NATIONAL INVESTIGATIVE HEARING ON ENSURING THE RIGHT TO BASIC EDUCATION IN THE CONTEXT OF PROTESTS

EQUAL EDUCATION SUBMISSION TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION – JUNE 2016

Overview

The South African Human Rights Commission (SAHRC) has decided to institute a national investigative hearing on the right to basic education and the right to protest. On 25 May 2016, the SAHRC requested that Equal Education make written submissions and to attend the national investigative hearing.

Equal Education welcomes the opportunity to provide input into the investigation. Our submission is structured as follows:

- In Part 1, we provide background to the mandate and structure of Equal Education as a membership-based social movement working towards equality and quality in education.
- In Part 2, we briefly set out the constitutional framework protecting the right to education and the right to protest.
- In Part 3, we describe aspects of Equal Education's history of protest action, and the successes and challenges faced in working towards ensuring quality and equality in South African education.
- In Part 4, we examine trends toward the stifling of peaceful protest is stifled by unlawful practices, citing some examples from our history of organizing as a movement.
- In Part 5, we note the recent instances in which unlawful protests have taken place impacting on the right to education and emphasise the need to take the best interests of children into account when exercising the right to protest. We also seek to understand the driving forces that result in such unfortunate actions.
- Finally, in Part 6, we conclude that the right to education and the right to protest are not at odds, and that the state must respect, protect, promote and fulfill both rights, primarily by compliance with its Constitutional mandate to reverse the systemic inequality in our society, and by ensuring and end to the unlawful stifling of peaceful organising.

Part 1: Equal Education

Equal Education (EE) is a social movement of learners, parents, teachers and community members.[1] EE's core objective is to work towards achieving quality and equality in education in South Africa. In order to achieve its objectives, EE conducts a broad range of activities. They include campaigns grounded in detailed research and policy analysis and supported, where necessary, by using the courts and legal process to advance the values of, and to contribute to, a strong civil society that holds government, private interests and individuals accountable.

Our core membership base is made up of high school learners, termed 'Equalisers', who actively advocate for quality education for all. EE has approximately 3220 Equalisers across KwaZulu-Natal, Eastern Cape, Western Cape, Limpopo and Gauteng who participate on a weekly basis in the work of EE. EE also has a parent following, with six EE parent branches located in the Western Cape. EE has many other active supporters.

As a movement, Equal Education convenes a national congress every three years, where the leadership of the organization is elected by its membership. The elected National Council (highest decision making body) is bound to implement the resolutions taken by members at congress.

Since being founded in 2008, Equal Education has led campaigns aimed at the development of learning facilities; improved practice; content and access to teaching; the building of commitment and passion among teachers and learners; and improving the overall efficacy of South Africa's education system. Our focus and attention is directed by the interests of our members, who are largely from working-class and poor communities.

EE believes that the systemic crisis in education cannot be solved by government alone. However, government has a duty to lead society, and marshal all the resources available, both public and private, to achieve quality education for all. The ability to picket, demonstrate and engage in a wide variety of protest actions is crucial to the work of EE and maintaining a robust space for civil society engagement with the state.

Part 2: Constitutional framework and ongoing inequality in education

Education is one of the non-negotiable aspects of most societies, and the right to basic education is enshrined in section 29 of our Constitution. The Constitutional Court has held that the right to a basic education imposes a positive obligation on the state to provide and make basic education available to every person.[2]

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[1] Registered S10 (1) (cN) and S18A (1) (a) Public Benefit Organisation (PBO) (Exemption Number 930 027 221). Registered Non-Profit Organisation (NPO) (Registration Number 068-288-NPO)

[2] *Ex parte Gauteng Provincial Legislature: In re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1996* 1996 (3) SA 165 (CC) at para 9, finding that "Section 32(a) [the section under

Similarly, section 17 of the Constitution states that everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions[3].

The right to education and the right to protest must be read with section 7(2) of our Constitution, which demands that the state respect, protect, promote and fulfil the rights in the Bill of Rights. Crucially, the rights must also be read with section 9, which says amongst other things that everyone is equal before the law, and that this equality includes the equal enjoyment of all rights and freedoms.

South Africa inherited two education systems from Apartheid. The one system – located in townships, former homelands, in rural areas and on farms - was impoverished in terms of resources. Contrary to the very purpose of education, Apartheid schooling was not intended to realise the human potential of black children, but to reinforce systemic discrimination and to systematically deprive the majority of our citizens of their rights. The other system provided for a small white minority at the expense of the majority to experience educational excellence.

Progress has been made. Data points to improvement in learning quality. But dysfunctionality, vulnerability, alienation and a lack of social cohesion continue to characterise many of the country's township and rural schools. So while it is untrue to say that education outcomes have deteriorated over the past 20 years, education outcomes remain far too low – and especially among youths from poor black and coloured communities.

Unlike other socio-economic rights, the right to education is framed in the Constitution as an immediately realizable one. [4] Significantly, the full enjoyment of the right to education is to some extent a necessary condition for the realisation of other economic and social rights[5]. Justice Nkabinde emphasised this point in *Juma Musjid,* stressing that:

"Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be "progressively realised" within "available resources" subject to "reasonable legislative measures". The right to a basic education in Section 29(1) (a) may be limited only in terms of a law of general application which is "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom""[6].

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the Interim Constitution dealing with the right to education] creates a positive right that basic education be provided for every person and not merely a negative right that such a person should not be obstructed in pursuing his or her basic education."

[3] Ibid

[4] For example, the right to housing (s26), the right to health care, food, water and social security (s27) or the right to further education (s29(1)(b)). Here, the state need only take reasonable measures, within its available resources, to achieve the progressive realisation of each of these rights.

[5] Veriava and Coomans "The Right to Education" in D Brand and C Heyns (eds) *Socio-Economic Rights in South Africa* (2005) 57 at 57. The authors argue that the right to education is a prerequisite for properly enjoying rights such as freedom of information, the right to vote, the right to choose work, or the right to take part in cultural life.

