education. Many schools lack essential amenities like running water, electricity, and proper sanitation, making it challenging for learners and teachers to perform well in their respective grades (i.e., a lot of schools are overcrowded and lack adequate resources and classroom space).<sup>12</sup>

Poor academic performance of learners reflects negative effects of inadequate school infrastructure on the quality of education. High dropout rates and low academic achievement are frequent outcomes of underdeveloped educational facilities.<sup>13</sup> In comparison to learners who attend schools with better infrastructure, learners who attend poorly resourced schools are at a disadvantage. They are most likely to suffer disadvantages in school and are less likely to complete their education, all of which will negatively affect their prospects for the future. There are many schools in South Africa where learners learn about chemistry in their books without them doing the practical part of it in their schools, this will negatively affect them in the future as they will find it difficult to deal with real chemicals as compared to learners who attended schools that have those resources that they need to do their practical's.

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<sup>8</sup> Section 3(6)(a) of the South African Schools Act 84 of 1996.

<sup>9</sup> The Basic Education Laws Amendment Bill B2-2022

<sup>10</sup> *Komape v Minister of Basic Education* ([2020] 1 All SA 651 (SCA); 2020 (2) SA 347 (SCA)).

<sup>11</sup> *Ibid.*

<sup>12</sup> Amnesty International, 'Broken and Unequal: The state of education in South Africa' February 11, 2020.

<sup>13</sup> DBSA, 'The Effects of poor Infrastructure in Education, Transport, and Communities' < <https://www.dbsa.org/>> Accessed on 20 June 2023.

According to the Constitution of South Africa, which safeguards the interests of a child, any issue which impacts their welfare negatively triggers the application of the law and its enforcement.<sup>14</sup> There are other schools in the Eastern Cape Province which reported tragic incidents where a learners lost their life's due to an unsafe school environment (i.e. a pit toilet that was not in a condition that should be used by anyone) within the school premises. Given the events that unfolded in Limpopo in 2014, where a young boy tragically passed away after falling into a pit latrine, one would have expected the Department of Basic Education (DoBE) to have eradicated all pit latrines in the country by now. The *DoBE* has failed and continues to fail the people of South Africa, particularly learners and their parents. The reality is that children in public schools are not as safe as those in private schools, since those children in private schools have a better school infrastructure as compared to those in public schools. Just like all people, learners have the right, as stated in the Constitution to an environment that does not compromise their health and overall well-being.<sup>15</sup> This implies that learners hold a constitutional right to receive education within a secure school environment. Most of the population in South Africa, predominantly black individuals, have consistently held aspirations of experiencing what is referred to as world-class education.

## **1.2 The Background**

The right to basic education is constitutionally protected.<sup>16</sup> Although the right is recognized in South Africa, it is mostly accepted globally as a recognized right of the Universal Declaration.<sup>17</sup> In South Africa, the right to basic education is contextualized in the Constitution, in section 29(1)(a) which stipulates: "Everyone has the right to basic education, including adult basic education".<sup>18</sup> The right to basic education is not an independent right, similar to other constitutional rights, it is closely intertwined with other rights, such as the right to a safe and healthy environment,<sup>19</sup> human dignity,<sup>20</sup>

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<sup>14</sup> Section 28(2) of the Constitution.

<sup>15</sup> Ibid at section 24 of the Constitution.

<sup>16</sup> McConnachie, C et al 'Chapter 1, the constitution, and the rights to basic education,' (2016).

<sup>17</sup> The right to basic education is contained in many international instruments, like the Universal Declaration on Human Rights, the ICCPR, ICSEER, Children's Charter and other international instruments.

<sup>18</sup> Section 29(1)(a) of the Constitution of the Republic of South Africa, 1996.

<sup>19</sup> Ibid section 24.

<sup>20</sup> Ibid section 10.

and privacy,<sup>21</sup> to mention a few. Access to primary education is very important for every child within the republic of South Africa, irrespective of their citizenship status. The fundamental right to education should be upheld without discrimination, ensuring that no student endures a hostile or unsafe learning environment. It is a duty of the state to ensure the protection of learners within educational institutions, specifically addressing concerns related to environmental conditions. Section 24 of the Constitution explicitly guarantees the right of every learner to an environment that is safe and not harmful to their health, and this section imposes an obligation on the government to ensure that this right is realised.

The government bears the responsibility to safeguard the safety of all learners, regardless of whether those learners are within the confines of school premises or beyond. The DoBE holds the duty to oversee that children attend schools operating within safe and healthy environments. Financial constraints do not seem to impede the DoBE, as evidenced by their significant expenditures, notably on annual awards for top learners where costly gadgets are bestowed to the so-called top achievers. The government spend over R3 Million on the preparations of this awards, for example they book a venue which they normally book Mosaic church which is an expensive to book they will again have to pay the catering people as the ceremony is attendant by more than 300 people. With this money, as little as it may look it can build more than 20 proper toilets in public schools. This excessive spending raises concerns, especially when numerous schools lack adequate infrastructure, leading to dire consequences for learners' safety and well-being. A telling example of the government's skewed priorities is the contrast between lavish spending on awards ceremonies and the dire state of school facilities. The DoBE's allocation of R1.4 million to compensate the Komape family, following a tragic incident, underscores their capacity to allocate funds. This highlights the government's reluctance to prioritize the improvement of school infrastructure despite possessing adequate financial resources.<sup>22</sup>

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<sup>21</sup> Ibid section 14.

<sup>22</sup> Odeku, K 'Critical Analysis of School Pit Toilet System as an Impediment to the Right to Access Quality Education in South Africa,' 2022.

### 1.3 Research Problem

The long-standing issue of inadequate school infrastructure in South Africa has had a detrimental impact on the quality of basic education. The case of *Komape*, serves as a stark example of this problem. This incident shed light on the alarming state of school infrastructure in the country and the pressing need for improvement. Despite the *DoBE* making promises through the Sanitation Appropriate for Education (SAFE) initiative to eradicate all pit latrines by 29 November 2023, it is disheartening to see that even till today, learners continue to be victims of an unhealthy environment.<sup>23</sup>

### 1.4 Research Methodology

The study utilized a qualitative research methodology commonly employed in legal research. It is conducted primarily through desktop analysis, drawing extensively from authoritative legal resources such as textbooks, articles, case law, legislations, regulations, previous works, and relevant papers on the topic of the right to access basic education.

### 1.5 Literature Review

In their 2016 study, Khuzwayo and Mji<sup>24</sup> looked at how South Africa's poor school infrastructure affected the standard of instruction there.<sup>25</sup> In order to collect information from students, teachers, and school officials at four schools in KwaZulu-Natal, Khuzwayo and Mji in their study employed a mixed-methods approach that included interviews, questionnaires, and observations.<sup>26</sup> According to the study, poor infrastructure has various detrimental effects on education quality.<sup>27</sup> First, students who attend schools with inadequate facilities are more likely to contract diseases

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<sup>23</sup> The Department of Basic Education was given a task by the court in the case of Michael Komape and others v the Department of education, to go and develop a plan and provide a timeline in which that plan can be achieved. The Department came up with a plan and then submitted it together with the timeframe on which the Department will eradicate all the pit latrines in the country. The academic year that the department chose, as the year in which the pit toilets must be eradicated in 2022/2023.

<sup>24</sup> Khuzwayo, N & Mji, G 'An Assessment of the Impact of Inadequate School Infrastructure on the Quality of Basic Education in South Africa. International Journal of Educational Sciences, 16(2), 161-168,' (2016).

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Khuzwayo, N & Mji, G 'Exploring Educators perceptions of the impact of poor infrastructure on learning and teaching in rural South African schools,' (2014).

linked to poor hygiene and sanitation, which can lead to absenteeism and poor performance in school.

Second, insufficient classrooms space might hinder students' ability to focus and study efficiently. Examples include classrooms that are overcrowded, improperly ventilated, and devoid of windows. Thirdly, the availability of resources for teaching and learning may be impacted by certain schools' lack of electricity and water. The study also discovered that deficient infrastructure has an impact on students' health and safety since it exposes them to threats, including broken windows, uneven floors, and insufficient fencing.<sup>28</sup> Additionally, learners' access to materials that are necessary for effective learning is constrained by the absence of suitable facilities like libraries and computer laboratories.<sup>29</sup>

Yilmaz and Gokkurt argues that adequate school infrastructure is essential for promoting quality education and improving academic achievement for learners.<sup>30</sup> Their study adopted a quantitative methodology and gathered information from 30 elementary schools in the South African province of the Eastern Cape. Based on elements including the availability of secure and hygienic restrooms, power, and adequate classroom space, the research evaluated the infrastructural quality of schools. Based on the results of the students' performance on the Annual National Assessment (ANA), the research also evaluated academic attainment.

The study discovered a strong link between academic success and school infrastructure. Academic success was greater for students in schools with appropriate infrastructure than it was for students in schools with poor infrastructure.<sup>31</sup> According to the study, students who attend schools with poor infrastructure are most likely to have health issues, be absent, and perform poorly academically. The authors contend that lack of infrastructure has a detrimental impact on the learning environment and

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<sup>28</sup> Ibid.

<sup>29</sup> Khuzwayo N, & Mji, G 'An Assessment of the Impact of Inadequate School Infrastructure on the Quality of Basic Education in South Africa. *International Journal of Educational Sciences*, 16(2), 161-168,' (2016).

<sup>30</sup> Yilmaz, M & Gokkurt, B 'An investigation of the relationship between school infrastructure and academic achievement in South African primary schools. *South African Journal of Education*, 38(2), 1-11,' (2018).

<sup>31</sup> Ibid.



can lead to learners performing poorly academically. They advise the government to allocate more funds to school infrastructure to raise the standard of instruction and support students' academic success. The authors also advise school administrators to give infrastructure upkeep priority so that students can learn in a secure and supportive setting.<sup>32</sup>

The article "School infrastructure and the reproduction of poverty and inequality in South Africa" by Motala, Sayed and Dhunpath, examines the relationship between school infrastructure, poverty, and inequality in South Africa.<sup>33</sup> Authors argues that inadequate school infrastructure contributes to the perpetuation of poverty and educational disparities in the country. They analyze how lack of infrastructure, including classroom overcrowding, poor sanitation facilities, and limited resources, affects the quality of basic education and exacerbates existing inequalities.<sup>34</sup> The authors emphasize the socio-economic implications of inadequate infrastructure and its impact on student outcomes, teacher well-being, and community development.

The findings of the study highlight that inadequate school infrastructure reinforces social and economic inequalities. Students from disadvantaged backgrounds are disproportionately affected by poor infrastructure, leading to lower educational attainment and limited opportunities for upward mobility. The article underscores the need for targeted interventions, increased investment, and policy reforms to address the infrastructure challenges and break the cycle of poverty and inequality in South African education.<sup>35</sup>

The Infrastructure Backlog in South African Schools: A Legacy of the Past" by Taylor discusses the historical context and challenges faced by schools in South Africa regarding inadequate infrastructure.<sup>36</sup> The article highlights that the infrastructure backlog in South African schools is a result of historical factors, including discriminatory

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<sup>32</sup> Ibid.

<sup>33</sup> Motala, S et al 'School infrastructure and the reproduction of poverty and inequality in South Africa. *Journal of Education Policy*, 33(3), 396-414,' (2018).

<sup>34</sup> Ibid.

<sup>35</sup> Motala, S et al 'School infrastructure and the reproduction of poverty and inequality in South Africa. *Journal of Education Policy*, 33(3), 396-414,' (2018).

<sup>36</sup> Stephan, T 'The Performance of South African Schools: 'Implications for Economic Development', Dissertation presented for the degree of Doctor of Philosophy (Economics) at the University of Stellenbosch,' (2010).

policies during the apartheid era that allocated inadequate resources to schools serving Black communities. Taylor emphasizes that many schools in South Africa suffer from lack of basic infrastructure, such as classrooms, sanitation facilities, libraries, and computer labs. This leads to overcrowding, poor learning environments, and limited access to resources for students and teachers.<sup>37</sup>

The author discusses how inadequate infrastructure negatively affects the quality of education. Overcrowded classrooms make individualized attention difficult, while dilapidated buildings and lack of amenities create unfavorable learning environments. Limited resources and facilities hinder comprehensive education and holistic development. The article highlights the importance of addressing the infrastructure backlog in a manner that promotes equity and social justice.<sup>38</sup> It emphasizes the need to prioritize resources for historically disadvantaged schools and communities to bridge the educational inequalities caused by the legacy of apartheid.<sup>39</sup>

Van der Berg discusses the state of education infrastructure in South Africa in the context of the 21st century.<sup>40</sup> The article highlights the crucial role that education infrastructure plays in supporting effective teaching and learning processes. It emphasizes the need for modern and well-equipped facilities to meet the demands of the 21st-century education system. Van der Berg addresses the challenges and deficiencies in education infrastructure in South Africa. This may include a lack of classrooms, inadequate sanitation facilities, limited access to technology and resources, and issues related to maintenance and safety. The author discusses how inadequate education infrastructure can impact educational outcomes. This includes decreased learners' engagement, lower academic achievement, and reduced overall quality of education. The article further explores the disproportionate impact on historically disadvantaged communities. Van der Berg is proposing policy recommendations to address the infrastructure challenges. This may involve increasing investment in education infrastructure, implementing effective planning and

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Van der Berg, S 'Education Infrastructure for the 21st Century: 'The Case of South Africa,' (2015).

resource allocation strategies, and promoting equity in access to quality infrastructure across different regions.

