IN THE CONSTITUTIONAL COURT

Constitutional Court Case No: CCT 209/18

Eastern Cape Local Division, Bhisho Court Case No: 276/16

In the matter between:

MINISTER OF BASIC EDUCATION	1st Applicant for leave to appeal
MEC FOR EDUCATION: LIMPOPO	2nd Applicant
MEC FOR EDUCATION: EASTERN CAPE	3rd Applicant
MEC FOR EDUCATION: FREE STATE	4th Applicant
MEC FOR EDUCATION: GAUTENG	5th Applicant
MEC FOR EDUCATION: KWAZULU-NATAL	6th Applicant
MEC FOR EDUCATION: MPUMALANGA	7th Applicant

MEC FOR EDUCATION: NORTHERN CAPE	8th Applicant
MEC FOR EDUCATION: NORTH WEST	9th Applicant
MEC FOR EDUCATION: WESTERN CAPE	10th Applicant

and

EQUAL EDUCATION	1st Respondent
AMATOLAVILLE PRIMARY SCHOOL	2nd Respondent

and

BASIC EDUCATION FOR ALL	*Amicus Curiae*

FIRST RESPONDENT'S AFFIDAVIT

I, the undersigned

NONCEDO MADUBEDUBE

do hereby make oath and say:

1 I am the General Secretary of Equal Education, which was the Applicant in the High Court and is the First Respondent in this application for leave to appeal.

2 I am duly authorised to depose to this affidavit on behalf of Equal Education.

3 The facts contained in this affidavit are true and correct and, unless the context indicates otherwise, fall within my personal knowledge. Where I make submissions of law I do so on the advice of Equal Education’s legal representatives.

4 Equal Education does not oppose the Applicants’ application for condonation.

5 This case is about the safety, dignity and wellbeing of South African learners. It concerns the obligation of the state to provide safe and adequate school infrastructure as an element of the right to basic education.

6 The Minister of Basic Education ("the Minister") has, since 2007, been obliged by section 29(1)(a) of the Constitution and section 5A of the South African Schools Act (which was introduced by the Education Laws Amendment Act 31 of 2007) to prescribe norms and standards for school infrastructure which will ensure the creation of the necessary environment for effective education. Nearly eleven years later, and after three applications to the High Court, the Minister has still not done so.

7 Equal Education submits that leave to appeal should be refused on the ground that there is no reasonable prospect of success on appeal. We submit, however, that it would not be in the interests of justice for leave to be refused on the ground that any appeal should first be heard by the Supreme Court of Appeal. The continued delay in resolution of the issue is causing lasting damage to successive cohorts of learners.

8 The structure of this affidavit is as follows:

8.1 In Part A, I deal with the nature of this application, including elements of the factual matrix not addressed in the founding affidavit of Mr Christopher Leukes.

8.2 In Part B, I submit that the Applicants do not have a reasonable prospect of success in the proposed appeal. I traverse the

grounds of appeal relied upon by Mr Leukes, but I do not respond *ad seriatim* to the affidavit in its entirety.

8.3 In Part C, I address the public import of this matter, and the urgency of its final resolution.

PART A: THE NATURE AND BACKGROUND OF THIS MATTER

9 When the Minister finally promulgated Minimum Uniform Norms and Standards for Public School Infrastructure on 29 November 2013 ("the Norms and Standards"), she set out timelines for the provision of infrastructure at public schools. The most pressing of these was that schools without any water, sanitation, or electricity, and schools built entirely of inappropriate materials, should be prioritised and dealt with within three years.

10 Equal Education was deeply concerned about aspects of the Norms and Standards, and most pertinently with a provision in the regulations which we call the "escape clause". It is Regulation 4(5)(a) of the Norms and Standards, which reads:

> *"The implementation of the norms and standards contained in these regulations is where applicable, subject to the resources and co-operation of other government agencies and entities*

responsible for school infrastructure in general and the making available of such infrastructure."

11 The practical effect of the "escape clause" is to make the timelines set by the Minister into mere aspirational targets. As Msizi AJ put it in her judgment in the High Court, it provides a *"lifetime indemnity"* against a failure to fix school infrastructure.

12 As has become widely known, large numbers of South African children do not only have to learn under conditions which are inimical to effective teaching and learning. They literally face mortal danger because of the state of their schools.