[6] *Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others* 2011 (8) BCLR 761 (CC) at para 37 (Juma). Taken from the Studies in Poverty and Inequality Institute's report: Realising the Right to a Basic Education in South Africa, November 2015

Despite the courts' pronouncement in *Juma Musjid* and several other cases, access to quality education remains a struggle for most South Africans. Not only that, but the process of accessing education compromises other fundamental rights of learners, including dignity and, at times, the right to life. Many learners walk unhealthy and dangerous distances to and from school; thousands attend schools with no toilets or with only pit latrines and many female learners are unable to access feminine hygiene products at their school.

In January 2014 Michael Komape, a 5 year old learner in Limpopo, lost his life when he fell into an unsafe dilapidated pit latrine at his rural school in Chebeng Village[7]. In the same year, unsupervised and negligent building at a mud school near Qumbu, Eastern Cape, led to a wall collapsing and killing 16 year old learner Esethu Tilayi[8]. In April 2015, 13 year old Lutho Felepu died after suffering a heart attack in trying to access the limited scholar transport available at here school in Mdantsane, Eastern Cape[9].

It is important then to pause and consider that the most systemic and entrenched threats to the realisation of the right to basic education are the factors that contribute to incidents such as learners dying at their schools due to lack of service provision.

To that end, our members struggle tirelessly for access to all the components which we think constitute the content of the right to education, including adequate school infrastructure, access to scholar transport, dignified sanitation and access to feminine hygiene, and improved school management and teaching and learning.

Part 3: A Snapshot of EE's History of Peaceful Protest for the Right to Education

Protest action has enhanced the right to basic education for many school children across South Africa. Our members have been at the forefront ensuring that township and rural schools are no longer the victims of the system, but are given equal rights, equal access and an equitable chance to succeed in the new democratic South Africa. As a movement we have, over time, seen the crucial role that peaceful protest has to play in the realisation of the Constitutional vision, but that we also have experienced first-hand the recalcitrance of the state in responding to protest action. It seems clear then that South Africans have to wait for years in frustration for the realisation of basic rights. Therefore, while we understand the dangers involved in violent protest, and condemn any failure of protestors to take into account the primacy of the rights of children, we also think the primary road towards encouraging

[7] https://www.enca.com/south-africa/no-photos-remember-boy-who-died-school-pit-toilet [Accessed on 8 June 2016]
[8] http://www.dispatchlive.co.za/news/wall-collapses-and-kills-pupil-16/[Accessed on 8 June 2016]
[9] http://www.dispatchlive.co.za/gen/pupil-dies-rushing-for-a-taxi/ [Accessed on 8 June 2016]

peaceful protests and protecting the right to education is government responsiveness and compliance with its section 7(2) mandate.

Below we set out, in brief, some of our experiences using peaceful protest as a tool to enhance struggle for the right to access quality education.

The Gauteng Sanitation Campaign

In August 2013, Equalisers in Tembisa, a township outside Johannesburg, launched the Gauteng Sanitation Campaign. They vowed not to stop the campaign until all students enjoyed dignified and safe sanitation in their schools. Since then, we have conducted one of the largest social audits in South Africa. We organised a march of 2 000 EE members, picketed and protested. We met with government officials and members of the Gauteng Provincial Legislature to express our demands. Today, our campaign includes Equalisers, EE parent members, churches and community organisations in over 20 townships in all regions of Gauteng including Ekurhuleni, Johannesburg, Tshwane, Sedibeng and the West Rand.

In response to our campaign, the Gauteng Department of Education (GDE) has already spent R150 million to upgrade the sanitation conditions at 578 schools serving about 500 000 students. Government contractors have fixed or replaced the toilets, taps, pipes and basins at these schools. Some schools have received new toilet blocks altogether. Politicians and government officials throughout the GDE have spoken out on the need for principals and school governing bodies (SGBs) to better maintain toilets – even issuing a new manual to guide schools on how to do this.

More recently, the GDE committed to spending R50 million to fix the toilets at the 50 schools in most dire need in Gauteng. It promised to fix all the matric toilet blocks in the province. In addition, the GDE promised to undertake significant policy changes by 16 June 2015 that, if implemented, will improve access to toilets, maintenance, soap, sanitary pads and toilet paper in schools.

Our exercise of the right to assemble and protest in Gauteng has demonstrated that protection of the right to protest can contribute valuably to the struggle to realise the right to dignity in education in the Province.

The Campaign for Scholar Transport

In July 2014, EE members based in the Nquthu in Kwa-Zulu Natal area raised a lack of scholar transport as a serious barrier to their education.

In January 2015, EE and the Equal Education Law Centre (EELC) visited schools in Nquthu. We spoke to teachers and principals who complained of having to teach learners who were hungry and exhausted after their long walk to school, and who struggled to concentrate or stay awake in class. They attributed high incidences of late coming, absenteeism, and learners dropping out of school to the lack of scholar transport. Some described how school attendance was as low as 5% to 10%on days of heavy rains or lightning storms, particularly during the summer rainfall season. The teachers and principals also said it

was difficult to provide extra lessons after school when learners still had to make the long journey home.

On Thursday 9 April 2015, 500 EE members from Nquthu marched to the KZN Department of Education's head office in Pietermartizburg to demand the provision of scholar transport. We demanded that scholar transport be provided to the learners of Nquthu and that the provision of scholar transport in KZN be prioritised and expanded significantly. EE also demanded that a national scholar transport policy be adopted, and that a conditional grant from Treasury be allocated to fund its provision.

On 23 October 2015 after sustained correspondence with the Minister of Basic Education, and under the threat of litigation by EE assisted by the EELC, the National Scholar Transport Policy was finally published, providing a platform to ensure that learners no longer walked long and dangerous distances to and from school. After months of advocacy, campaigning, legal interventions, and coordinated peaceful protest action, learners at three Nquthu high schools were provided with buses to ensure they are able to access schools.