As per Motala's perspective, despite notable advancements in granting physical and structural entry to education in South Africa, it doesn't guarantee equal chances or fair educational access to all students in terms of "quality." It's crucial to go beyond just expanding access and emphasize meaningful entry, acknowledging the significance of both dimensions.<sup>41</sup> Motala suggests that when examining South Africa's situation, it's important to recognize that educational accessibility isn't just about the quantity of students enrolled in schools or their completion rates. It involves understanding who gets access to what kind of education and the basis or standards for that access.<sup>42</sup>

Motala's conclusion highlights that achieving quality educational access is a fundamental element in striving for a world order that is more equitable, just, prosperous, sustainable, and harmonious.<sup>43</sup> The government should ensure that during this stage of education, children have access to quality educational resources and opportunities. This phase is crucial because children have reached a level of maturity where they are prepared to take on educational responsibilities and make informed choices.<sup>44</sup>

Tomasevski asserts that education plays a vital role in the realization of socio-economic rights. It improves an individual's chances of obtaining employment, which subsequently guarantees access to essential resources such as food, housing, and healthcare services.<sup>45</sup> This implies that an individual who has received education or had access to quality education has a higher likelihood of obtaining favorable employment compared to someone who lacks education.<sup>46</sup>

According to Dlamini, the significance of education resides in its ability to cultivate critical thinking skills in the human mind. Education is a fundamental aspect of human

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<sup>41</sup> Motala, S 'Educational access in South Africa, 2011, page 84 par 1,' (2018).

<sup>42</sup> Ibid at, page 96 para 2.

<sup>43</sup> Ibid at, page 98 para 1.

<sup>44</sup> Sefoka, IM, I 'Accentuating the Right to Ample Access to Quality Education in Rural South Africa: Legal Analysis,' 2016.

<sup>45</sup> Tomasevski, K 'Human Rights Obligations in Education page 47'.

<sup>46</sup> Ibid.

existence, serving as the means through which an individual's progress towards full humanity and maturity. This development is attained by acquiring knowledge that brings about transformative changes in the human condition.<sup>47</sup>

### **1.6 The aim of the study**

The research aims to provide an in-depth analysis of the impact of inadequate school infrastructure on the quality of basic education in South Africa. The research further aims to raise awareness about the urgent need for improved school infrastructure in and its direct link to the quality of basic education, and to identify key factors that contribute to inadequate school infrastructure and hinder the provision of quality basic education in South Africa. The research also aims to explore the potential solutions to address the issue of inadequate school infrastructure and improve the quality of basic education for all learners.

### **1.7 Objectives of the study**

This study achieved its objectives by analyzing the current state of school infrastructure in South Africa and explored the impacts of inadequate school infrastructure on the quality of basic education. It also investigated the safety hazards associated with inadequate school infrastructure for learners and examined the policy and practice changes that have occurred because of the case of Komape. The objective of this research was to examine the evolution of legal principles and suggest potential improvements to existing laws by considering both empirical evidence and current circumstances. Finally, it proposes potential solutions to address the issue of inadequate school infrastructure and improve the quality of basic education.

### **1.8 Research Questions**

Schools are supposed to be safe places where effective teaching and learning can take place in an environment that is safe for learners, educators, and non-educators. However, if one considers the incidence's which happen in our public schools, things such as lack of proper infrastructure, death of learners, and shortage textbooks, the obvious questions that comes to mind is: How safe are South African schools?

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<sup>47</sup> Bekker G, 'A compilation of essential documents on the rights to food and nutrition', 2000.

Will the 4<sup>th</sup> goal of the transforming our world: the 2030 Agenda for sustainable development, which says: “ensure inclusive and quality education and promote lifelong learning opportunities for all”, be realized when the time arrives?

What are the impacts of inadequate school infrastructure on the quality of basic education?

### **1.9 Significance of the Study**

The significance on which this study is based is to provide the DoBE and other stakeholders with an insight on how they can legally approach the problem of death's continuing to climb the ladder as a result of pit toilets. This study contributes to solutions that can foster to promote the state's efforts in resolving the impasse as regards the right to learn. It further contributes to mechanisms that are put in place to safeguard the right to learn which largely bolters through the application of the Bill of Rights and legislation. This study assists the *DoBE* and other relevant stakeholders in finding ways in terms of which the right to learn as it is basic should be protected. The results of this study will be utilized to enhance school safety policies and practices.

### **1.10 Chapterization**

#### CHAPTER 1

This chapter deals with the introduction and background of the study.

#### Chapter 2

In this chapter the study provides the critical analysis of the legislative and policy frameworks regulating the impact of inadequate school infrastructure on the quality of basic education in South Africa putting emphasis on the death of learners on school infrastructure.

#### Chapter 3

The chapter analyses the impact and/or effect(s) of inadequate school infrastructure on other rights as encapsulated in the Bill of Rights in South Africa.

## Chapter 4

This chapter is a comparative study of the impact of inadequate school infrastructure on the quality of basic education in South Africa, on international law, and on other countries such as for instance Germany. This comparative analysis help in ensuring that by 2030 the goal that South Africa and other African nations which ratified the 2030 Agenda, fulfil the goal set in goal number 4 of the Sustainable Development Goals.

## Chapter 5

This chapter provides the conclusion as well as recommendations.

## **CHAPTER 2: THE CRITICAL ANALYSIS OF THE LEGISLATIVE AND POLICY FRAMEWORKS REGULATING THE IMPACT OF INADEQUATE SCHOOL INFRASTRUCTURE AND THE QUALITY OF BASIC EDUCATION**

### **2.1 Introduction**

South Africa's education system has long grappled with the challenge of inadequate school infrastructure and its detrimental impact on the quality of basic education. In this analysis, the discussion delves into the legislative and policy frameworks that aim to address this pressing issue. While the South African government has implemented various measures to improve educational facilities, there remains a persistent gap between policy intent and practical implementation.<sup>48</sup> This is so because despite the well-meaning policy directives, the translation of these intentions into practical implementation has encountered numerous challenges. One significant hurdle has been the allocation of sufficient financial resources. While policies may be well-drafted on paper, the actual funding required for their effective execution is often inadequate. This scarcity of financial support limits the government's ability to construct and maintain modern and conducive learning environments, hindering the realization of improved educational facilities. Inadequate funding, bureaucratic inefficiencies, and a lack of proper monitoring and evaluation mechanisms have hindered the effective execution of these frameworks.<sup>49</sup> The issue of inadequate funding poses a significant hurdle to the realization of the intended goals outlined in these frameworks. Without sufficient financial resources, the allocation of critical assets such as personnel, equipment, and infrastructure become severely limited. As a result, many schools continue to operate in substandard conditions, compromising the learning environment and hindering learners' academic progress.<sup>50</sup>

This analysis adds further requirements of current legislative and policy actions and propose potential avenues for enhancement, with the aim of guaranteeing that each

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<sup>48</sup> Ischinger B, 'Foreword Reviews of National Policies for Education': South Africa,'(2008). < <https://www.education.gov.za/LinkClick.aspx?fileticket=sKsxhYorWOk=> > Accessed on 14/08/2023.

<sup>49</sup> Mupa P and Chinooneka T, 'Factors contributing to ineffective teaching and learning in primary schools: Why are schools in decadence? Vol.6, No.19,' (2015).

<sup>50</sup> Ibid.

child in South Africa can access a favourable and enriching educational encounter. By addressing the impact of inadequate school infrastructure head-on, the government can take significant strides toward enhancing the overall quality of basic education and securing a brighter future for the youth. While the Constitution of South Africa enshrines the right to basic education, it is essential to assess the extent to which this right has been realized in practice. The implementation and enforcement of laws related to school infrastructure must be assessed to understand their effectiveness in addressing the issue adequately.<sup>51</sup>

Any gaps or limitations within the existing legislative framework need to be identified to pave the way for necessary amendments or new policies. The policy frameworks devised to tackle the problem of inadequate school infrastructure must also be critically analysed. This includes the government's allocation of funds and resources to improve schools, the efficiency of the implementation process, and the degree of involvement from various stakeholders such as local communities, educational institutions, and non-governmental organizations. An in-depth analysis will shed light on whether these policies are sufficiently comprehensive, sustainable, and able to achieve the desired outcomes of providing quality education to all children in South Africa.

## **2.2 Legislative analysis: the legal requirements**

### *2.2.1 The Constitution of the Republic of South Africa, 1996*

After an extended period of apartheid, the new leadership (the leadership that took over after the apartheid government was voted out of power, which is the African National Congress leadership under the capable leadership of Nelson Rolihlahla Mandela), in South Africa acknowledged the significance of creating a state guided by the principles of efficient governance and leadership.<sup>52</sup> Taking a bold step, they introduced a new system known as democracy,<sup>53</sup> which aimed to create a fair and inclusive society. Central to this transformation was the implementation of a

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<sup>51</sup> Ibid.

<sup>52</sup> Levy B, et al 'South Africa: When Strong Institutions and Massive Inequalities Collide Carnegie Endowment for International Peace,' (2021) < <https://carnegieendowment.org/2021/03/18/south-africa-when-strong-institutions-and-massive-inequalities-collide-pub-84063> > Accessed 17/07/2023.

<sup>53</sup> This concept is defined as government by the people for the people.



Constitution, designed to safeguard the rights of every individual residing in the country, regardless of their status and background. The advent of the Constitution represented a profound shift in the responsibilities of the state, particularly concerning the provision of basic education for all children, irrespective of their race.<sup>54</sup>

This ground-breaking development ensured that both black and white children were entitled to receive equal opportunities in accessing quality education. The Constitution served as a unifying framework that aimed to rectify the educational disparities that had previously existed under apartheid. By emphasizing the importance of basic education as a fundamental right, the Constitution reaffirmed the government's commitment to ensuring equal educational opportunities for every child.<sup>55</sup> It signified a monumental stride toward building a society where educational resources and benefits were distributed equitably, thus striving to overcome the legacy of apartheid. The Constitution brought about a significant change in the state's responsibilities concerning the provision of fundamental education for every child (black and white children).<sup>56</sup> The right to basic education is stipulated in section 29 of the Constitution as follows:

- (1) Everyone has the right –
  - (a) to basic education, including adult basic education.
  - (b) which the State through reasonable measures must make progressively available and accessible.<sup>57</sup>

Section 29 of the Constitution consists of a cluster of education rights and has consequently been called a “hybrid” right.<sup>58</sup> Section 29(1) mandates the government

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<sup>54</sup> Chürr C, 'Realisation of a child's right to a basic education in the South African school system: Some lessons from Germany,' (2015) SciELO Network criteria <[http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1727-37812015000700002](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812015000700002) > Accessed on 17/07/2023.

<sup>55</sup> Calderhead V, 'The Right to an 'adequate' and 'equal' education in South Africa: An analysis of s. 29(1)(a) of the South African Constitution and the right to equality as applied to basic education, Section 27 and Equal Education, (2011) < <https://section27.org.za/wp-content/uploads/2011/04/The-Right-to-a-Basic-Education.pdf> > Accessed 17/07/2023.

<sup>56</sup> Malherbe 2004 European Journal for Education Law and Policy 49.

<sup>57</sup> Section 29 of the Constitution of South Africa, 1996.

<sup>58</sup> Veriava F and Coomans F, 'The right to education in D Brand and C Heyns et al (eds) Socio- Economic Rights in South Africa 60,' (2005).

to guarantee universal access to education for all individuals. Socio-economic rights entail legally entitled provisions for essential material conditions crucial to meeting fundamental human welfare needs, such as housing, healthcare, and food. In contrast, civil and political rights centre on freedoms related to speech, association, and individual autonomy in decision-making.<sup>59</sup> The right to education, as a civil and political right, encompasses freedom of choice.

As a socio-economic right, the right to basic education places a proactive responsibility on the state to ensure that everyone, regardless of race, age, or nationality, has access to basic education. This obligation extends to both South African citizens and legal residents within the country, without discrimination.<sup>60</sup> The absence of an internal qualifier in section 29(1) indicates that the essential right to access basic education is absolute, requiring direct and immediate implementation.<sup>61</sup> Upon careful examination of the aforementioned section, it becomes apparent that it lacks a precise definition of what constitutes basic education.<sup>62</sup> To fully comprehend and actualize this right, it is essential to establish a clear understanding of the term "basic education" as referenced in this section. According to International Standard Classification of Education (ISCED) standard, basic education comprises of primary education (first stage of basic education) and lower secondary education (second stage). It also covers a wide variety of non-formal and informal public and private activities intended to meet the basic learning needs of people of all ages.<sup>63</sup> Without a comprehensive understanding of this concept, it becomes challenging to interpret the right as outlined in section 29 of the Constitution.