13 The tragic irony of this case is that on the first day of its hearing in the Bhisho High Court, Lumka Mkhethwa died after falling into a dilapidated pit latrine in the Eastern Cape.

14 Following the judgment, the Department of Basic Education spokesperson Elijah Mhlanga was quoted in the Business Day of 20 July 2018 (attached hereto as **"NM1"**) as saying that the Department had *"already begun reviewing the norms and standards, and the department therefore did not plan to appeal the judgment"*.

15 We wrote to the President and the Minister of Basic Education saying, *"The years of spending time and money on litigating should be past. South Africa's children can no longer afford it."* We said that we hoped to meet with them to engage on the judgment and the critical school infrastructure issues in the country. We also wrote to the Department of Basic Education, inviting Departmental officials to meet with us to engage on the judgment and the way forward. We have to date received no response to the letters to the President, the Minister and the Department.

16 The Applicants have now applied for leave to appeal.

17 The Third, Fourth and Fifth Applicants all filed Notices to Abide in the High Court. They now apply for leave to appeal. I am advised that parties who say they will abide by the decision of a court are barred from appealing that decision.[1]

18 The members of Equal Education are deeply disappointed that this litigation continues in a context where learners are in danger and unable to access adequate and equitable education.

19 I now address the merits of the proposed appeal.

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[1] *Cilliers NO v Ellis* [2017] ZASCA 13.

PART B: THERE IS NO REASONABLE PROSPECT OF SUCCESS ON APPEAL

20 In this section I address the grounds of appeal raised by the Applicants. They are found at paragraph 27 of the affidavit of Mr Leukes. The Applicants identify three broad points of dispute, and an additional point *in limine*.

20.1 First, the Applicants say that a key point of dispute is whether the Minister is entitled to make the implementation of norms and standards subject to the resources and cooperation of other government entities and agencies. I deal with this below.

20.2 Second, the Applicants say that the parties are in dispute as to whether the High Court was entitled to overturn the discretion of the Minister in prioritising certain schools. This is not a point of dispute.

20.2.1 We have never contended that the Minister cannot prioritise certain schools. What we have said is that it is unconstitutional entirely to exclude, or exclude from prioritisation, schools which have dire infrastructure needs.

20.2.2 Specifically, we have disputed the permissibility of the provision in the Norms and Standards which excludes the prioritisation of schools which are built substantially, but not *"entirely"*, from inappropriate materials.

20.2.3 The order of the High Court preserves the prioritisation on which the Minister decided, but says that the complete exclusion of such a significant category of unsafe and inadequately built schools is impermissible.

20.3 Third, the Applicants say there is a dispute as to whether the failure to make public their infrastructure plans and reports undermines the constitutional principles of accountability and effective governance.

20.3.1 Despite this assertion, the Applicants do not raise any ground of appeal that would result in reversal of the order of the High Court in this regard.

20.3.2 The failure to provide for the publication of plans and progress reports on the provision of school infrastructure in accordance with the Norms and

Standards undermines accountability, transparency, openness and ultimately effectiveness in governance. The record of Equal Education's long struggles to compel the release of these annual plans demonstrates the problem.

20.3.3 Msizi AJ said the following:

"Denying the public access to these plans and reports has the result that school governing bodies, educators, parents and learners are prevented from knowing what their rights are, knowing what progress has been made and knowing what will be done in future and when it will be done. They are unable to monitor whether the state is complying with its commitments. They are prevented from engaging effectively with the state in this regard." [Paragraph 156]

"Section 195(3) of the Constitution expressly provides that national legislation must ensure the promotion of accountability and transparency….

The natural consequence flowing from the stance of the Minister is that Government can never be expected to account. Furthermore, it means that the public cannot ascertain whether, when and what school infrastructure to expect. Members of the public can also not assist in drawing the attention of the Government to errors in the implementation of the scheduled programmes. The public is hamstrung by this." [Paragraphs 183 and 184]

20.3.4 The Applicants do not identify any basis on which Msizi AJ erred in ordering that the Minister amend the regulations to ensure that plans and reports are made public within a reasonable time after she receives them.

21 Finally, the Applicants say that there is a dispute as to whether the promulgation of the Norms and Standards constitutes administrative action.