However, thousands of learners in Kwa-Zulu Natal remain without desperately needed scholar transport, despite long term peaceful strategic activism. Our lessons in this campaign are that protests are a necessary tool for citizen participation in our democracy, but also that the state is not adequately responsive to the peaceful protests of its citizens, especially given that these protests are held by children for the assertion of their fundamental rights.

School Infrastructure Campaign

The unacceptable state of school infrastructure in many of the country's schools prompted our movement to initiate a sustained campaign to compel Basic Education Minister Angie Motshekga to promulgate legally-binding regulations for Norms and Standards for school infrastructure in line with her responsibilities under the South African Schools Act.

EE members marched and picketed, petitioned, wrote countless letters to the Minister, went door-to-door in communities to garner support for the campaign and went as far as spending nights fasting and sleeping outside of Parliament. EE petitioned Parliament and politicians, and on Human Rights Day in March 2011, EE led a march of 20 000 learners and supporters to Parliament to demand that the Minister and the DBE keep their promise and adopt Minimum Norms and Standards that lay down the blueprint for ensuring that all learners in South Africa, regardless of race or wealth, are able to learn in schools with adequate infrastructure.

Equal Education's sustained campaigning over three years, involving thousands of young people and parents from across the country, compelled the Minister to draft Regulations that lay the physical foundations for an adequate education. On 29 November 2013, the Minister complied with the court order and published final and binding Norms and Standards for school infrastructure. They are a tool with which to improve thousands of schools and change millions of lives.

While the mass mobilization of learners and sustained peaceful protest was no doubt crucial as a component of the campaign for norms and standards for school infrastructure, and served to create a moral consensus on the critical need for this framework, for years the Minister failed to act decisively to realise the demands which learners and parents were voicing in peaceful action. It was only once court action was initiated that the Minister adopted the regulations. Again, one of the lessons drawn for us was that the process of protesting peacefully is frustrated by a negligent and unresponsive state.

From the above campaign work and victories experienced by EE, it is evident that peaceful protests are an essential tool for progress and sustainable change. There has been massive benefit to education rights linked to protests. To name a few, EE has seen an increase in the investment in sanitation in Gauteng; buses delivered to schools in KZN and the promulgating of the Norms and Standards for School Infrastructure. As noted above, our experience of protesting peacefully also illustrates the unfortunate frustration of an unresponsive state: one that often ignores or delays action regarding the legitimate demands of learners around the country. A responsive state with an understanding of its Constitutional mandate is a key element toward encouraging peaceful protest, and discouraging protests which may impact adversely on the best interests of children.

Part 4: Unlawful Practices Stifling the Right to Education

The Constitution guarantees all, *"the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions"*.[10] The Regulation of Gatherings Act 205 of 1993 ("the RGA"), regulates protest action in South Africa. The preamble to the RGA says, *"[e]very person has the right to assemble with other persons and to express his views on any matter freely in public and to enjoy the protection of the state while doing so*…." However, contrary to what was envisioned by the RGA, the right to protest seems to be under attack, dis-incentivising people from engaging in the type of peaceful protest which is protected by the Constitution.

As detailed above, since its inception, our movement has been mobilising through many means, including protest action, to compel government to comply with its constitutional and statutory obligations pertaining to the rights to equality and to basic education. After close to 9 years of demonstrations, pickets, sleep-ins, marches and vigils, it is evident to us that the right to protest is regularly stifled by the use of unlawful practices and the creation of unlawful conditions.

The Stifling of the Right to Protest: Some Examples from EE's Experience

EE is a movement which is fortunate enough to have access to some resources and to legal expertise in the form of the Equal Education Law Centre. Despite this, it has become increasingly difficult for Equal Education to hold protests. It is apparent to us that individuals and organisations without these resources may experience even more barriers to their right to peaceful assembly and demonstration.

Our difficulties primarily take the form of abuse of power by the responsible officers during the RGA section 4 meetings; and unlawful conditions being imposed before issuing of "permits". In fact, given

[10] Section 17 of the Constitution.

that protest is a constitutional right, and the RGA speaks of a notice procedure, the notion of a protest "permit" itself is a constitutionally fraught misnomer.

April 2015 National Sleep-In Protests

During April 2015, Equal Education held sleep-in protests in three cities: Cape Town, Pretoria and King William's Town. Our members were demanding that the Minister of Education, Angie Motshekga, publicly disclose the 9 provincial plans for implementing the Minimum Norms and Standards for Public School Infrastructure. These demonstrations followed multiple letters and a request in terms of section 18(1) of the Promotions of Access to Information Act, during which period the officials have repeatedly made vague assurances that the plans will be released. While it was difficult to gain access to these plans, obtaining "permits" to demonstrate for the plans have proven equally difficult. The reasons for this are as follows:

In Pretoria a last minute email was received from the City of Tshwane, denying Equal Education permission to demonstrate. The reason provided was that the sidewalk is for the use of pedestrians and no person is allowed to carry on any business or cause any obstruction.

The demonstration and sleep-in in Cape Town was to be held outside of Parliament, near the statute of Louis Botha. Equal Education submitted the required notice in terms of the RGA to the Participation Unit, which reports to the City Manager. This was done in terms of the RGA, seven days prior to the protest. Equal Education gave notice that 100 members would picket and sleep outside Parliament's gates from 1 to 3 April 2015. The RGA provides that any negotiations the authorities wish to conduct must be arranged within 24 hours of receiving the notice of protest. To limit the encroachment on the right to protest, the RGA says that if the authorities fail to call such a meeting within the prescribed period, the protest can go ahead in accordance with the notice. We heard nothing from the City of Cape Town until 3:20pm on Monday, 30 March 2015, two days before the planned sleep-in. At that time, Equal Education was invited to attend a meeting at the Civic Centre the following afternoon, less than 24 hours before the demonstration was due to commence.