Over the years, the state has made concerted efforts to fulfil this right. One notable example is the release of the National Development Plan (NDP), which outlines a strategic vision for the country's future. The objective of this plan is to establish a

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<sup>59</sup> Arendse E, 'The school funding system in post-apartheid South Africa: Is the right to adequate basic education accessible to the rich only?' (2009) page 5.

<sup>60</sup> Section 29 of the Constitution of South Africa, 1996.

<sup>61</sup> Murungi LN, 'Woolman and Bishop "Education" 57-11; Seleokane "Right to Basic Education" 224-225; Viljoen International Human Rights Law in Africa' 549.

<sup>62</sup> Manuel MP, 'Minister in the Presidency, On Behalf of the National Planning Commission National planning commission, national development plan', 2011.

<sup>63</sup> UNESCO, institutions for statistics < <https://uis.unesco.org/en/glossary-term/basic-education> > Accessed 26 October 2023.

society by the year 2030 in which every citizen, including individuals with disabilities, attains sufficient basic education.<sup>64</sup> The objective is to equip individuals with the necessary knowledge and skills that will empower them to embrace available opportunities. By setting forth such a vision, the state demonstrates its commitment to ensuring inclusive and quality basic education for all. The NDP serves as a blueprint to guide policies, initiatives, and resource allocation towards achieving this educational goal.<sup>65</sup> It highlights the importance of providing accessible and effective education to enable individuals to participate fully in the society and unlock their potential.

### *2.2.2 The South African Schools Act, 1996*

This legislation was passed two years after South Africa's transition to a democratic state. Its primary purpose was to address the organization, governance, and funding of schools, while also safeguarding and promoting the right to education.<sup>66</sup> The leaders of the country at that time recognized the need to revise and amend existing laws related to South African schools.<sup>67</sup> The arrival of democracy signalled the conclusion of an educational structure distinguished by unjust disparity and segregation.<sup>68</sup> It became crucial for the nation to construct a fresh, nationwide network of schools aimed at addressing historical educational injustices and delivering increasingly excellent education for every student.<sup>69</sup> The legislation also requires parents to guarantee their children's attendance at school starting at seven years old until either they turn fifteen or finish the ninth grade, depending on which event occurs first.<sup>70</sup> This legislation stipulates that public schools must be funded equitably from public revenue, with the aim of ensuring the proper exercise of learners' right to education and addressing past inequalities in the education sector.<sup>71</sup>

Though the Act talks about education in different ways, it doesn't directly talk about the problem of schools not having enough buildings or infrastructural facilities. The Act sets out rules that affect how schools are run, but it doesn't specifically focus on

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<sup>64</sup> The National Development Plan of 2030.

<sup>65</sup> Ibid.

<sup>66</sup> The South African Schools Act 84 of 1996.

<sup>67</sup> Ibid.

<sup>68</sup> DoBE, Infrastructure report to interest bodies. Power Point presentation to EE, EELC and LRC,' (2022)

<sup>69</sup> This is provided in the preamble of the South African Schools Act, no 84 of 1996.

<sup>70</sup> See section 3(1) of the South African Schools Act 84 of 1996.

<sup>71</sup> Section 34 (1) of the South African Schools Act 84 of 1996.

fixing infrastructure problems. It says the government must make sure all children can go to school and that schools have enough resources to provide a good education quality.<sup>72</sup> The Act further enshrines the right of all learners to a safe and conducive learning environment, implying that schools should have appropriate infrastructure in place to support effective teaching and learning. Although the Act does not specifically address infrastructure concerns, its provisions lay the foundation for ensuring that schools have the necessary resources to create an environment conducive to optimal learning experiences.<sup>73</sup>

### *2.2.3 The Children's Act 38 of 2005*

In South Africa, the right to education is protected under several laws, and the Children's Act is one of those laws. The primary focus of this Act is mostly based on the protection and care of children, it goes further to recognize and promote the right to basic education for every child in the country. This Act highlights the importance of education for children and establishes the duty of parent, guardians, and the state to ensure that children receive proper basic education. It emphasizes that education is a fundamental right of every child, and any action or neglect that interferes with a child's right to basic education is considered a violation of their rights.<sup>74</sup>

### *2.2.4 Basic Education Laws Amendment Act 15 of 2011 (BELAA)*

In South Africa, the Basic Education Laws Amendment Act (BELAA)<sup>75</sup> specifically addresses the impact of poor school infrastructure on the quality of basic education. This law is there to provide support to the South African Schools Act (SASA) and introduces provisions that set minimum requirements for school facilities. The overarching objective of implementing norms and standards through BELAA is to ensure that all public schools in South Africa have access to appropriate teaching and learning facilities.<sup>76</sup> These norms and standards encompass various essential aspects, including access to clean water, sanitary facilities, electricity, and well-equipped classrooms, libraries, laboratories, and other necessary learning resources.<sup>77</sup>

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<sup>72</sup> The South African Schools Act 84 of 1996.

<sup>73</sup> Ibid.

<sup>74</sup> The Children's Act 38 of 2005.

<sup>75</sup> Act 15 of 2011.

<sup>76</sup> The Basic Laws Amendment Act No 15 of 2011.

<sup>77</sup> Ibid.

Under BELAA, the responsibility of establishing guidelines and requirements for all public schools throughout the country lies with the Minister of Basic Education.<sup>78</sup> It is the duty of the DoBE to conduct regular evaluations of school facilities, identify areas that require improvement or upgrading, and develop plans to address these challenges. By implementing BELAA and its associated norms and standards, the aim is to address the longstanding issue of inadequate school infrastructure in South Africa. The law ensures that schools have the necessary infrastructure and resources to create an environment conducive to effective teaching and learning. It seeks to bridge the gap in infrastructure disparities and ensure that all learners have access to safe, suitable, and well-equipped educational facilities.<sup>79</sup> Through these provisions, BELAA aims to improve the overall quality of basic education in South Africa by addressing the challenges posed by poor school infrastructure. By setting minimum requirements and conducting regular evaluations, the law provides a framework for continuous improvement and accountability in the provision of school infrastructure. It underscores the government's commitment to enhancing the learning environment and ensuring that all learners can thrive academically.<sup>80</sup>

#### *2.2.5 National Education Infrastructure Management System (NEIMS)*

The purpose of this law was to create a comprehensive structure for the supply, upkeep, and enhancement of educational infrastructure within South Africa.<sup>81</sup> The NEIMS stands for a managerial system that enables the streamlined and proficient planning, growth, upkeep, and oversight of educational infrastructure, encompassing school structures, furnishings, tools, water and sanitation amenities, and associated infrastructure.<sup>82</sup> The legislation allows for the creation of the Education Infrastructure Council, tasked with formulating and executing policies, strategies, and plans to cater for the supply, maintenance, and enhancement of educational infrastructure.<sup>83</sup> The NEIMS also necessitates the formulation of a nationwide blueprint for education infrastructure. This plan entails identifying the requirements for educational

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<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> National Education Policy Act No. 27 Of 1996.

<sup>82</sup> Ibid at section 6.

<sup>83</sup> Ibid at section 5.

infrastructure, ranking infrastructure projects by priority, and allotting resources for the expansion and upkeep of educational infrastructure.<sup>84</sup>

## **2.3 Policy Framework: Impact of inadequate school infrastructure and interventions**

### *2.3.1 Norms and Standards for Public School Infrastructure law, 2013*

This serves as the primary policy delineating the essential prerequisites for offering infrastructure, such as ensuring that schools have ample access to water and sanitation amenities, ensuring a wholesome learning setting. Since its release in 2013, basic pit latrines have been prohibited at schools. This policy on school infrastructure also includes, among various provisions, explicit timelines by which schools should have obtained crucial infrastructure and associated services. In this regard, the DoBE and provincial education departments are required to:

- Substitute all schools constructed solely from unsuitable materials like mud, asbestos, metal, or wood. Additionally, ensure that schools lacking access to water, electricity, and sanitation are equipped with these fundamental necessities by November 29, 2016.
- Furnish every school with sufficient classrooms, electricity, water, sanitation, along with internet connectivity and perimeter security by November 29, 2020.
- Provide all schools with libraries and laboratories by 29 November 2023; and to date it is not realised.
- Supply all additional infrastructure, encompassing school auditoriums, sports fields, pathways, parking areas, and facilities for individuals with disabilities, by November 29, 2030.

### *2.3.2 Sanitation Appropriate for Education (SAFE) Initiative*

After four years from Michael Komape's passing, another heart-breaking incident occurred. In March 2018, five-year-old Lumka Mkhethwa tragically lost her life by

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<sup>84</sup> The National Education Infrastructure Management System.

falling into a basic pit toilet at her school.<sup>85</sup> In response to this devastating event, President Cyril Ramaphosa introduced the Sanitation Appropriate for Education (SAFE) initiative in August 2018. This initiative aimed to expedite the substitution of basic pit toilets with suitable sanitation facilities in alignment with the school infrastructure legislation, following the unfortunate loss of yet another young life.<sup>86</sup> Under the provisions of the SAFE initiative, the DoBE carried out a comprehensive evaluation of the backlog in school sanitation across the nation. The assessment identified that 3,898 schools within the country had subpar sanitation amenities. After a thorough review, the DoBE revised this figure to 2,918 schools. This correction was made after realizing that a portion of the initially identified schools had been inaccurately categorized as having inadequate sanitation, while others had undergone amalgamation or closure due to school rationalization efforts.<sup>87</sup> The latest advancement report from the DoBE indicates that a mere 991 schools have undergone sanitation enhancements since the commencement of the SAFE initiative. This leaves 1,927 schools still awaiting upgrades. The DoBE stated that out of the original 457 Limpopo schools covered by SAFE, only 127 have undergone sanitation improvements up to this point.<sup>88</sup> Incomplete data can be held partially responsible for the sluggish advancement in delivering schools with water and sanitation, along with the required enhancements.

#### *2.3.4 National Policy on School Infrastructure (NPSI)*

The main goal of the National Policy on School Infrastructure is to direct the creation of suitable physical spaces for teaching and learning that are accessible to all learners in South Africa in a fair manner. In order to attain its key goals, the policy relies on a series of fundamental principles, which encompass comprehensive accessibility, fairness and rectification, excellence, efficacy, utility, and adaptability, along with an array of core national principles. The policy encompasses six strategic declarations

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<sup>85</sup> Dyantyi H, 'The indignity of pit toilet deaths: Michael Komape in 2014, now Lumka Mkhethwa' 2018.

<sup>86</sup> The Presidency, 'President Ramaphosa launches SAFE Sanitation for schools. Media statement,' (2018) < <https://www.thepresidency.gov.za/press-statements/president-ramaphosa-launches-safes sanitation-schools> > Accessed on 26/07/2023.

<sup>87</sup> DoBE, 'Infrastructure report to interest bodies. Power Point presentation to EE, EELC and LRC, 23,' (2022).

<sup>88</sup> Ibid.

and two practical statements of policy.<sup>89</sup> In South Africa, there exist two distinct categories of issues concerning school infrastructure, both of which carry significance for the execution of the National Policy on School Infrastructure. The initial category of challenges pertains to the requirement for infrastructure and the process of supplying the requisite infrastructure to meet this need. The second challenge pertains to the condition of the existing school infrastructure and the management of such infrastructure at the school level. Schools within South Africa are experiencing a critical deficiency in fundamental infrastructure, essential for delivering education of high quality. While the government places emphasis on furnishing such infrastructure, accomplishing the actual provision poses a challenge.<sup>90</sup>

#### *2.3.5 School Infrastructure Safety and Security Guidelines (SISSG)*

SISSG are of paramount importance to ensure a conducive and secure learning environment for students, teachers, and staff. These guidelines encompass various measures that address physical and psychological safety aspects within educational institutions.<sup>91</sup> School buildings and facilities must adhere to strict safety standards. Regular inspections should be conducted to identify potential hazards, such as structural weaknesses, electrical issues, or fire risks. Adequate fire safety equipment, including fire extinguishers and alarms, should be installed, and maintained, and emergency evacuation plans must be practiced periodically to prepare students and staff for any unforeseen situations.<sup>92</sup> Safety guidelines should extend beyond the physical aspects to include measures addressing the emotional well-being of students.

### **2.4. The prevailing circumstances out of the analysis of legislation and policy on the matter**

South Africa has been grappling with significant challenges regarding inadequate school infrastructure. Despite efforts to improve educational facilities, various prevailing circumstances continue to hinder progress in this area. One of the major issues is the historical legacy of apartheid, which resulted in the unequal distribution of resources between schools in different regions. Many schools in rural and

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<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> School Infrastructure Safety and Security Guidelines.

<sup>92</sup> Ibid.



disadvantaged areas lack basic infrastructure, such as proper classrooms, sanitation facilities, libraries, and laboratories. This inequality has created a significant education gap between rural and urban schools, limiting opportunities for students in underprivileged areas. The legislative framework and policies aimed at addressing inadequate school infrastructure have been essential steps towards rectifying these disparities. The South African Schools Act of 1996, and subsequent policies have outlined provisions for the improvement of school infrastructure. Challenges remain in implementing these measures effectively due to limited financial resources and bureaucratic complexities.