21.1 Equal Education has, from the outset, pleaded this case in the alternative, on the basis that the regulations are invalid whether

or not they constitute administrative action. Nothing turns on this question. (To the extent that it might be argued that the application could not succeed because the regulations are administrative action and the application was brought outside the 180 days prescribed by PAJA, Equal Education explained the delay – including that it attempted to negotiate with the Minister to avoid litigation – and asked that the delay should be condoned.)

22 I turn now to the specific grounds of appeal raised in the affidavit of Mr Leukes. I have endeavoured to group them in a manner that will be of assistance to the Court.

Ad para 27.1 and paras 27.5 – 27.6

Did the High Court misunderstand the right to basic education?

23 The Applicants say the High Court misdirected itself in reading section 29(1) of the Constitution to include access to school infrastructure as part of the immediately realisable right to basic education. They say that the judgment of the High Court is irreconcilable with the judgment of this Court in the *Ermelo* case,[2] *"which expressly holds that the State,*

[2] *Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* 2010 (2) SA 415 (CC).

in discharging its constitutional obligations may '... take into account what is fair, feasible and satisfies the need to remedy the results of past racially discriminatory laws and practises ...'".

24 In fact, the Minister's explicit premise, in her answering affidavit, was that the right to basic education (not just school infrastructure) is not immediately realisable. This is inconsistent with the jurisprudence of this Court.

25 Our courts have held in a range of cases, including *Tripartite Steering Committee,*[3] *Minister of Basic Education v Basic Education for All,*[4] and *Madzodzo*,[5] that a number of elements – in essence those matters which are necessary for effective education - form part of the section 29(1)(a) right to basic education. We submit that it is correct that this includes safe and adequate school infrastructure.

26 The *Ermelo* case dealt with section 29(2), which addresses not the right to basic education, but the language of instruction. The test in that regard is what is *"reasonably practicable"*. At paragraph 177 of

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[3] *Tripartite Steering Committe and Another v Minister of Basic Education and Others* 2015 (5) SA 107 (ECG).
[4] *Minister of Basic Education v Basic Education for All* 2016 (4) SA 63 (SCA).
[5] *Madzodzo and Others v Minister of Basic Education and Others* 2014 (3) SA 441 (ECM).

her judgment, Msizi AJ pointed out that the Applicants' reliance on *Ermelo* was *"clearly wrong"*.

Ad para 27.6

Did the High Court incorrectly "lump" rights together and misunderstand the rationale of the Bill of Rights?

27 The Applicants say the High Court erred in *"lumping other rights contained in the Bill of Rights together with section 29(1) without considering the rationale behind the crafting of a Bill of Rights with different provisions for which different ministries and departments are responsible"*.

28 I submit that this demonstrates a fundamental misunderstanding of the nature of the constitutional duties of the state.

29 The duty to fulfil the right to basic education rests on the state - not only on the Department of Basic Education and the provincial Education Departments. The duty rests on the state as a whole.

30 The Minister was expressly sued not only as the functionary identified in the South African Schools Act, but also as the representative of the national government. The national government was therefore before

the court. The MECs were similarly expressly sued not only as functionaries mentioned in the Act, but also as the representatives of the provincial governments. Those governments were therefore also before the court. This was not disputed.

31 There is no significant public service which can be achieved in a silo, by only one organ of state. It is, I submit, appropriate to sue the national and provincial governments where it is alleged that the state has not carried out its constitutional obligations. It is for them to decide how to put up such defences as they wish. And it is for them to organise their affairs in such a way as to ensure that they carry out their section 7(2) obligations to fulfil the rights in the Bill of Rights.

Ad para 27.3 and para 27.17

Should the court have found the escape clause to be rational and justifiable?

32 The Applicants assert that the High Court should have found that it was *"rational and justifiable for the Minister to make the implementation of the norms and standards subject to the co-operation and resources being made available by other Organs of State and entities being responsible for the provision of these aspects of infrastructure"*.

33 The Applicants have never attempted to offer a proper justification in terms of the limitations provision in section 36 of the Constitution. They do not say that they intend to do so on appeal. I submit that this is the only basis on which it could conceivably be asserted that the escape clause is justifiable.

34 In any event, Equal Education submits that a limitation which amounts to a *"lifetime indemnity"*; which effectively legalises indefinite delay in the realisation of fundamental rights, including the rights to education and dignity; and which is inconsistent with the best interest of children, could not meet the requirements of section 36. Such a limitation could not be justified in an open and democratic society based on human dignity, equality and freedom.