The meeting was attended by officials from the City of Cape Town, SAPS and Public Order Policing Unit, traffic officers, Equal Education and Parliament Protection Services. During the meeting it was insisted that the "permit" not be issued without the approval of the Speaker of Parliament. The National Key Points Act was cited as the reason for this as well as the fact that since EFF disrupted Parliament during the State of the Nation Address, all protest to Parliament requires the permission of the Speaker.

The City of Cape Town initially refused to issue a "permit", and instead instructed a city official to review all of Equal Education's gathering permits over the past five years. When the meeting was reconvened the City of Cape Town agreed to issue a conditional permit, provided permission was also obtained from the Chief Magistrate of Cape Town, the City Manager and the Speaker of Parliament. In violation of the RGA, the City of Cape Town failed to provide written reasons for this refusal to issue an unconditional permit.

The Speaker of Parliament has no authority to deny marches to Parliament under the National Key Points Act or any other law. The fact that the Speaker's permission was raised as a pre-requisite echoed the events of 2010, when Equal Education was prevented from marching to the Union Buildings without the permission of the Presidency.

The City of Cape Town stipulated that the permit is conditional upon government agreeing to receive Equal Education's memorandum, but this condition was eventually deleted.

The RGA does require the additional permission of the Chief Magistrate of Cape Town for marches to Parliament, but in numerous marches to Parliament Equal Education never had this condition enforced on it.

Following the delayed section 4 meeting, our attorneys, the Equal Education Law Centre, began preparing an urgent application to have the Western Cape High Court confirm the Speaker's lack of authority over protests. In the meantime the City Manager, the Chief Magistrate and the Speaker's office each insisted that they could issue approval only after one of the others granted it first, this creating an endless circle limiting the organisation's right to protest. It was only hours before the sleep-in was due to begin, that the Speaker's office gave oral approval, which prompted formal approval from the Chief Magistrate.

In a separate incident, in 2012, we prepared urgent court papers when, on the basis of an affidavit prepared by the City of Cape Town, which Equal Education was never shown, permission was denied for a Human Rights Day march in Khayelitsha. In this instance the threat of litigation ensured that the march went ahead.

Section 4 meetings treated as a negotiation – continuous abuse of power

In October 2014, Equal Education in the Western Cape was planning to march to the Provincial Legislature to raise a number of different issues, including but not limited to: poor sanitation; lack of adequate fencing; gangsterism; drugs in schools; discriminatory teenage pregnancy policies; corporal punishment; and lack of adequate libraries. Our plan was for learners facing these issues at different schools to march together at a joint "Rally for Education Equality". An application form was delivered to the City of Cape Town on 17 October 2014, a copy of which is annexed hereto marked **"EES1"**.

A section 4 meeting was called, which was attended by Equal Education, officials from SAPS, Metro Police and the City of Cape Town. A copy of the meeting notification is annexed hereto marked **"EES2"**. The meeting was held on 24 October 2014, and was approached by officials as a negotiation, in which they felt they had the power to make Equal Education accept changes in date, time, and route, and answer questions as to the political motivations and rationale for the protest action. The tone of the chairperson at the meeting as well as that of other officials was aggressive, arrogant and domineering – and inconsistent with a government official's role, which is to facilitate the expression of our rights and not to obstruct them. During the meeting concerns were raised about the time of the march, the date of the march, the route of procession, the number of participants and marshals and the traffic flow on the date of the march. It was agreed that it was logistically impossible to collect 2000 learners and arrive in

town ready to march any earlier than 15h30 as we would have to wait for school to finish at about 13h30. We explained that, Equal Education as a matter of principle does not interfere in teaching and learning time, and therefore we would not accede to the government stakeholders' request that we convince the principals to allow the learners to leave earlier. During the meeting and subsequent drive through of the route, consensus was reached on the basis that the route be amended.

To our surprise we received a call from the City of Cape Town, informing that the City's decision regarding Equal Education's notice to gather may require that we conclude proceedings and disperse by 16h00.

In response an email was sent to the City of Cape Town on 27 October 2014, a copy of which is annexed hereto marked **"EES3"**. In our email we expressed our concerns with the latest developments. Equal Education felt that this additional requirement would limit the gathering unlawfully, as the RGA requires the responsible officer to depose to an affidavit stating that the gathering would result in disruption of traffic, injury to participants or other or extensive damage to property, and in that case to meet with the convener to discuss the notice to negotiate a safe gathering, as well as to give a letter to the convener with written reasons for prohibiting the gathering.

The City of Cape Town responded with an email stating that Equal Education must seek the permission of the Chief Magistrate. We were now just 3 days away from the march.

On 29 October 2014, Equal Education sent a letter to the Chief Magistrate, a copy of which is annexed hereto marked **"EES4"**. The Chief Magistrate granted permission in a letter dated 29 October 2014. A copy of the letter is annexed hereto marked **"EES5"**. In her letter, the Chief Magistrate refers to a letter from the City of Cape Town dated 28 October. We have not seen this letter and requested that the Chief Magistrate send it to us. Upon receipt of the letter, we learned that this letter was addressed to Equal Education and reflected that the march was approved by the City on said date – the letter goes on to set out 14 conditions under which the gathering was approved. It was unclear why we also had to seek permission from the Chief Magistrate. This process placed us in a very confusing and worrying position and unable to assess the legality of the City's conduct. At best this reflects carelessness and poor communication; at worst it suggests a deliberate attempt to frustrate our efforts, made in good faith, to fulfil our responsibilities in terms of the RGA.