Budget constraints pose a significant hindrance to addressing inadequate school infrastructure comprehensively. Despite various initiatives, the government faces challenges in allocating sufficient funds for infrastructure development and maintenance. The cost of upgrading existing schools and building new facilities is substantial, and competing priorities often dilute the allocation of funds for education.<sup>93</sup> Another critical issue is lack of coordination and monitoring of infrastructure development projects. In some cases, delays in the implementation of infrastructure projects have been observed due to administrative inefficiencies and corruption. Proper oversight and transparent processes are needed to ensure that allocated funds are utilized effectively, and infrastructure projects are completed in a timely manner. The persistence of socio-economic challenges, including poverty and unemployment, impacts the ability of communities to actively participate in supporting school infrastructure improvement initiatives. In disadvantaged areas, community engagement and contributions may be limited, making it difficult to supplement government efforts adequately.<sup>94</sup>

## **2.5 Conclusion.**

Examining the legislative and policy frameworks overseeing the impact of insufficient school infrastructure on basic education quality underscores both strengths and limitations in tackling this pivotal concern. The assessment of current laws and policies

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<sup>93</sup> OECD, 'The Funding of School: Education Connecting Resources And Learning' (2017 < <https://www.oecdilibrary.org/docserver/9789264276147en.pdf?expires=1692032229&id=id&accname=guest&checksum=129BFEEDA2A822AAB28373F00F1B52C8>> Accessed on 14/08/2023.

<sup>94</sup> Ibid.

brings attention to praiseworthy endeavours by governments and educational authorities to acknowledge the pivotal role of adequate school infrastructure in advancing educational quality. Numerous nations have grasped the importance of infrastructure and have formulated regulations and policies intended to enhance school facilities. These measures encompass assigning funds for infrastructure advancement, constructing and refurbishing schools, and striving for comprehensive student accessibility. Some of these policies also attend to matters involving safety, hygiene, and comprehensive learning environments, showcasing a dedication to establishing an environment conducive to effective teaching and learning.

The analysis also exposes several shortcomings in the legislative and policy frameworks. One key concern is lack of proper implementation and enforcement mechanisms. Inadequate monitoring and evaluation systems often lead to disparities in the distribution of resources, with underprivileged schools and regions remaining neglected. The focus on physical infrastructure alone overlooks other crucial factors influencing the quality of education, such as teacher training, curriculum design, and community involvement. A more integrated approach, considering all these aspects, is essential to achieve sustainable improvements in the education system. To address these issues, policymakers must prioritize comprehensive assessments of school infrastructural needs and allocate adequate resources accordingly. Robust monitoring and evaluation mechanisms should be implemented to ensure that policies are effectively executed, and corrective measures can be taken promptly. Policymakers should recognize the interdependence of infrastructure, teaching quality, and community involvement in shaping the overall educational experience. Stakeholders at all levels, including governments, education authorities, communities, and civil society, must collaborate to advocate for the importance of adequate school infrastructure. Public awareness and engagement can lead to increased support and resources, encouraging positive changes in the legislative and policy frameworks governing basic education infrastructure.

## CHAPTER 3: THE EFFECT(S) OF INADEQUATE SCHOOL INFRASTRUCTURE ON OTHER RIGHTS IN THE BILL OF RIGHTS

### 3.1 Introduction

In South Africa, the Constitution stands as a cornerstone of democracy, embodying the aspirations and rights of its citizens. One of its most pivotal components is the Bill of Rights, a comprehensive document that serves as a shield and beacon of hope for the nation. The Bill of Rights enshrines an extensive array of fundamental rights and liberties, illuminating the path towards a fair and just society. Among the rights it safeguards, the right to education holds a prominent place. It is widely recognized as an essential pillar for individual development, empowerment, and societal progress.

Education is not merely a privilege, it is the means through which individuals can unlock their full potential, contributing to the betterment of both themselves and their communities. This recognition of education's transformative power is at the heart of the Bill of Rights in South Africa. The attainment of quality education is a multifaceted endeavor. While curricula, teaching methodologies, and skilled educators undoubtedly play a crucial role, the physical infrastructure in which learning takes place is equally instrumental. Inadequate school infrastructure poses a significant challenge to realizing the right to education and has far-reaching consequences that extend beyond the confines of the classroom.<sup>95</sup> The ramifications of substandard facilities can ripple through various other rights protected by the Bill of Rights, weaving a complex web of challenges that impact not only educational opportunities but also the overall well-being and dignity of students.

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<sup>95</sup> Barrett P, 'The Impact of School Infrastructure on Learning,' 2019, <<https://files.eric.ed.gov/fulltext/ED604388.pdf>> Accessed on 19-20-2023.

## **3.2 Rights in the Bill of Rights affected by inadequate school infrastructure.**

### *3.2.1 The right to life*

The right to life is enshrined in section 11 of the Constitution, which guarantees everyone's right to life and states that it may not be arbitrarily deprived.<sup>96</sup> Inadequate school infrastructure can pose significant risks to the right to life of learners, jeopardizing their safety and well-being within the educational environment. Dilapidated buildings, poorly maintained facilities, and lack of necessary safety measures can create hazardous conditions that may lead to accidents, injuries, or even fatal incidents. For instance, crumbling walls or unstable structures could collapse, endangering the lives of learners and staff. Insufficient fire safety measures or the absence of emergency exits might impede quick and safe evacuations during emergencies, potentially putting lives at risk. When school infrastructure fails to meet basic safety standards, it prioritizes education at the expense of the learners' right to life, turning schools into potentially dangerous spaces rather than nurturing environments for personal growth and development.

Inadequate school infrastructure can negatively impact learners' physical and mental health, indirectly affecting learners' right to life. Inadequate sanitation facilities and lack of access to clean drinking water can lead to the spread of diseases, compromising learners' health and well-being. Overcrowded classrooms with poor ventilation can contribute to the transmission of respiratory infections, affecting learners' ability to attend school regularly and potentially exacerbating existing health conditions. Mental health can also suffer in environments with inadequate infrastructure, as the stress and anxiety resulting from uncomfortable and unsafe surroundings can hinder learners' ability to concentrate and learn effectively. The right to life is a fundamental human right, and every effort should be made to ensure that learners are provided with safe and conducive learning environments that prioritize their well-being and safety. Adequate school infrastructure is essential for upholding this right, as it lays the foundation for a nurturing and empowering educational experience.

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<sup>96</sup> Section 11 of the Constitution of the Republic of South Africa, 1996.

The case of *Komape v Minister of Basic Education and Others*<sup>97</sup> is a landmark legal case that highlights the critical intersection between inadequate school infrastructure and the right to life in South Africa. The case centers around the tragic death of five-year-old Michael Komape, who drowned in a pit latrine at his primary school in Limpopo in 2014.<sup>98</sup> The incident brought to light the dire consequences of neglecting proper school infrastructure and its severe implications on learners' right to life. The right to life is a fundamental human right, protected under both international human rights law and the South African Constitution. The Komape case directly raised questions about the state's obligation to protect this fundamental right, particularly concerning the safety and well-being of children attending schools. In the Komape case, inadequate school infrastructure played a central role in the tragedy. The pit latrine in which Michael Komape fell was in an appalling state, with dangerous and unsanitary conditions.<sup>99</sup> Lack of proper sanitation facilities not only posed a risk to learners' health but also directly led to the loss of a young life. This incident demonstrated how a failure to provide safe and secure school infrastructure could result in a blatant violation of the right to life.

### *3.2.2 Right to Health Care, Food, Water, and Social Security*

Inadequate school infrastructure in South Africa can have a significant impact on learners' access to health care, food, water, and social security, thereby affecting their overall well-being and human rights. Inadequate school infrastructure can impede learners' access to essential healthcare services. Many schools in underprivileged areas lack proper health facilities or access to medical professionals, making it challenging for learners to receive timely medical attention when needed. Without adequate healthcare provisions, learners may face difficulties in managing chronic health conditions or receiving necessary treatments, leading to the potential exacerbation of health issues, and hindering their ability to fully engage in their studies.

Inadequate infrastructure can contribute to water scarcity and poor sanitation, compromising learners' access to clean drinking water and proper hygiene facilities. Schools with unreliable or contaminated water sources pose a health risk to learners,

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<sup>97</sup> *Komape and Others v Minister of Basic Education* (1416/2015) [2018] ZALMPPHC 18.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

increasing the likelihood of waterborne illnesses and diseases. Lack of functional and hygienic sanitation facilities may also lead to the spread of infections, further jeopardizing learners' health and well-being. Inadequate school infrastructure can indirectly affect learners' access to social security. Poverty and social inequalities often contribute to the disparities in school infrastructure, with underprivileged communities facing the brunt of these challenges. Learners from disadvantaged backgrounds may not have access to essential social security measures, such as adequate housing, social welfare, or safety nets, which can impact their overall quality of life and well-being.

The case of *Minister of Health v Treatment Action Campaign*,<sup>100</sup> marks a pivotal moment in South Africa's history, significantly shaping the country's approach to addressing HIV/AIDS and formulating public health strategies. In the late 1990s and early 2000s, South Africa faced a severe HIV/AIDS epidemic that affected millions of people. At that time, the government under the then Health Minister Dr. Manto Tshabalala-Msimang and President Thabo Mbeki faced significant scrutiny and backlash, both domestically and internationally, for their handling of the HIV/AIDS crisis.<sup>101</sup> One of the key issues of contention was the South African government's reluctance to provide antiretroviral treatment (ARV) to people living with HIV/AIDS.

The government had questioned the safety and effectiveness of ARV drugs and promoted alternative treatments such as nutrition and traditional medicines, which were widely criticized by health experts and activists. The Treatment Action Campaign (TAC), a South African HIV/AIDS activist group, emerged as a leading voice advocating for access to ARV treatment for all South Africans living with HIV/AIDS. TAC argued that the government's refusal to provide ARV treatment was a violation of the constitutional rights to health and life.<sup>102</sup> Judge Botha from the High Court of South Africa Pretoria division issued a favorable verdict for TAC, instructing that Nevirapine should be accessible to mothers with infections who are delivering babies in state-run facilities. Additionally, the government was directed to provide a detailed plan to the

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<sup>100</sup> *Minister of Health and Others v Treatment Action Campaign and Others* (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC).

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

court regarding the expansion of medication availability to its birthing facilities across the entire country.<sup>103</sup>

### *3.2.3 The right to dignity*

Inadequate school infrastructure significantly affects the right to dignity of learners in South Africa. Dignity is a fundamental human right enshrined in the South African Constitution, and it emphasizes the inherent worth and value of every individual. When learners attend schools with substandard infrastructure, their right to dignity can be compromised in several ways. The physical conditions of the school environment play a crucial role in shaping learners' sense of dignity. Inadequate and poorly maintained school buildings can create an undignified atmosphere that impacts learners' self-esteem and self-worth. Crumbling walls, leaky roofs, or dilapidated classrooms can send a message of neglect and lack of value to the learners, making them feel disrespected and undeserving of a proper learning environment. Lack of basic facilities, such as proper sanitation and hygiene facilities, can further erode learners' dignity. Schools with inadequate sanitation facilities or lack of access to clean water can force learners to endure undignified and unsanitary conditions, potentially leading to embarrassment and discomfort. This can be particularly distressing for learners during their formative years, as it may contribute to feelings of shame and marginalization.<sup>104</sup>

Inadequate school infrastructure can also impact learners' access to resources and opportunities. Schools with limited or outdated educational materials, technology, and resources may hinder learners' academic progress and limit their potential for personal growth and development. The denial of access to a quality education can be degrading and may perpetuate a cycle of poverty and inequality, further compromising learners' sense of dignity. Lack of adequate safety measures in schools can create an environment of fear and insecurity, depriving learners of their right to dignity. Schools with inadequate security measures may expose learners to risks of violence, bullying, or other safety concerns, leading to a constant state of anxiety and vulnerability. This

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<sup>103</sup> Ibid.

<sup>104</sup> Nocuze B, 'Port St Johns learners have to be sent home when its rains', 2017.

not only affects learners' ability to focus on their studies but also diminishes their sense of dignity as they feel unprotected and undervalued.<sup>105</sup>

The case of *Section 27 v Minister of Education*,<sup>106</sup> a pressing legal matter was brought to the attention of the North Gauteng High Court. The aim was to secure a declaration asserting that the DoBE neglect in delivering textbooks to schools in Limpopo constituted a breach of essential rights, such as the right to fundamental education, equality, and dignity. The petition sought the court's intervention to instruct the department to swiftly furnish textbooks for Grades R, 1, 2, 3, and 10 to the schools experiencing shortages, with a specified deadline of May 31, 2012.<sup>107</sup> During the proceedings, the court acknowledged the crucial role of education in empowering individuals and unlocking their potential. It further emphasized on the significance of textbooks in ensuring quality learning and teaching. Consequently, the court reached the conclusion that the respondents' failure to furnish the required textbooks constituted a breach of the right to basic education.<sup>108</sup>

In his ruling, Judge Kollapen emphasized the importance of providing effective and meaningful remedies when rights have been violated.<sup>109</sup> He stressed that simply ordering the delivery of textbooks would not be sufficient to address the consequences and effects of the delayed delivery during the first half of the year.<sup>110</sup> Instead, he argued that a comprehensive intervention was necessary to tackle both the learning gaps and the quality of education, especially for Grade 10 learners. This intervention aimed to alleviate the prejudice they experienced due to lack of textbooks. The Court's decision, in this case, was driven by the goal of safeguarding and promoting the right to quality basic education, recognizing that this right cannot be fully realized without access to textbooks.<sup>111</sup> Therefore, the ruling sought to ensure that appropriate

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<sup>105</sup> Allen KP, 'Classroom management, bullying, and teacher practices. The Professional Educator', 34(1), 1-15, 2010.