35 As to rationality, the purpose of the power given to the Minister to promulgate Norms and Standards is to ensure the realisation of the right to basic education and related rights of learners and children, by creating enforceable rights and obligations. There is no rational connection between the escape clause and the purpose of the power.

Ad para 27.4

Did the High Court err by misunderstanding the core function of the Department of Basic Education?

36 The Applicants say that the High Court misdirected itself in not considering the core function of the Department of Basic Education, *“namely the provision of basic education in accordance to Section 29(1) of the Constitution”*.

37 This case is however not just about the Department of Basic Education. It is about the obligation of the state to fulfil the right to basic education.

38 The issue is whether the Minister of Basic Education may make a law which attenuates the state’s obligation in terms of section 29(1)(a), by providing that it exists and is enforceable only to the extent that unidentified organs of state provide unidentified services at unidentified times. We submit that she may not do so.

Ad para 27.7 to 27.11

Did the High Court err in failing to take proper account of intergovernmental cooperation?

39 The Applicants say that the High Court erred in failing to take proper account of section 41 of the Constitution and the dispute resolution mechanisms of the Intergovernmental Relations Framework Act.

40 Equal Education submits that this reflects a misunderstanding of the nature of the relationship between spheres of government. Section 41 imposes a duty on organs of state in the different spheres of government to co-operate in giving effect to the Constitution. It cannot be used to provide, in effect, that a fundamental right falls away if intergovernmental cooperation does not take place.

41 We submit that the proper interpretation of section 41 lends additional weight to the unconstitutionality of Regulation 4(5)(a) of the Norms and Standards, as the Regulation anticipates and in advance condones the violation of the constitutional principles in that section. I respectfully refer to the *dictum* of this Court in *Independent Electoral Commission v Langeberg Municipality,*[6] which made clear that spheres of government and organs of state must understand their interrelatedness and their independence to require them to perform their duties for the benefit of the country as a whole.[7]

42 Similarly, the Applicants' reliance on the Intergovernmental Relations Framework Act is misplaced. The purpose of the Act is to facilitate cooperative governance and the resolution of intergovernmental

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[6] *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC).
[7] 2001 (3) SA 925 (CC) at para 26.

disputes. It cannot be relied on to justify a continuing breach of the duty on the state to fulfil a fundamental right.

43 The purpose of these provisions is to facilitate the fulfilment of the state's duties. They do not contemplate that a breach can be justified on the basis of a lack of co-operation between organs of state and spheres of government.

43.1 Msizi AJ was, with respect, correct to say:

> *"The interpretation of section 40 and 41 of the Constitution that the respondent contended for also cannot be sustained. It cannot [co-exist] with the values enunciated in the Constitution. The situation confronting the minister with regard to the need for resources to discharge its responsibility is not unique to her. There is interdependence in government. The members of the public owed a duty by government must be secured in the knowledge that government is driven by the values in the Constitution. Every section in the Constitution should be read against those values."* [Paragraph 199]

Ad para 27.12

Did the High Court err in rejecting the Applicants' complaint of non-joinder?

44 The Applicants assert that the High Court should have upheld the point *in limine* raised by the Minister, that multiple other State departments or organs of state should have been joined in the application.

45 I have already pointed out that the national and provincial governments were before the court. Equal Education specifically alleged that each of the respondents was joined as representative of his or her government, and none of them disputed that.

46 I have submitted above that no delivery of rights takes place in a silo. The Minister's obligation is to formulate norms and standards which will achieve the right to basic education, and to bring about the intergovernmental co-operation which will ensure that this happens.

47 If the Applicants are correct, this litigation would be impermissible unless the applicants had joined every municipality in South Africa, because they are responsible for the provision of municipal roads, water, and sometimes electricity, which serve public schools. I submit that this cannot be the case.

Ad paras 27.13 and 27.14

Did the High Court incorrectly interpret <u>Grootboom</u> and wrongly find that the First Applicant relied solely on budgetary constraints to justify the impugned provisions?

48 The Applicants say the High Court erred in interpreting the principle enunciated by this Court in *Grootboom*[8] narrowly and transposing the total extent of the responsibility of the State to the Department of Basic Education, and that the High Court incorrectly found that the Minister relied solely on budgetary constraints as justification for the qualification of the Norms and Standards.