A similar issue arose in the Eastern Cape when we planned a demonstration for 5 April 2016. Despite our willingness to make arrangements necessary for traffic and safety, the chairperson spent the majority of the section 4 meeting trying to establish that we would not be able to control the crowd. He also asked questions regarding our demands that we would put forward and what we will do if those demands were not met. The chairperson also insisted that he will not give his approval if we are unable to show that the Eastern Cape Education Department (ECDOE) did not respond to our requests to handover our memorandum – saying incorrectly that this was a requirement under the Gatherings Act.

This last alleged condition is particularly absurd. The implication of claiming that we cannot protest unless the state has acknowledged it will receive us properly means that a recalcitrant department could simply avoid a protest by being recalcitrant towards requests to receive memoranda at protests. In King

William's Town in preparation for the 2015 sleep in and a march on 29 May, we had also been asked to provide this proof, and been told it was a requirement of the RGA. We had pointed out the absurdity of this incorrect claim at that stage as well.

The chairperson further challenged the strategy of our march, and said that we could either do a demonstration or a march, not both. Finally, after the intervention of our attorneys, the chairperson allowed the march.

On the day of the march everything went according to plan until about an hour before we reached the ECDOE. After a series of disappointments and frustrations about how the ECDOE was receiving the marches, our members decided to sit down in front of the exit gate until the top ECDOE leadership would address them. As police began to grab their plastic shields, a line of parents set down in front of the equalisers. After some time, things become a bit chaotic with learners blocking other traffic on the road away from the gate, largely while standing. The police become more aggressive in pushing them around out of the road. The police at one point used pepper spray, and we could see the police with their hands on stun grenade canisters.

In 2015, Equal Education was forced into holding unlawful demonstrations, when students' right to protest in Maluti, near the Eastern Cape's border with Lesotho, was denied, seemingly on purely political grounds. In this case a 17-person panel that for some reason included representatives of the South African Democratic Teachers Union (SADTU), refused to issue a "permit", leaving Equal Education with no choice but to proceed in defiance of the blatant illegality.

Promoting peaceful demonstration, and protecting the right to education together with the right to protest, means ending unlawful obstacles to protests

The examples cited above demonstrate how the administrative process of obtaining a "permit" is being used to unlawfully stifle the right to protest.

The RGA, a product of Apartheid parliament, does not allow a demonstration to be prohibited unless authorities are on *"reasonable grounds convinced"* based on *"credible information on oath"* that there is a threat of *"serious disruption of vehicular or pedestrian officers…will not be able to contain this threat".* Despite this, officials behave as if denying the right to protest is within their discretion.

Without access to a computer, internet, printing equipment, transport, money and access to legal support, it would be extremely difficult to access, complete and submit the gatherings application forms required by the various local authorities responsible for dealing with the RGA notices. If an organisation such as Equal Education, with secure resources, members around the country, and legal support, has been battling endlessly against unlawful obstacles limiting the organisation's right to protest peacefully, it is difficult to fathom the depth of the struggles faced by people with limited resources and access to services.

If the state is seeking to ensure, as it must, that the right to education and the best interests of the children are protected and promoted, it needs to not only be responsive to peaceful protest, but act

swiftly to ensure that authorities do not place unlawful obstacles in the way of peaceful protest, in contravention of section 17 read with section 7 of the Constitution. Those who create unlawful conditions and approach RGA notices as applications for discretionary permission must be properly identified and appropriately disciplined.

Part 5: Protest Action and the Right to Basic Education: Recent Lessons

Equal Education does not support the burning down of schools; we have never done so and have continuously expressed public concern over this. We recognise the hugely negative impact on children that this has. But it would be misguided to view the incident as the primary threat to education, when so many are attending schools that are totally inadequate and on a daily basis learners rights to equality, dignity, safety and basic education are flouted. There are socio-economic and political factors at play.

The Vuwani Protests

In the wake of the recent protests that took place in Vuwani, Limpopo, it became evident that a political issue and debate was the light that sparked the unrest. In response to a decision that was heard in the Limpopo High Court, a wave of violent unrest exploded in the Mashau, Masakona, Doli, Masia, Bungeni and Vyeboom areas, which took various forms, including:

- Blocking of roads with tree trunks, rocks, stones and pipes;
- Damaging and burning of government properties (mainly Schools and Motor Vehicles);
- Attacking and ambushing the Police Vehicles patrolling the area;
- Attacking motorists; and
- Targeted attacks to specific community members and Councillors

52 827 learners from 102 schools were affected.[11] Teaching and learning was set back from the 2nd of May 2016, and this also affected the writing of Preparatory Exams in Grade 12 and other forms of assessment from Grade 1 to 11. This situation was violent and criminal, but the basis of it was never directed at education and learners. This was a means to get the attention the protesters wanted, attention that they ultimately received.

However, it is important to note that not all the problems of the Limpopo Department of Basic Education (LDoE) can be placed at the feet of protesting community members in Vuwani. According to StatsSA[12], only about one in 10 (10.8%) of schools in Limpopo had access to a library, a quarter (25%) had an administration block, less than one in 10 (7.8%) had a laboratory and less than three-quarters (67.4%) have access to piped water prior to this tragedy. The LDoE further stated that the CSIR social audit on schools infrastructure in Limpopo found that there was a shortage of 6,217 classrooms in the

[11] Limpopo Education Department presentation to Parliament DBE Portfolio Committee, May 23 2016.
[12] Education Series I Focus on schooling in Limpopo, accessible on: http://www.dailymaverick.co.za/article/2016-05-10-op-ed-the-right-to-basic-education-and-vuwani/#.V1VFUvl97IU

province. Furthermore, according to the LDoE budget speech, the interim CSIR report highlighted that there was a shortage of 40,448 toilets, the vast majority (33,669) of which were pit latrines that need to be replaced[13].