<sup>106</sup> *Section 27 v Minister of Education* 2013 2 SA 40 (GNP).

<sup>107</sup> Sefoka IM, 'Accentuating the Right to Ample Access to Quality Education in Rural South Africa: Legal Analysis', 2016.

<sup>108</sup> *Section 27 v Minister of Education* 2013 2 SA 40 (GNP) para 32.

<sup>109</sup> *Ibid*.

<sup>110</sup> *Ibid* at para 35.

<sup>111</sup> *Ibid* at para 36.



measures were taken to address the challenges faced by the affected students and to uphold the spirit of the Constitution in protecting their rights to education.

#### *3.2.4 The right to a healthy environment*

The Constitution of South Africa, a beacon of democratic ideals, enshrines the right to a safe and healthy environment as a fundamental human right under its Bill of Rights. While this constitutional guarantee primarily pertains to the broader environmental context, the quality of school infrastructure significantly intersects with this right, often in less explored ways. This introduction will delve into the complex relationship between inadequate school infrastructure and the right to a safe and healthy environment in South Africa, highlighting the profound implications this dynamic has on the well-being of students and the nation.<sup>112</sup>

The South African Constitution as adopted in 1996, is revered for its commitment to protecting and promoting a wide array of human rights. Among these rights is the right to a safe and healthy environment, enshrined in section 24 of the Bill of Rights. This right obliges the government to take reasonable legislative and other measures to secure the ecological sustainability of the environment for present and future generations. While the right to a safe and healthy environment is typically associated with environmental conservation, it also extends to the built environment, encompassing the spaces where citizens live, work and crucially learn.

In the case of *Madzodzo and Others v Minister of Basic Education and Others*,<sup>113</sup> the Eastern Cape High Court delivered a verdict following a petition lodged against the National and Provincial Education Departments. This petition aimed to ensure the delivery of school furniture to multiple schools across the Eastern Cape Province. Parents, such as Madzodzo and others, whose children attended public junior and senior schools in the region, formed the petitioners. Initially centered on three schools, the petition broadened its reach as additional parents joined, aiming to address the furniture shortage issue for the entire province.<sup>114</sup>

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<sup>112</sup> Section 24 of the Constitution.

<sup>113</sup> *Madzodzo and Others v Minister of Basic Education and Others* (2144/2012) [2014] ZAECMHC 5, para 61.

<sup>114</sup> *Ibid.*

The Education Departments defended themselves by arguing that resource allocation and furniture delivery should only occur after an independent audit of furniture shortages in all Eastern Cape schools, scheduled to be completed later that month. The Court rejected this argument, emphasizing that school furniture is an integral component of the right to a basic education as outlined in section 29(1)(a) of the Constitution.<sup>115</sup> As such, the state is obligated to take all reasonable measures to promptly realize this right.

The Court found that the respondents (Education Departments) were in breach of learners' constitutional right to basic education by failing to provide sufficient age- and grade-appropriate furniture that would allow each child to have their own reading and writing space. This lack of adequate furniture in public schools, especially in deep rural and impoverished areas, not only undermined the right to basic education but also violated learners' entitlement to immediate access to education, equality, and dignity. The Court acknowledged that the Education Departments were aware of the furniture shortages for an extended period. The court then ordered the departments to deliver the required furniture to public schools by 31 May 2014, recognizing that this action was necessary to protect and promote the right to quality education, as this right cannot be fully realized without the appropriate furniture in place in the schools.<sup>116</sup>

### **3.3 Conclusion**

The insufficient school infrastructure in South Africa has wide-ranging consequences that extend beyond the realm of education, significantly affecting other rights protected by the Bill of Rights. The right to education is a fundamental cornerstone of any democratic society. When schools lack proper infrastructure or have subpar facilities, it places in jeopardy the realization of various other rights, such as the right to dignity, equality, and even health. Inadequate school infrastructure directly undermines the right to dignity, a fundamental principle enshrined in the South African Constitution, which includes the right to a basic standard of living. When school facilities are substandard and lack essential amenities like safe and functional toilets,

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<sup>115</sup> *Madzodzo and others v Minister of Basic Education and Others* 2014 (3) SA 441 (ECM).

<sup>116</sup> Jamieson L (Children's Institute, University of Cape Town), Stein N(Section 27), and Waterhouse S (Community Law Centre, University of the Western Cape), *South African Child Gauge* 2014, part one: Children and law reform, page 15.

clean drinking water, and proper classrooms, they fall short of upholding the right to dignity not only compromise the physical well-being of students but also infringe upon their dignity. Students forced to endure overcrowded and dilapidated classrooms may feel devalued, disrespected, and their self-esteem may be negatively impacted.<sup>117</sup>

The right to equality is undermined when some students have access to better educational facilities than others. The South African Constitution enshrines the principle of equality, emphasizing the need to rectify the imbalances of the past. Inadequate school infrastructure perpetuates disparities in education, as schools in marginalized communities often lack the resources and infrastructure necessary for quality learning. This inequality further entrenches socio-economic disparities, as students from impoverished backgrounds are denied equal opportunities to succeed academically and in life. Inadequate school infrastructure can have a detrimental impact on the right to health. Clean and safe school environments are essential for the overall health and well-being of students. Poorly maintained facilities, lack of sanitation, and overcrowded classrooms can create an environment conducive to the spread of diseases, which ultimately compromises the right to health for both students and educators. Students who attend schools with inadequate infrastructure are more likely to face health risks and may experience higher rates of absenteeism due to illness.

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<sup>117</sup> The South African Human Rights Commission, 'Lack of Safety and Security Measures In Schools For Children With Disabilities,' < Accessed on 20-09-2023.

## CHAPTER 4: BRIDGING THE EDUCATIONAL DIVIDE, A COMPARATIVE ANALYSIS OF SCHOOL INFRASTRUCTURAL IMPACT ON THE QUALITY OF BASIC EDUCATION IN SOUTH AFRICA AND GERMANY

### 4.1 Introduction

In one of his quotes Mandela alludes that: "Education is the most powerful weapon which one can use to change the world".<sup>118</sup> This quote by the former president of South Africa, literally seeks to show to the whole world and the people of South Africa in particular how important education is and people should most probably start taking it very seriously.

Education is the cornerstone of societal progress, fostering personal growth, economic development, and social cohesion.<sup>119</sup> The quality of education is deeply intertwined with the infrastructure that supports it. Inadequate school infrastructure can hinder a student's ability to learn, limiting their potential and perpetuating cycles of inequality.<sup>120</sup> This chapter embarks on a comparative analysis of the stark differences in school infrastructure and its impact on basic quality education in two different nations, being South Africa and Germany. South Africa, a nation historically burdened by the legacy of apartheid, faces numerous challenges in providing quality education to its diverse population. Apartheid have left many scars on the country, particularly considering how the country struggled under this regime. Looking on the other side, Germany as the compared country is often lauded for its robust educational system and extensive infrastructure investments.<sup>121</sup> Germany has as much went through some difficulties as a country, where they were even involved in World Wars and other minor wars, which lead to the country's infrastructure being destroyed dismally.<sup>122</sup>

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<sup>118</sup> Mandela N, *Long walk to freedom* (1994).

<sup>119</sup> GGI Insights, 'How to Promote Education: A Comprehensive Guide,' 2023 <<https://www.graygroupintl.com/blog/how-to-promote-education>> Accessed on 02-10-2023.

<sup>120</sup> Ibid.

<sup>121</sup> Barrett P, 'The Impact of School Infrastructure on Learning: A Synthesis of the Evidence,' 2019 <<https://files.eric.ed.gov/fulltext/ED604388.pdf>> Accessed on 02-10-2023.

<sup>122</sup> Ibid.

The comparative analysis of these two countries allows us to unravel the complex relationship between educational infrastructure and the quality of basic education.<sup>123</sup>

South Africa's educational landscape is characterized by a stark contrast between under-resourced schools in disadvantaged communities and well-equipped institutions in more affluent areas.<sup>124</sup> Decades of systemic inequalities have left many learners in South Africa with limited access to safe, well-maintained classrooms, libraries, and laboratories. These disparities raise critical questions about the extent to which inadequate school infrastructure impedes the acquisition of basic education skills and how it hampers the nation's progress towards a more equitable society. South Africa, like many African nations, is committed to the 2030 Agenda for Sustainable Development, in terms of this agenda, Goal Number 4 stipulates that: "By the year 2030 the country should, ensure inclusive and equitable quality education and promote lifelong learning opportunities for all".<sup>125</sup> However, one of the most pressing challenges hindering the realization of this goal is the pervasive issue of inadequate school infrastructure. On the other hand, Germany boasts a comprehensive educational system supported by a network of modern, well-maintained schools.<sup>126</sup> Germany's commitment to educational infrastructure is reflected in its emphasis on creating an inclusive, nurturing, and innovative learning environment for all learners. As we delve into the German education system, the study explores how their investments in educational infrastructure contribute to the country's reputation for academic excellence and economic competitiveness.

## **4.2 The historical, socio-economic, and political factors that have shaped the educational infrastructure in South Africa and Germany**

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<sup>123</sup> Ibid.

<sup>124</sup> South Africa: 'Broken and unequal education perpetuating poverty and inequality,' 2020, <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/> > Accessed on 02-10-2023.

<sup>125</sup> Sustainable Development Goals Report 2017 < <https://unstats.un.org/sdgs/report/2017/Overview/> > Accessed on 02-10-2023."

<sup>126</sup> Barrett P, 'The Impact of School Infrastructure on Learning: 'A Synthesis of the Evidence',' 2019 < <https://files.eric.ed.gov/fulltext/ED604388.pdf> > Accessed on 02-10-2023.

#### 4.2.1 Historical Factors

In South Africa, the past has left a lasting imprint on the state of its educational infrastructure.<sup>127</sup> The legacy of apartheid, a system of institutionalized racial segregation and discrimination that lasted from 1948 to the early 1990s, is one of the most influential historical factors. During this period, educational facilities were explicitly segregated along racial lines, with black students receiving significantly inferior resources and infrastructure compared to their white counterparts.<sup>128</sup> This segregation created a stark division in the quality of education, setting the stage for persistent disparities in school infrastructure.<sup>129</sup> This system of educational segregation left a permanent mark on South African society. It created a chasm in the quality of education, with white students receiving a vastly superior educational experience compared to their black counterparts. This division further entrenched socio-economic inequalities and contributed to the broader cycle of disadvantage experienced by black communities.<sup>130</sup>

The legacy of apartheid continues to have a profound and lasting impact on South Africa's educational infrastructure, with far-reaching consequences that persist to this day. Apartheid created deep-seated inequalities in education that continue to challenge the country's progress towards a more equitable and inclusive society. During apartheid, education was segregated based on race, with the white minority receiving the best resources, funding, and educational opportunities, while black South Africans were systematically disadvantaged. This inequality in access to quality education has persisted, and many black students continue to attend underfunded schools with limited resources, poorly trained teachers, and inadequate

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<sup>127</sup> Arendse L, 'The South African Constitution's empty promise of "radical transformation": unequal access to quality education for black and/or poor learners in the public basic education system. *Law democr. Dev.* [online]. 2019, vol.23 [cited 2023-11-08], pp.100-147' <<http://dx.doi.org/10.17159/2077-4907/2019/idd.v23a5>> Accessed on 04-10-2023.

<sup>128</sup> Maria LO, 'Global Perspectives on Human Language: The South African Context, A Brief History of Educational Inequality from Apartheid to the Present,' 2004 <[https://web.stanford.edu/~jbaugh/saw/Lizet\\_Education\\_Inequity.html](https://web.stanford.edu/~jbaugh/saw/Lizet_Education_Inequity.html) > 02-10-2023.

<sup>129</sup> Ibid.