49 Msizi AJ did not transpose all the responsibility for building schools onto the Department of Basic Education. The effect of her judgment is that the First Applicant cannot make a law that waters down the constitutional obligation of the state as a whole, and undermines the critical role of intergovernmental cooperation.

50 The High Court referred to the *Grootboom* decision in order to express the principle that state action cannot be reasonable if it fails to take proper account of the inherent dignity of all human beings.

[8] *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC).

51 I submit that the High Court was correct in finding that vague language, the absence of accountability mechanisms, and indefinite escape provisions which anticipate and condone failures in intergovernmental cooperation and coordination, fail to take account of the dignity of South African learners and children.

52 The High Court did not find that the Minister relied solely on budgetary constraints as a justification for qualifying the obligations in the Norms and Standards. But in any event, this would have no bearing on whether the Court was correct in finding that there was no constitutionally sound justification for the *"lifetime indemnity"* built into the regulations.

Ad para 27.20

Did the High Court err in not finding that the Rivonia judgment means that the impugned provisions are permissible?

53 The Applicants contend that in the context of the prioritisation by the Minister of certain schools, the High Court erred in not following the dictum of this Court in *Rivonia,*[9] that "although Section 29 of the Constitution guarantees everyone the right to a basic education: That

[9] *MEC for Education in Gauteng Province and Other v Governing Body of Rivonia Primary School and Others* 2013 (6) SA 582 (CC).

is the promise. In reality, a radically unequal distribution of resources – related to a history of systematic discrimination – still makes this constitutional guarantee inaccessible for large numbers of South Africans'".

54 To the extent that the Court held that the state would be required to prioritise some schools ahead of others, in order to address the continuing inequality, there is nothing in the judgment of the High Court which is inconsistent with this.

55 The Norms and Standards are based on the prioritisation of different aspects of school infrastructure at different times. Equal Education does not object to this. The judgment of the High Court did not invalidate this staggered framework, or hold that the Minister does not have a discretion to determine the timelines for delivery. What the Court did was hold that the timelines which the First Applicant herself has determined cannot be avoided indefinitely.

56 In addition, the High Court held that it was arbitrary and unconstitutional for the regulations to exclude from prioritisation, schools which are built substantially but not entirely from inappropriate materials.

57 The implications of this exclusion are grave. There are thousands of schools across South Africa in this position. In many instances, poor community members pool their scarce resources to build a brick and mortar structure for their children's school. The High Court was correct, I submit, to hold that the Norms and Standards could not effectively punish these communities for their self-help, by excluding such schools from prioritisation. This would create a perverse disincentive.

58 Following a recent PAIA application, Equal Education now has access to a report by the KwaZulu-Natal Department of Education on its implementation of the Norms and Standards. The KZN report says that there is not one school in the province which is built entirely of inappropriate materials, and therefore there is no backlog in regard to appropriate materials. I submit that this illustrates the absurdity of the Norms and Standards in a province with many rural schools with many inappropriately built school structures.

Ad para 27.21

Did the High Court err in failing to suspend its order of invalidity?

59 The Applicants say that if the High Court was correct to invalidate provisions of the Norms and Standards, it erred in not suspending its

finding of invalidity so as to allow the Minister to cure the defects in the Regulations.

60 The Applicants did not raise this in their oral submissions to the High Court, despite counsel for Equal Education having made submissions as to why it would be inappropriate to suspend the operation of the order.

61 The state has already missed the first (three-year) deadline in the Norms and Standards. There remain, by the state's own account, hundreds of schools without water and electricity, and thousands with the unsanitary and unsafe plain pit latrines that have resulted in the deaths of two children in the past four years.

62 Suspension of the order of invalidity will indefinitely prolong this situation, because of the escape clause and the lack of transparency and accountability in respect of plans and programmes.

Ad para 27.22

Did the High Court err in awarding costs to the amicus curiae?

63 This is of course a matter for the *amicus curiae*, and not Equal Education, to address. As the *amicus curiae* is, however, not currently

before this Court, I explain the context in which the High Court made this order:

63.1 The High Court made an order of costs in favour of the *amicus curiae* in relation to the filing of an opposing affidavit, out of time, by the Applicants.