We will not endorse the criminal acts in Vuwani, and the way in which the rights of learners were compromised. We recognize however that the protests take place within the context, as noted above, of a state that is generally unresponsive to peaceful protest and in fact places obstacles in the way of lawful demonstration. We recognize also the frustration at a continued real daily struggle for access to quality education in Limpopo, as demonstrated by the statistics above. It is this systemic issue that should be the cause for the greatest concern when the South African Human Rights Commission considers the threat to the right to basic education.

Port Elizabeth School Shutdown

Earlier this year, parents in Northern Port Elizabeth shut down over 50 schools in a stand-off with the Eastern Cape Department of Education. These parents demanded more teachers be hired in order to address overcrowding in affected schools. Children lost out during these strikes, being kept away from school for over three weeks. EE cannot agree with this means of action, as the learners in those schools' right to education were infringed upon.

The case does demonstrate one again, however, that protesters saw violence and unrest as a necessary resort after numerous attempts to engage with the education department. It was unfortunate and telling that, following the school closures, the Premier Phumulo Masualle and Mayor Danny Jordaan moved to the forefront of the discussions in an education matter. This was an education problem and it should have been capable of being handled by education officials when the community first engaged them on the critical teacher shortage.

Following the protests, the Province promised the hiring of 98 teachers and the installation of temporary structures to alleviate the issue of classroom overcrowding. While the protestors had been driven to use problematic methods, the action yielded positive results which, due to the recalcitrant approach to peaceful demands and demonstration, may not otherwise have been achieved. This is a problematic reality and the reason that we recommend that the state opens the way for lawful demonstration and becomes duly responsive to the needs of communities, both in and beyond the education sphere.

South Africans face serious challenges of unemployment, poverty and inequality. These are some of the key factors which have culminated in citizens taking to the streets to raise their dissatisfaction over the problem of poor service delivery. Unless service delivery and local governance is strengthened, the country is likely to witness more service delivery protests that could be more violent than the previous

[13] http://www.dailymaverick.co.za/article/2016-05-10-op-ed-the-right-to-basic-education-and-vuwani/#.V1VFUvl97IU

ones, which have been characterized by xenophobic attacks, looting and police brutality. One would agree with Thabile Sokuta's[14] statement that the South African voting public has been promised much and 'a better life for all' each time a new government is to be formed after each election. The circle continues while most South Africans struggle with unemployment, hunger, and deprivation while trying to create a better living environment. Poor living conditions directly undermine the constitutional commitment to basic human rights and dignity. As a result of this frustration, many South Africans take to the streets in protest, in the hope that their voices will be heard.

The Mail and Guardian put service delivery protest number in 2016 (the first 4 months) at 70 demonstrations already. "In the first four months of 2016, Gauteng experienced the highest proportion (26%) of service delivery protests, followed closely by the Eastern Cape (24%). Many of these protests have taken place in informal settlements and underdeveloped areas where service delivery remains a major challenge. The Free State experienced only 1% of such protests this year to date, followed by Northern Cape (4%), Limpopo (6%), North West (7%), Mpumalanga (9%), Western Cape (11%) and KwaZulu-Natal (12%)[15].

There are many reasons cited for the aforementioned protests; some are perceptions, while others are realities. Some literature cites the issue of a 'third force' as an aggravating factor in service-delivery protests. Nontando (Guwa) Ngamlana[16] argues that 'even if third forces existed, the fact remains that it could be riding on people's legitimate grievances, which are numerous'. However, the primary reason is dissatisfaction with lack of provision of basic services such as access to running water, electricity and sanitation.

Part 6: Conclusions and Recommendations

When considering protest action, Equal Education seeks always to act peacefully and within the bounds of the law, and condemns protests which endanger life or threaten the best interests of children and/or the right to basic education.

However, we believe that there are two primary threats to the full realisation of the right to basic education for all, bearing in mind that the state bears the primary responsibility for this and that the right must be taken together with the right to equality and dignity, and the need to address the legacy of colonialism and Apartheid in our education and our society at large.

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[14] Sokuta, T.,2011. *Service delivery: how about real equitable distribution of state revenue to less endowed municipalities?* Available at http://www.afesis.org.za/local-governance/local-governance-articles/209-service-delivery-how-about-real-equitable-distribution-of-state-revenue-to-less-endowed-municipalities.html [Accessed on 6 June 2016]

[15] Lisa Steyn, http://mg.co.za/article/2016-05-18-service-delivery-protests-set-for-new-highs

[16] Ngamlana, N., 2012. *Who is to blame for the violent protests? Is it the state or criminal elements?* 19 April. Available at http://www.afesis.org.za/Local-Governance-Articles/who-is-to-blame-for-the-violent-protests-is-it the state-or-criminal-elements [Accessed 4 June 2016].

The first problem is that the state is failing adequately to respond to the demands of protestors and, in our case, the legitimate and peaceful demands of learners to realise their rights to equality and education. This failure is a failure to fulfill the obligations set out in section 7(2) of the Constitution, and one which contributes to decisions to turn to violence and/or destruction in protest.

The second is the unlawful treatment of the RGA process as a 'request for permission', rather than a notice to exercise a fundamental right to protest, and the raising of unlawful conditions as a barrier to protest. Again, this discourages individuals and organisations from using peaceful protest as a tool to realise their rights and expectations, and unconstitutionally infringes on the right to assemble and demonstrate.

We therefore recommend:

1. That the state, and particularly local government, complies with service delivery obligations set out in the Constitution, and become increasingly responsive to the peaceful demands and demonstrations of communities and movements, particularly relating to the rights of children. In order to address the poor state of our municipalities, Equal Education suggests that the following be implemented:

- Fully engage with communities and organisations from the first instance that a grievance is lodged;
- Receive and acknowledge protests action, treat memoranda of demands with due concern, and carefully monitor the implementation of public promises, whether or not arising out of protest action;
- Strengthen human and resource capacity, which will enable local government to deliver its constitutional mandate to the public;
- Recognise and address the fact that the 'one size fits all' approach does not work for all municipalities, as communities have different needs according to their geographical areas;
- Strengthen national and provincial oversight and supervision of local government affairs, which will enable prompt intervention to take place;
- Make and honour commitments to root out corruption in areas such as recruitment for municipal positions and the awarding of tenders for services;
- Hold senior officials accountable when they fail to deliver and execute their roles affectively; and
- Strengthen government procurement procedures and policies and accountability mechanisms; and act on recommendations resulting from audits. Punitive action should be taken against transgressors.