<sup>130</sup> Lorette A, 'The South African Constitution's empty promise of "radical transformation": unequal access to quality education for black and/or poor learners in the public basic education system,' 2019, < [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S2077-49072019000100004](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072019000100004) > Accessed on 04-10-2023.

infrastructure.<sup>131</sup> Although the official end of apartheid in the early 1990s marked a turning point in the nation's history, the scars it left on the educational system have been slow to heal.<sup>132</sup> Decades of underinvestment in black schools, coupled with the enduring socio-economic disparities, have resulted in persistently inadequate infrastructure for many learners. As South Africa strives to rectify these historical injustices and bridge the educational divide, addressing the inequities in school infrastructure remains a central challenge.<sup>133</sup>

The emergence of World War II in Germany in the year 1939, brought serious disparities to the country.<sup>134</sup> After 1945, the war had left the country in ruins, both physically and morally, and the task of rebuilding extended far beyond the reconstruction of its cities and industries. It also necessitated the reconstruction of its educational institutions, which had been severely impacted by the war's ravages.<sup>135</sup> The emphasis on rebuilding the nation after the war was not confined solely to bricks and mortar but extended to nurturing the minds of future generations, the then leaders believed that education is the only solution that the country needs.<sup>136</sup> The leaders of post-war Germany recognized that investing in education was not only essential for the country's immediate recovery but also for its long-term stability and prosperity.<sup>137</sup> Education was seen as a powerful tool to help heal the wounds of war, instil democratic values, and foster a sense of unity among a population that had been deeply divided by the conflict.<sup>138</sup>

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<sup>131</sup> Ocampo M, 'A Brief History of Educational Inequality from Apartheid to the Present,' 2004 < [https://web.stanford.edu/~jbaugh/saw/Lizet\\_Education\\_Inequity.html](https://web.stanford.edu/~jbaugh/saw/Lizet_Education_Inequity.html)> Accessed on 05-10-2023.

<sup>132</sup> Arendse L, 'The South African Constitution's empty promise of "radical transformation": unequal access to quality education for black and/or poor learners in the public basic education system,' 2019, < [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S2077-49072019000100004](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072019000100004)> Accessed on 04-10-2023."

<sup>133</sup> Ibid.

<sup>134</sup> MacMillan M, 'Rebuilding the world after the second world war,' 2009 < <https://www.theguardian.com/world/2009/sep/11/second-world-war-rebuilding>> Accessed on 04-10-2023.

<sup>135</sup> Ibid.

<sup>136</sup> After Nazi Germany surrendered on 8 May 1945, four countries representing the Allies (the United States, United Kingdom, Soviet Union, and France) asserted joint authority and sovereignty through the Allied Control Council (ACC) under the Berlin Declaration of 5 June 1945 that led to the fall of the German Reich.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

This commitment to education manifested in a comprehensive effort to modernize and upgrade educational facilities throughout the country. Schools were seen as more than just places of learning; they were envisaged as hubs for post-war recovery and development.<sup>139</sup> The physical infrastructure of these schools was designed to reflect the nation's aspirations for a brighter future. Modern classrooms, well-stocked libraries, state-of-the-art laboratories, and recreational facilities were all integral components of this vision. The commitment to quality education infrastructure became a cornerstone of the German educational system.<sup>140</sup> It was enshrined in policy and backed by a strong consensus among political leaders, educators, and the public. The belief in the transformative power of education was deeply ingrained in the national psyche.<sup>141</sup> As a result of these concerted efforts, Germany succeeded in not only rebuilding its educational infrastructure but also in elevating it to a level of excellence that is admired worldwide.<sup>142</sup> The investment in education paid off handsomely, as Germany's well-equipped schools fostered a highly skilled and innovative workforce, contributing significantly to the country's post-war economic miracle.<sup>143</sup>

#### *4.2.2 Socio-economic Factors*

Socio-economic factors wield an undeniable influence over the educational infrastructure in both South Africa and Germany, but their manifestations and consequences differ significantly in these two nations.<sup>144</sup>

In South Africa, socio-economic disparities are deeply rooted in the historical injustices perpetrated during the era of apartheid. The apartheid regime systematically marginalized and oppressed the majority of black population, relegating them to impoverished living conditions and depriving them of basic rights and opportunities. Although apartheid officially ended in the early 1990s, its long-lasting legacy continues

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<sup>139</sup> Barrett P, et al 'The Impact of School Infrastructure on Learning: 'A Synthesis of the Evidence', '2019 < <https://files.eric.ed.gov/fulltext/ED604388.pdf> > Accessed on 02-10-2023.

<sup>140</sup> Ibid.

<sup>141</sup> Protecting education from attack: a state-of-the-art review, 2009 < <https://unesdoc.unesco.org/ark:/48223/pf0000186732> > Accessed on 03 October 2023.

<sup>142</sup> OECD, Equity and Quality in Education: Supporting Disadvantaged Students and Schools, OECD' (2012) < <https://www.oecd.org/education/school/50293148.pdf> > Accessed on 06 October 2023.

<sup>143</sup> OECD: 'Equity and Quality in Education: Supporting Disadvantaged Students and Schools, OECD Publishing, Paris,' 2012.

<sup>144</sup> Alphin Jr and Henry C, 'South Africa and Germany: A K-12 Educational Comparison' (2009) < <http://dx.doi.org/10.2139/ssrn.2287246> > Accessed on 03 October 2023.



to cast a shadow over the country's socio-economic landscape.<sup>145</sup> A significant proportion of South Africa's population, particularly within historically disadvantaged communities (black people), still grapples with the harsh realities of poverty.<sup>146</sup> In these areas, basic services such as clean water and electricity remain elusive for many residents. This lack of access to essential amenities has ripple effects on various aspects of daily life, including education.

The socio-economic challenges that persist in South Africa spill over into the education system in profound ways. Underfunded schools in impoverished communities are compelled to operate under tight budget constraints, making it exceedingly difficult to provide adequate infrastructure and resources for effective teaching and learning. The consequences are felt most acutely by the learners in these areas, who face a multitude of challenges that hinder their educational experiences.<sup>147</sup> One of the most glaring issues is overcrowded classrooms, this have been a South African problem for a long time. The country moved from attending under trees and went straight to overcrowded classrooms. This is not development at all, and the country really has to do something and very fast about it. This overcrowded school lead to schools having lesser teachers and many students in one classroom, which will negatively impact the quality of education on the learners. In underprivileged schools, the student-to-teacher ratios often soar to levels that make personalized attention nearly impossible. As a result, students may struggle to engage with the curriculum effectively, and teachers find it challenging to meet the diverse needs of their pupils.<sup>148</sup>

All the above problems are caused a result of lack of proper management of finances. Lack of dealing with financial resources means that many schools in disadvantaged communities are unable to keep their educational materials up to date. Outdated textbooks and limited access to educational technology can impede the quality of

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<sup>145</sup> Blakemore E, 'The Harsh Reality of Life Under Apartheid in South Africa,' 2019, <<https://www.history.com/news/apartheid-policies-photos-nelson-mandela> > Accessed on 06 October 2023.

<sup>146</sup> Ibid.

<sup>147</sup> Mouton N, 'Critical Challenges of The South African School System' 2012 <Critical Challenges of the South African School System> Accessed on 01 October 2023.

<sup>148</sup> Organisation for Economic Co-operation and Development (OECD), 'Education at a glance: What is the student-teacher ratio and how big are classes?' (2021) <<https://www.oecd.org/edu/skills-beyond-school/48631144.pdf> > Accessed on 02 October 2023.

instruction and leave students at a disadvantage in an increasingly knowledge-driven world.<sup>149</sup> The state of school buildings in these communities is another cause for concern.<sup>150</sup> Dilapidated and poorly maintained infrastructure not only compromises the physical safety of students and staff but also creates an environment that is less conducive for learning. Unreliable facilities can disrupt educational continuity, forcing schools to close temporarily due to structural issues or health hazards.<sup>151</sup>

In stark contrast to the socio-economic challenges faced by South Africa, Germany enjoys the advantages of a strong socio-economic foundation. At the heart of this foundation lies Germany's robust economy, which stands as one of the largest and most stable in the world.<sup>152</sup> This economic strength provides a solid financial basis for various public services, including education. Germany's commitment to social welfare programs ensures that its citizens, including students and their families, have access to a high standard of living. This commitment is deeply ingrained in the nation's social fabric and extends to their educational experiences.<sup>153</sup>

German families typically have the means and resources to actively support their children's education. The country's labour market is characterized by a high level of skilled employment, low unemployment rates, and competitive wages.<sup>154</sup> This translates into a comparatively high average household income, which empowers parents to invest in their children's academic development.<sup>155</sup> These financial resources enable families to provide supplementary educational materials,

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<sup>149</sup> Haleem A, et al 'Understanding the role of digital technologies in education: A review, Sustainable Operations and Computers, Volume 3,' 2022. Pages 275-285.

<sup>150</sup> Maffea J, 'Lack of Resources in Classrooms,' 2020, <<https://research.library.kutztown.edu/cgi/viewcontent.cgi?article=1003&context=wickedproblems>> Accessed on 01 October 2023.

<sup>151</sup> *ibid.*

<sup>152</sup> Folkerts-Landau D, 'Beacon of stability: The foundations of Germany's success', <[https://www.dbresearch.com/PROD/RPS\\_ENPROD/PROD0000000000441807/Beacon\\_of\\_stability%3A\\_The\\_foundations\\_of\\_Germany%E2%80%99s\\_.pdf?undefined&reaload=RyElnwjrekR452XiU19c0saf9tOi9mTzqRe0UUs0CcvfUIkXdnODLehnh4/Ghw2](https://www.dbresearch.com/PROD/RPS_ENPROD/PROD0000000000441807/Beacon_of_stability%3A_The_foundations_of_Germany%E2%80%99s_.pdf?undefined&reaload=RyElnwjrekR452XiU19c0saf9tOi9mTzqRe0UUs0CcvfUIkXdnODLehnh4/Ghw2)> Accessed on 06 October 2013.

<sup>153</sup> OECD (2012), Equity and Quality in Education: Supporting Disadvantaged Students and Schools, OECD Publishing.

<sup>154</sup> Harasty C, 'Employment Strategy Papers Successful employment and labour market policies in Europe and Asia and the Pacific,' 2004 <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/emp\\_elm/documents/publication/wcms\\_114329.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/emp_elm/documents/publication/wcms_114329.pdf)> Accessed on 05-10-2023.

<sup>155</sup> Harasty C, 'Successful employment and labour market policies in Europe and Asia and the Pacific,' 2004 <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/emp\\_elm/documents/publication/wcms\\_114329.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/emp_elm/documents/publication/wcms_114329.pdf)> Accessed on 05 October 2023.

extracurricular activities, and private tutoring, all of which enhance the overall quality of education. The collective prosperity of the German population contributes significantly to the consistent investment in educational infrastructure.<sup>156</sup> The government, at both federal and state levels, recognizes the pivotal role that education plays in maintaining and enhancing the country's economic competitiveness and social cohesion. As a result, there is a strong commitment to ensuring that educational institutions are well-equipped to meet the evolving needs of students and society.<sup>157</sup>

#### *4.2.3 Political Factors*

The role of political decisions and policies is paramount in influencing the state of educational infrastructure, and nowhere is this more evident than in post-apartheid South Africa. The apartheid regime, had perpetuated a deeply segregated and unequal education system. Thus, when the nation transitioned to a democratic government, there was a profound commitment to rectify these historical injustices through comprehensive policies and initiatives aimed at improving school infrastructure.<sup>158</sup> One such initiative is the Accelerated Schools Infrastructure Delivery Initiative (ASIDI)<sup>159</sup>, a flagship program launched by the South African government. ASIDI embodies the government's commitment to redress historical inequalities by prioritizing the provision of modern, safe, and well-equipped school facilities in disadvantaged areas.<sup>160</sup> This program seeks to create an educational environment where all students have equal opportunities to learn and thrive, regardless of their socio-economic background or geographical location.

The road to equitable educational infrastructure in South Africa has been fraught with challenges. Bureaucratic inefficiencies, often associated with the scale and complexity of such a program, have led to delays in project implementation.<sup>161</sup> Coordinating

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<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Jennifer K, 'Apartheid and post-apartheid discourses in school space: a study of Durban,' 2003.

<sup>159</sup> The main goal of ASIDI is to eradicate inadequate, unsafe, and poor physical infrastructure in schools by properly utilising funding that will be made available to the DoBE under the Schools Infrastructure Backlog Grant (SIBG) allocations in the Division of Revenue Act.

<sup>160</sup> The ASID brief, helping to restore dignity in education, 2018 < <https://www.education.gov.za/Portals/0/Documents/Publications/Asidi%20Brief%20Vol18.pdf?ver=2018-07-20-143608-750>> Accessed on 03 October 2023.

<sup>161</sup> Nompumelelo M, 'Challenges towards curriculum implementation in high schools in mount fletcher district, eastern cape,' 2016.

efforts to build or renovate thousands of schools across the country is a formidable task, and the bureaucratic machinery has, at times, struggled to keep pace with the pressing need for infrastructure improvements. Budget constraints have also posed a significant hurdle.<sup>162</sup> While there is a genuine commitment to improving educational infrastructure, the resources needed to address the vast backlog of infrastructure deficiencies are immense.<sup>163</sup> The government must balance competing priorities, including healthcare, social services, and infrastructure development, within a limited budget. This financial challenge has led to periodic shortfalls in funding for ASIDI and other similar initiatives, which, in turn, have slowed the pace of infrastructure improvement.<sup>164</sup>

The issue of corruption has been a persistent concern. In some instances, funds allocated for educational infrastructure have been misappropriated or siphoned off through corrupt practices, diverting resources away from their intended purpose. Corruption not only undermines the effectiveness of infrastructure improvement programs but erodes public trust in the government's ability to deliver on its promises.