63.2 The *amicus* had asked for costs as a result of the late filing of opposition to its application to be heard in this matter. An application for condonation was only handed to the court and the other parties on the day of the hearing.

63.3 I submit that whatever the merits of the Applicants' complaint, they would not provide sufficient cause for this Court to grant leave to appeal.

PART C: THE INTERESTS OF JUSTICE

64 For all of the reasons set out above, I submit that the proposed appeal does not have a reasonable prospect of success, and that leave to appeal should be refused on that basis.

65 However, I submit that it would not be in the interests of justice to refuse leave to appeal on the ground that the matter should first be

dealt with by the Supreme Court of Appeal. I say so because this is a matter of considerable and pressing public importance, involving the continuing breach of the rights of many thousands of learners; because of the history of the matter; and because of the consequences of further delay in its resolution:

65.1 Section 5A of the South African Schools Act was introduced by the Education Laws Amendment Act 31 of 2007. The Minister is obliged by section 29(1)(a) of the Constitution and section 5A of the South African Schools Act to prescribe norms and standards for school infrastructure which will ensure the creation of the necessary environment for effective education. Nearly eleven years later, she has still not done so.

65.2 Equal Education members, who are predominantly high school learners in rural and township schools in five of South Africa's provinces, have maintained a sustained campaign through youth meetings, marches, pickets, petitions and engagement with Parliament, politicians and the Minister for the promulgation and implementation of minimum norms and standards which will ensure the provision of safe and adequate school infrastructure.

65.3 The Minister initially contended that she is not under a legal obligation to prescribe norms and standards for school infrastructure. However, she made a number of public statements that she would promulgate such norms and standards.

65.4 In 2012, after continued failure by the Minister to promulgate norms and standards, Equal Education made an application to the Eastern Cape High Court for an order directing her to do so.[10]

65.5 The Minister initially opposed that application.

65.6 On 19 November 2012, the Minister gave a written undertaking, which was recorded by the Court, to make and promulgate regulations prescribing norms and standards on or before 15 May 2013.

65.7 The Minister did not comply with that undertaking. Equal Education then made a further application to the Eastern Cape High Court.

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[10] *Equal Education, Infrastructure Crisis Committee of Mwezeni Senior Primary School & Another v Minister of Basic Education, MEC of Education Eastern Cape and 11 Others* Case No 81/2012.

65.8 On 11 July 2013, by consent, the High Court ordered the Minister to promulgate minimum norms and standards by 30 November 2013.

65.9 On 29 November 2013, the Minister promulgated the Norms and Standards which are the subject of this litigation. Equal Education contends that they are fundamentally defective. They contain an escape clause which in effect postpones indefinitely the obligation to put in place adequate school infrastructure. And in various other respects, too, they do not comply with the requirements of the Constitution and the law.

66 This has been a long and arduous journey, which has still not come to an end. During this period, very many learners have had to undergo and complete their schooling in unsafe and inadequate infrastructure, which has no doubt affected their life outcomes. Dragging this matter out is contrary to the interests of the very many learners who will continue to bear, and future cohorts who will also bear, the brunt of an unequal, substandard and ineffective education.

67 I submit that there can be little doubt that if an appeal were to be heard by the Supreme Court of Appeal, the matter would eventually be

brought back on appeal to this Court. A protracted continuation of this court process is something our children cannot afford to endure.

68 This case squarely engages the question of the nature of the right to basic education, as well as the rights to equality, dignity and the principle of the paramountcy of the best interests of the child. In this regard, the parties are in agreement.

69 The Applicants rely on what we submit is a clear misunderstanding of the meaning of section 41 of the Constitution and the legislation enacted in furtherance thereof. The implication of their argument here, if accepted, would be that the state may rely on intergovernmental cooperation (and the lack of it) as an excuse for watering down legal obligations to deliver many of the rights in the Bill of Rights, and not just the right to basic education.

70 Our primary submission is that leave to appeal should be refused on the grounds of the lack of prospects of success, for the reasons set out above. But we respectfully ask the Court explicitly not to refuse leave to appeal on the grounds that a direct appeal would not be in the interests of justice, and that leave to appeal to the Supreme Court of Appeal should first be sought.

71 We respectfully submit that if the High Court judgment is to be reconsidered on appeal, the interests of justice require that the matter be heard without delay by this Court.