2. That the state ensures that the RGA is no longer treated as a framework for requesting discretionary permission to protest, by:

- Running training and issuing circulars to all relevant authorities on the right to protest and the duty of responsible officers under the RGA;

- Ensure that no notice procedure under the RGA is termed a permission procedure and no documents for protests are issued under the language of “permit” or “request for permit”
- Creating a platform for reporting the conduct of any person who attaches or purports to attach any unlawful conditions to a gathering, demonstration, assembly or any protest, and ensuring that all such reports are duly investigated, and that in cases where such conduct takes place the relevant individuals face appropriate sanctions;
- Ensuring that all officials recognise that the best interests of children are paramount when learners are engaged in peaceful protest action.

3. We encourage the South African Human Rights Commission to:

1) Endeavor to intervene in substantive and meaningful ways in instances of communities or movements protesting the denial of their right to safe access to quality education, where the responsible Provincial education authorities fail to adequately and timeously address the issues.

2) Consider an investigation into the unlawful limitations and conditions imposed on the right to protest, the abuse of the RGA, and the potential need for amendment of the RGA to ensure that it does not provide avenues for unjustified limitations of the right enshrined in Section 17 of the Constitution.

"EES 1"

CITY OF CAPE TOWN | ISIXEKO SASEKAPA | STAD KAAPSTAD

Civic Centre
12 Hertzog Boulevard
Cape Town 8001
P O Box 298, Cape Town 8000
Ask for: René Everts
Tel: 021400 1479
Fax: 021 400 1465

Iziko loLuntu
12 Hertzog Boulevard
Cape Town 8001
P O Box 298, Cape Town 8000
Cela: René Everts
Umxeba: 021 400 1479
Faksi: 021 400 1465

Burgersentrum
Hertzog-Boulevard 12
Kaapstad 8001
Posbus 298, Kaapstad 8000
Vra vir: René Everts
Tel: 021 400 1479
Faks: 021 400 1465

E-mail: Renenancirene.Everts@capetown.gov.za
Webmail: http://www.capetown.gov.za

17 OCT 2011

GOVERNANCE & INTERFACE - GATHERINGS

APPLICATION FOR PROCESSION, DEMONSTRATION OR GATHERING IN TERMS OF REGULATION OF GATHERINGS ACT NO. 205 OF 1993

1. ORGANISATION

The Convener is acting on behalf of: (indicate the full name of the organisation)

Name of organisation: EQUAL EDUCATION

Organisation's Address: WASHINGTON SQUARE, CAPITAL DRIVE, TEMBOKWEZI, KHAYELITSHA, CAPE TOWN, 7784

2. CONVENOR

2.1 Name: NISHAL ROBB

Physical Home Address: 307 Winston Place, Freeman Road, Greenpoint, Capetown, 8005

Telephone: 021 - 387 0022

Facsimile: -

Cellular: 079 511 6790

E-mail: NISHAL.ROBB@GMAIL.COM

ALTERNATIVE CONVENOR

2.2 Name: WHITNEY CELE

Physical Home Address: 1 York Road, Greenpoint, Cape Town, 8005

Telephone: 021 - 387 0022

Facsimile:

Cellular: 078 14 14 773

E-mail: WHITNEY@EQUALEDUCATION.ORG.ZA

3. THE PURPOSE OF THE GATHERING:

To hand over pupils' demands on the equal education 'School Based Campaigns' and raise awareness on the challenges faced by school pupils in their schools.

4. The procession, demonstration or gathering will be held as follows:

DATE	TIME	DURATION
31 OCTOBER 2014	14 H00 - 17H30	4 HOURS

5. Number of participants to attend the procession, demonstration or gathering: 2 000

6.1 Number of marshals appointed to control the procession, demonstration or gathering 100

6.2 Identified by (e.g. red arm bands) YELLOW BIBS

6.3 The Chief Marshall will be:

Name: VUYISA MBAYI

Physical Home Address: B317 SITE C, KHAYELITSHA, CAPE TOWN 7784

Cellular 072 451 6259

7. Route of the procession, demonstration or gathering:

PARTICIPANTS WILL GATHER AT THE GRAND PARADE AND MARCH TO PROVINCIAL PARLIAMENT ON WALE STREET.

8. Venue for the procession, demonstration or gathering (name of place)

PROVINCIAL PARLIAMENT, 7 WALE STREET

8.1 The participants will assemble at (time) 13 H30 at (place) GRAND PARADE

8.2 The procession, demonstration or gathering will commence at approximately (time) 14 h00 from (place) PROVINCIAL PARLIAMENT and the participants will disperse by no later than (time) 18 H00

8.3 Mode of transport to the place of assembly: BUS and

Mode of transport from the point of dispersal: BUS

8.4 The number and types of vehicles to form part of the march

1 FLAT BED TRUCK

9. LATE APPLICATIONS

The reasons why notice was not given timeously are:

10. PETITIONS

Indicate name of person to receive the memorandum.

Western Cape MEC of Education

10.1 Was the recipient of the memorandum informed?

Yes ☑ No ☐

10.2 If yes, who was informed? (state name and contact number)

11. OTHER DETAILS

Please indicate what arrangements have been made for:

11.1 Parking for vehicles and busses

Buses will drop pupils off at the Grand Parade before the March, and will pick them up again after.