Despite these formidable obstacles, South Africa's commitment to rectifying historical inequalities in educational infrastructure remains steadfast. The government continues to refine policies, streamline processes, and seek innovative financing solutions to accelerate progress.<sup>165</sup> While challenges persist, there have been notable successes, with many schools in previously disadvantaged areas benefiting from improved infrastructure under ASIDI and similar initiatives.<sup>166</sup>

In Germany, the synergy between a stable political environment and an unwavering commitment to education as a national priority has been instrumental in shaping the country's formidable educational infrastructure.<sup>167</sup> This commitment to education is

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<sup>162</sup> Alston P, 'turning around a dysfunctional school culture: An auto-ethnography,' 2018.

<sup>163</sup> Ibid.

<sup>164</sup> National Development Plan 2030, Our Future-make it work <[https://www.gov.za/sites/default/files/gcis\\_document/201409/ndp-2030-our-future-make-it-workr.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf) > Accessed on 03 October 2023.

<sup>165</sup> National Development Plan 2030, Our Future-make it works.

<sup>166</sup> Ibid.

<sup>167</sup> Bartl W, 'Governing Spatial Disparities in School Infrastructure by Numbers: Investments in Form, Tensions, New Compromises?' 2022 < <https://www.mdpi.com/2227-7102/12/3/167> > Accessed on 03 October 2023.

deeply ingrained in the nation's ethos, reflecting an understanding that investing in the intellectual capital of its citizens is a sure-fire path to long-term prosperity and social cohesion.<sup>168</sup> Germany's federal structure is a unique feature of its political landscape, with significant implications for education. Education policy and funding are not centralized at the national level; instead, they are decentralized to the individual states, known as "Länder".<sup>169</sup> This decentralization empowers each state to craft education policies tailored to its specific needs, circumstances, and priorities.<sup>170</sup> Consequently, it allows for a nuanced approach to infrastructure development that considers the diverse educational landscapes across the country. Whether in bustling urban areas like Berlin or more rural regions such as Bavaria, this decentralization ensures that education infrastructure initiatives are adapted to local contexts.<sup>171</sup>

One of the key factors behind Germany's remarkable educational infrastructure is the outstanding political consensus on the paramount importance of education as an investment in the nation's future.<sup>172</sup> Across the political spectrum, there is a recognition that a well-educated populace is essential not only for individual success but also for the country's economic competitiveness and social cohesion.<sup>173</sup> This consensus transcends changes in government and administrations, resulting in a consistent and sustained commitment to educational infrastructure projects over the years.<sup>174</sup> Because of this political unity, Germany has been able to allocate substantial resources to maintain and modernize its schools, ensuring that they remain at the forefront of educational innovation and accessibility. Investments extend beyond the mere construction of physical buildings to encompass the integration of cutting-edge technology, the provision of up-to-date teaching materials, and the recruitment and training of high-quality educators.<sup>175</sup> The commitment to accessibility and inclusivity

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<sup>168</sup> Ibid.

<sup>169</sup> Erk J, et al 'Emergence of an All-German Educational Policy in a System of Exclusive Provincial Jurisdiction,' 2003 < <https://www.jstor.org/stable/3233248>> Accessed on 03 October 2023.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> David E, 'What is education's impact on civic and social engagement?' < <https://www.oecd.org/education/innovation-education/37425694.pdf>> Accessed on the 02 October 2023.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> OECD, *Innovating Education and Educating for Innovation: The Power of Digital Technologies*

is reflected in the provision of facilities for students with special needs, reinforcing the idea that education is a right for all, regardless of individual challenges or circumstances.<sup>176</sup>

### **4.3 Access to Technology and resources**

#### *4.3.1 South Africa*

In terms of access to technology and resources, in urban and well-resourced schools in South Africa, access to computers is relatively common. Many urban schools have computer labs equipped with desktop computers, while some even provide laptops for students' use.<sup>177</sup> In rural and less affluent areas, the availability of computers remains limited. Schools in these areas may have a smaller number of computers, which can often be outdated or in need of maintenance. This digital divide in computer access poses a substantial challenge for ensuring equal educational opportunities for all South African students. Another important tool is internet access. Internet connectivity is a critical component of technology access in schools. In urban centres and more developed regions, schools generally have reliable internet access. However, in rural and remote areas, access to high-speed internet remains a challenge.<sup>178</sup> Some schools may rely on slower and less reliable connections, hindering students' ability to access online resources and engage in digital learning effectively. Addressing this connectivity gap is a priority for South Africa's educational authorities.

The availability of digital learning materials varies across South African schools. Well-resourced schools often have access to a wide range of digital resources, including e-textbooks, educational software, and online learning platforms. Many schools, particularly those in underserved communities, still rely heavily on traditional printed materials due to limited access to digital resources. While efforts have been made to

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and Skills, OECD Publishing, Paris (2016) < <https://www.oecd.org/education/cei/GEIS2016-Background-document.pdf> > Accessed on 03 October 2023.

<sup>176</sup> Ibid.

<sup>177</sup> University of Chicago Law School - Global Human Rights Clinic, "Access Denied: Internet Access and the Right to Education in South Africa" (2020). Global Human Rights Clinic. 1 < <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1000&context=ghrc> > Accessed on 29 October 2023.

<sup>178</sup> Ibid.

develop digital content and resources for South African schools, ensuring equitable distribution and utilization remains a challenge.<sup>179</sup>

#### *4.3.2 Germany*

Access to technology in German schools is generally robust and well-developed, reflecting the country's strong commitment to providing high-quality education. The availability of computers, internet connectivity, and digital learning materials in German schools plays a significant role in enhancing the learning experience for students.<sup>180</sup> German schools, both at the primary and secondary levels, are equipped with computers. Computer labs are common in schools, ensuring that students have access to modern technology. Many schools also provide laptops or tablets to students for educational purposes. While the number of computers per student may vary between schools and regions, efforts are made to maintain a reasonable ratio to ensure students have adequate access.<sup>181</sup>

Germany boasts a well-developed internet infrastructure, and schools benefit from reliable and high-speed internet connections. This connectivity facilitates online research, communication, and access to digital teaching and learning platforms.<sup>182</sup> Teachers often integrate online resources into their lesson plans, and students can explore educational content on the internet. German schools have embraced digital learning materials and resources.<sup>183</sup> These include e-books, online courses, and educational software. Textbooks are increasingly available in digital formats, allowing for more dynamic and interactive learning experiences. Many schools use learning management systems (LMS) to organize coursework and assignments. Many German

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<sup>179</sup> Msiza G, et al 'Implementation of an e-Learning Project in Tshwane South District: Towards a Paperless Classroom in South African Secondary Schools,' 2020 < <https://files.eric.ed.gov/fulltext/EJ1276377.pdf>> Accessed on 01 October 2023.

<sup>180</sup> Saal P and Graham M, 'Comparing the Use of Educational Technology in Mathematics Education between South African and German Schools,' 2023 < [https://www.researchgate.net/publication/369128705\\_Comparing\\_the\\_Use\\_of\\_Educational\\_Technology\\_in\\_Mathematics\\_Education\\_between\\_South\\_African\\_and\\_German\\_Schools](https://www.researchgate.net/publication/369128705_Comparing_the_Use_of_Educational_Technology_in_Mathematics_Education_between_South_African_and_German_Schools)> Accessed on 28 October 2023.

<sup>181</sup> Haleem, A 'Understanding the role of digital technologies in education: A review,' 2022 < <https://www.sciencedirect.com/science/article/pii/S2666412722000137>> Accessed on 01 October 2023.

<sup>182</sup> Basa ZM, 'The Effectiveness and Challenges of Online Learning for Secondary School Students – A Case Study,' 2021 < <https://files.eric.ed.gov/fulltext/EJ1309475.pdf>> Accessed on 05 October 2023.

<sup>183</sup> Ibid.

schools have adopted interactive whiteboards and smart classroom technologies. These tools enhance teaching by allowing educators to display multimedia content and engage students interactively. They create dynamic and visually stimulating learning environments.<sup>184</sup>

Teachers in Germany receive training to effectively integrate technology into their teaching. Professional development programs ensure that educators are proficient in using digital tools to enhance the learning process.<sup>185</sup> This commitment to teacher training helps maximize the benefits of technology in the classroom. While technology is widely available in German schools, efforts are made to ensure equity and accessibility.<sup>186</sup> Schools in poor areas receive support to ensure that they have the necessary technology resources. Additionally, measures are taken to accommodate students with disabilities, ensuring that technology is accessible to all. Both public and private schools in Germany generally have access to technology, although private schools may have more flexibility in terms of technology integration due to their funding sources.<sup>187</sup>

#### **4.4 Government efforts and policies aimed at improving technology access**

##### *4.4.1 The efforts and policies to improve technology access in South African schools*

Government efforts and policies aimed at improving technology access in South African schools have been critical in addressing the digital divide and enhancing the quality of education, particularly in underserved communities.<sup>188</sup> These initiatives have recognized the importance of technology as a tool for learning, skills development, and bridging educational inequalities. One notable government initiative is the National

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<sup>184</sup> Bradley V, 'Learning Management System (LMS) use with online instruction. International Journal of Technology in Education (IJTE), 4(1), 68-92' 2021 < <https://files.eric.ed.gov/fulltext/EJ1286531.pdf>> Accessed on 03 October 2023.

<sup>185</sup> Simin Ghavifekr, Ahmad Zabidi Abd Razak, ICT Integration In Education: Incorporation for Teaching & Learning Improvement, 2014< <https://www.google.com/search?client=firefox-b-d&q=Teachers+in+Germany+receive+training+to+effectively+integrate+technology+into+their+teaching.+Professional+development+programs+ensure+that+educators+are+proficient+in+using+digital+tools+to+enhance+the+learning+process> > Accessed on 01 October 2023.

<sup>186</sup> Ibid.

<sup>187</sup> Hayes A and Bulat J, 'Disabilities Inclusive Education Systems and Policies Guide for Low- and Middle-Income Countries,' 2017 < <https://www.ncbi.nlm.nih.gov/books/NBK554622/>> Accessed on 05 October 2023.

<sup>188</sup> Chisangol G and Marongwe N 'The digital divide at three disadvantaged secondary schools in Gauteng, South Africa;' 2021 < [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S2520-98682021000100010](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2520-98682021000100010)> Accessed on 05 October 2023.



School Connectivity Program. This program, launched by the South African government, seeks to connect all public schools to the internet. It addresses the digital divide by providing schools in rural and disadvantaged areas with access to high-speed broadband. By ensuring that even remote schools have internet connectivity, this initiative aims to level the playing field and provide students with the same opportunities for digital learning as their urban counterparts.<sup>189</sup> The South African government has introduced the tablet initiative in certain provinces. This program involves the distribution of tablets or laptops to students and teachers in selected schools. These devices are equipped with educational software and digital resources, enabling interactive and technology-enhanced learning experiences.<sup>190</sup> While this initiative has faced implementation challenges, it signifies the government's commitment to integrating technology into the education system.

The South African National Education Infrastructure Management System (SANEIMS) plays a pivotal role in monitoring and improving technology access in schools. SIAS is a comprehensive database that tracks the infrastructure and resources in schools across the country.<sup>191</sup> It helps identify areas where technology access is lacking and directs resources to bridge these gaps. SIAS also assists in ensuring that schools receive adequate support for maintaining and upgrading their technological infrastructure.<sup>192</sup> To support teachers in effectively using technology, the South African government has initiated training programs and workshops. These programs focus on enhancing educators' digital literacy and their ability to integrate technology into classroom teaching. By upskilling teachers, the government aims to maximize the impact of technology on student learning outcomes.<sup>193</sup> Despite these efforts, challenges remain in South Africa, including funding constraints, infrastructure

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<sup>189</sup> University of Chicago Law School - Global Human Rights Clinic, "Access Denied: Internet Access and the Right to Education in South Africa" (2020). Global Human Rights Clinic. 1 < <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1000&context=ghrc> > Accessed on 03 October 2023.

<sup>190</sup> Ibid.

<sup>191</sup> Department of Basic Education, Draft policy on screening, identification, assessment, and support, 2014.

<sup>192</sup> Department of Basic Education, Draft policy on screening, identification, assessment, and support, 2014.

<sup>193</sup> Implementation Programme for the National Digital and Future Skills Strategy of South Africa, 2021 – 2025 < [https://www.gov.za/sites/default/files/gcis\\_document/202203/digital-and-future-skillsimplementation-programmefinal.pdf](https://www.gov.za/sites/default/files/gcis_document/202203/digital-and-future-skillsimplementation-programmefinal.pdf) > Accessed on 03-10-2023.

limitations in rural areas, and disparities in access among schools. The government continues to work on expanding and refining its policies to address these challenges and ensure that all South African students have equitable access to technology and digital resources.<sup>194</sup>

#### *4.4.2 Exploring government efforts and policies aimed at improving technology access in German-schools.*

Government efforts and policies aimed at improving technology access in German schools have been pivotal in ensuring that students have the necessary tools and resources to thrive in a digital age. Germany, known for its strong education system, has recognized the importance of integrating technology into education to enhance learning outcomes and prepare students for a technology-driven future. One significant government initiative in Germany is the "*DigitalPakt Schule*"<sup>195</sup> (Digital Pact for Schools).<sup>196</sup> Launched in 2019, this program represents a substantial financial commitment from both federal and state governments, with an allocation of €5 billion over five years.<sup>197</sup> The primary goal of the *DigitalPakt Schule* is to equip schools with modern technology and provide high-speed internet access. Through this initiative, schools can apply for funding to purchase digital devices such as laptops, tablets, and interactive whiteboards, as well as to upgrade their IT infrastructure.

Germany's federal states, known as "*Bundesländer*," play a crucial role in education policymaking. Many states have developed their own initiatives to complement the *DigitalPakt Schule*. For example, the state of North Rhine-Westphalia has introduced the "Gute Schule 2020"<sup>198</sup> (Good School 2020) program, which focuses on improving infrastructure, including digital infrastructure in schools. This initiative aims to ensure

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<sup>194</sup> Ibid.

<sup>195</sup> This was a funding programme developed by Germany, in which the German Federal Government wants to help the school authorities to integrate digital media and learning opportunities into lessons to a much greater extent.

<sup>196</sup> Bond M, 'Digital transformation in German higher education: student and teacher perceptions and usage of digital media,' 2018 <  
<https://educationaltechnologyjournal.springeropen.com/articles/10.1186/s41239-018-0130-1>>  
Accessed on 06-10-2023.

<sup>197</sup> Ibid.

<sup>198</sup> The project supports educational investments in the German Federal State North Rhine- Westphalia by providing financial aid to all the 429 entities (municipalities, cities, and other relevant actors) responsible for operation and maintenance of the schools in the region. The project consists of three main components: 1) (rehabilitation and modernisation of school buildings and sport facilities, 2) new construction and remodelling of school buildings and sport facilities, and 3) digitalisations of the schools.

that every classroom is equipped with modern technology and high-speed internet by a specified target year. In addition to hardware and infrastructure, Germany places significant emphasis on professional development for teachers to effectively integrate technology into their teaching practices. The government supports teacher training programs and provides resources for educators to develop digital teaching skills. This investment in teacher professional development is critical for maximizing the benefits of technology in the classroom. Germany's education policies also emphasize the importance of digital literacy. The national education standards have been updated to include digital competencies, ensuring that students acquire essential digital skills alongside traditional subject knowledge. This recognition of digital literacy as a core educational component underscores the commitment to preparing students for the challenges of the modern world.

#### **4.5 What can South Africa learn from Germany?**

This is a very important question to a country like South Africa, which is a country that went through some historical disadvantages. As South Africa is known as a country that leans a lot from the European countries, looking into our Constitution one can confirm that when it comes to the Bill of Rights most of them were inspired by international treaties that were developed after world war II.<sup>199</sup> With regards to the right to basic education, it is evident that indeed the country is having it hard to ensure that this right is realized. It has been many years since the introduction of a formal primary education in South Africa but still, the country has a problem of infrastructure, which this problem keeps on taking away lives of learners in their schools. In 2014 the DoE lost Michael Komape and in 2023 another learner in the Eastern Cape, this is sufficient proof that the DoE is having it hard and it needs help. This study believes that the solution to this problem is guided by our Constitution.<sup>200</sup>

The Constitution stipulates that:

“When interpreting the Bill of Rights, a court, tribunal, or forum. -

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<sup>199</sup> De Werk E, et al 'The implementation of international law in Germany and South Africa', 2015.

<sup>200</sup> The Constitution of the Republic of South Africa, 1996.

- a. must promote the values that underlie an open and democratic society based on human dignity, equality, and freedom.
- b. must consider international law; and
- c. may consider foreign law".<sup>201</sup>

This provision encourages South Africa as a country to consider both international and foreign law, when interpreting any right in the Bill of Rights (in the context of this study, we are interpreting the right to basic education as stipulated in section 9(1) of the Constitution). This provision gives light to consult from some of the best countries that have done it before, now looking at Germany and try to benefit something from it.

South Africa can learn several valuable lessons from Germany when it comes to improving its educational system and bridging the educational divide. These lessons span various aspects of education, including infrastructure, funding models, teacher-student ratios, and access to technology and resources. South Africa can learn from Germany's approach to infrastructure investment and maintenance. Germany places a strong emphasis on the quality and upkeep of school buildings and facilities. South Africa can adopt a similar commitment to maintaining and upgrading school infrastructure to create a conducive learning environment. This includes addressing issues such as overcrowded classrooms, inadequate sanitation facilities, and the provision of safe and well-equipped schools.

Germany's funding models for education should not be left unnoticed. The country allocates significant financial resources to its education system, by ensuring that schools have the necessary funds for operations, teacher salaries, and extracurricular activities. South Africa can benefit from exploring sustainable funding mechanisms that prioritize education, allowing for consistent investment in both infrastructure and teaching quality. Teacher-student ratios represent another area where South Africa can draw lessons from Germany. Germany maintains relatively low teacher-student ratios, ensuring that educators can provide individualized attention to students. South

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<sup>201</sup> Section 39 of the Constitution of the Republic of South Africa, 1996.

Africa should consider reducing class sizes to improve teacher-student interactions and enhance the learning experience.

Access to technology and resources is another crucial aspect of modern education. Germany's well-equipped schools and investment in digital infrastructure have enabled students to benefit from the digital age. South Africa can learn to bridge the digital divide by providing equitable access to technology, internet connectivity, and educational resources, especially in underserved communities. Socio-economic factors also play a significant role in educational outcomes. Germany's efforts to reduce disparities in education by providing financial support to disadvantaged students can serve as a model for South Africa. Implementing targeted interventions and scholarships can help mitigate the impact of socio-economic inequality on educational achievement.

#### **4.6 Conclusion**

The study comparing school infrastructure and its effect on basic education in South Africa and Germany has shown clear differences and highlighted how important good school facilities are for learning. These two countries, with very different economic situations, have taught the country a lot about how investing in school buildings, along with educational rules and how rich or poor a country is, affects education. In South Africa, past unfairness and not enough money spent on schools have kept educational differences going. According to Emmanuel<sup>202</sup> and Skelton,<sup>203</sup> school infrastructure and the Learner Education Ratio have a great impact on the quality of education and are some of the most influential factors when considering increasing academic performance in classrooms. Overcrowded classrooms are also believed by Van Wyk to be a contributing factor to poor learning conditions because of lack of space, fresh air and high noise levels that could lead to lack of attention and even create stress within learners.<sup>204</sup> Despite significant policy efforts to address these issues, the legacy

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<sup>202</sup> Emmanuel A, 'Effect of student-teacher ratio on students' academic performance in secondary schools in the Ado-Odo/Ota Local Government area of Ogun State', NOUN. M.Ed. dissertation, National Open University of Nigeria, Lagos (2013).

<sup>203</sup> Skelton A, 'Leveraging funds for school infrastructure: The South African "mud schools" case study', in UKFIET international conference on education and development: Education and development post 2015: Reflecting, reviewing, revisioning, Oxford, 10–12 September 2013 (2014).

<sup>204</sup> Van Wyk P, 'The didactically neglected child', in J.A. Kapp (ed.), *Children with problems: An orthopedagogical perspective*, pp. 133–144, Van Schaik, Pretoria' (2018).

of apartheid continues to pose challenges, emphasizing the need for sustained investment and innovative policy approaches to bridge the educational divide.<sup>205</sup> Conversely, Germany, with its strong economy and robust educational system, offers a contrasting perspective. The country's well-maintained school infrastructure, smaller class sizes, and abundant resources have contributed to a higher standard of basic education. While Germany serves as a model for effective infrastructure management, it also underscores the importance of holistic educational policies, teacher quality, and equitable resource distribution to maintain high-quality education.

This comparative analysis highlights several critical lessons. Firstly, the level of infrastructure investment and maintenance significantly influences educational outcomes. Adequate and well-maintained facilities create an enabling environment for effective teaching and learning. Secondly, the equitable distribution of resources and technology is pivotal in addressing educational disparities. Access to modern tools and resources enhances educational opportunities for all students. Thirdly, the socio-economic context plays a pivotal role, with poverty and inequality posing significant challenges that require multifaceted policy responses. For South Africa, research underscores the urgency of continued efforts to address historical inequalities in education. Adequate infrastructure, improved teacher training, and equitable resource allocation are essential elements in this endeavour. For Germany, the challenge lies in maintaining and further improving their high standards, while ensuring that educational opportunities remain accessible to all, irrespective of socio-economic background.

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<sup>205</sup> Abdoll C and Baberton C, 'Mud to bricks: A review of school infrastructure spending and delivery, Pretoria University Law Press, Pretoria, (2014).

## **CHAPTER 5: CONCLUSION AND RECOMMENDATIONS**

### **5.1 Introduction**

This is the final chapter of the study. It provides concluding remarks to outlined previous four chapters. It further provides recommendations on the need of adequate infrastructure in South African schools.

### **5.2 Conclusion**

The efforts taken by the DoBE to ensure that there is adequate infrastructure cannot be left unnoticed, the problem is not in their efforts but with the speed that they are using in doing these things. The study emphasises that a country like South Africa which gained its independence 29 years ago still fails to provide adequate basic education on adequate infrastructure to its people. The DoBE should go back to the drawing board and try and assess all the solutions provided to them by all academic writers and look at which one they can employ to help in bettering of our education system. It is very sad to witness a death of a school learner who lose their lives while within the school premises due to poor infrastructure. It is time that our government, particularly the DoBE do something about the infrastructure in our schools. It cannot be that the very same government compels children to go to school and at the same time they are failing to take care of the wellbeing of these children and ensure that their lives are safe.

The legal analysis of the impact of inadequate schools' infrastructure on the right to basic education in South Africa reveals a deeply concerning situation. While South Africa has made significant progress in the realm of education since the end of apartheid, the persistent inadequacy of school's infrastructure has undermined the right to basic education for countless learners. This issue not only violates the constitutional and international legal obligations of the South African government but also perpetuates inequalities and disadvantages, particularly among marginalized communities.

South Africa's Constitution enshrines the right to a basic education as a fundamental human right, and this right must be accessible, available and of sufficient quality. Inadequate schools' infrastructure, such as overcrowded classrooms, lack of basic

amenities and substandard facilities directly hinders the realization of this right. It creates an environment where effective teaching and learning are compromised, resulting in lower educational outcomes, particularly for students from disadvantaged backgrounds.

### **5.3 Recommendations**

Not long ago, the South African government embraced the National Development Plan 2030 ('NDP'), aiming to holistically guide the formulation of government policies. Essentially, the NDP serves as a roadmap detailing the anticipated socio-economic advancements targeted for accomplishment in South Africa by 2030. The issue of inadequate schools' infrastructure on the right to basic education in South Africa form an integral part of one of the developments contained in the NDP. Now this informs us that the schools need a nationally promulgated regulator that will be systematic in dealing with the issues of inadequate infrastructure in South African school.

The court in the case of Komape, should have gone extensive to impose a duty on the Department of Education to promulgate a policy framework that will specifically deal with the issue of infrastructure in schools. This policy should go into detail in outlining the liability of failure to ensure safety as a result of poor infrastructure in schools on the part of the department. The court have again failed the children of South Africa who attend public schools in that they should have directed the department to provide temporary measures that should be taken as they will be building those toilets, these measures include providing mobile toilets to the schools that have pit latrines within 3 or 4 months. This would have avoided the deaths of other learners who died as a result of pit latrines after the death of Michael Komape in 2014. In 2018 yet another learner in the name of Lumka Mkethwa, from Luna Junior Primary School in the Eastern Cape, lost her life in a pit-toilet.<sup>206</sup> There are other deaths that happened after the death of Komape, another one is the one that happened in the province of Eastern Cape in March 2023.

The DoE should conduct regular and comprehensive assessments of school infrastructure across different regions in South Africa. Establish a monitoring system

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<sup>206</sup> Odeku OK, 'Critical Analysis of School Pit Toilet System as an Impediment to the Right to Access Quality Education in South Africa', 2022.



that continually evaluates the adequacy of facilities, including classrooms, sanitation, libraries, and technology access. Explore partnerships with private entities, NGOs, and community-based organizations to support infrastructural development in schools. Encourage corporate social responsibility initiatives to invest in school infrastructure projects, especially in underprivileged areas. The department can again foster community involvement in school infrastructure projects. Encourage active participation from local communities, parents, and educational stakeholders in decision-making processes regarding infrastructure development, which can promote a sense of ownership and accountability. The department should again provide training programs for school administrators, teachers and maintenance staff on the effective management and maintenance of school infrastructure. Empower them with the necessary skills to ensure the longevity and optimal utilization of available resources.

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