11.2 Toilet facilities, water points, etc.

Water satchels will be provided

11.3 OTHER

SIGNED AT Equal Education, Khayelitsha ON THIS DAY 11th OF October 2014

Nishal Robb

NAME/(S) & SURNAME OF APPLICANT / CONVENOR (PLEASE PRINT IN CAPITAL LETTERS)

SIGNAUTRE OF APPLICANT / CONVENOR

"EES 2"

Rene Nancirene Everts <ReneNancirene.Everts@capetown.gov.za> 10/24/14

to Trevor, WC:Prov, WC:Cape, Jerome, Bradley, Cape, ctcentral.supp., Jacque, Erin, Maridia, me, whitney

OCT
24
Fri

GATHERING APPLICATION: EQUAL EDUCATION

View on Google Calendar

When	Fri Oct 24, 2014 10am – 11am (SAST)
Where	C&S BOARDROOM, 3RD FLOOR, FOYER H, CIVIC CENTRE, CAPE TOWN
Who	WC:Cape Town POP, WC:Prov Crime Events and OPS Centre, Jacque Brand, ctcentral.support@saps.org.za...

Yes Maybe No

Agenda

Fri Oct 24, 2014

9am	Campaigns team check-in
10am	GATHERING APPLICATION: EQUAL EDUCATION
11am	Camp exec meeting
6pm	Friday Futbol

Good day,

You are hereby invited to attend a meeting on 24 October 2014 at 10h00. The purpose of the meeting is to discuss the gathering notice from Equal Education.

Thank you

" EES 3 "

Urgent re Equal Education notice to gather on 31.10.2014 Inbox x Equal Education x

Nishal Robb <nishal.robb@gmail.com> 10/27/14
to Rene, Yana, Dmitri, Yoliswa, Brad, Doron

Dear Ms Everts,

I hope this finds you well. We ask that you kindly forward the following to the deputy responsible officer who chaired our meeting on Friday 24th October:

We would like to thank you for the meeting on Friday morning and for the drive-through of the amended march route on Friday afternoon. It was very useful to go over the route together; we are now all on the same page regarding the time and resources required to ensure that our march on the 31st goes smoothly and safely. The input from the representative from the traffic department was especially helpful; the officer made it clear that our proposed route and its timeframes are reasonable and can be easily accommodated by the City.

We are therefore surprised and concerned to hear from Ms Everts in a telephone conversation that the City's decision regarding our notice to gather may require that we conclude proceedings and disperse by 16h00. It was clear to those present at the morning meeting and at the afternoon drive-through that it will be logistically impossible to limit the timeframe of the march in this way.

To reiterate what was recognised by all parties on Friday:

- Learners are allowed to leave school at 13h30.
- We will be able to assemble at Keizergracht from 15h00 at the very earliest.
- We will be ready to depart from Keizergracht at 15h30 at the very earliest.
- The amended route will take roughly 45 minutes to complete.

Therefore if the City insists that we are to be dispersed by 16h00, it is in effect prohibiting our gathering. This despite the traffic department representative indicating that the march will not cause a *serious* disturbance for non-participants and can be accommodated by the City with relative ease.

As we explained on Friday, learners from over thirty township schools will attend Friday's march. Learners at each of these schools face huge challenges in pursuit of a decent education. They are campaigning peacefully for quality infrastructure, sanitation and fencing, for libraries, computer centres and science labs and against drugs, gangsterism, corporal punishment and the illegal exclusion of pregnant learners. These learners have been preparing for months to express their right to protest against government's continued failure to ensure their rights to education, health and safety, dignity and equality.

The timeframes the City seeks to impose on Friday's gathering will prevent them from realising that right. The City has not shown that the march could constitute a *serious* disturbance to non-participants (in fact it was shown that it would cause very little disturbance to outgoing traffic). We will therefore not hesitate to instruct our attorneys to seek an urgent interdict at the Western Cape High Court should the City seek to indirectly prohibit our gathering by imposing unreasonable timeframes upon it.

Should the City wish to prohibit our gathering outright, please note that the Gatherings Act requires the responsible officer to:

- Have an affidavit saying that the gathering will result in serious disruption of traffic, injury to participants/others or extensive damage to property
- Meet the convenor to discuss the notice and try to negotiate a safe gathering
- Give a letter to the convenor with written reasons for prohibiting the gathering

Thus far, we have received no indication that these requirements have been met.

We took the City's commitment to ensuring that we can go ahead with our gathering in good faith, and remain committed to resolving any reasonable concerns amicably. We hope to receive a written response articulating the City's decision regarding our notice by 09h00 tomorrow morning. Failing this we will be forced to instruct our attorneys to begin to seek a legal solution in this matter.

We look forward to your response and thank you in advance.

Best wishes,
Nishal Robb

"EES4"

EQUAL EDUCATION

National Council: Yoliswa Dwane (Chair), Ntuthuzo Ndzomo, Bayanda Mazwi, Sean Feinberg, Brad Brockman, Doron Isaacs, Daphne Erosi, Andiswa Kolanisi, Thando Dyamara, Mpumeza Mtyaphi, Lwando Mzandisi, Mpho Motloung, Phathu Manwadu, Lovey Mthethwa, Professor Peliwe Lolwana, Professor Paula Ensor, Zackie Achmat

29 October 2014

Chief Magistrate Dimbaza
Cape Town Magistrates Court

C/o Shereen Dollie
By email: sdollie@justice.gov.za

Dear Magistrate Dimbaza

Notice of a gathering in terms of The Gatherings Act no 205 of 1993

We are writing to you at the request of Mrs Dollie following a referal to your office by the City of Cape Town in the course of confirming EE's notice of a gathering intended on 31 October. For ease of reference, correspondence between ourselves Ms Renee Everts from the City of Cape Town to this effect is included.

Equal Education is a national movement of students, parents, teachers and community members campaigning for quality and equality in the South African education system, using research and activism. EE was established in 2008 and our head offices are in Khayelitsha, Cape Town. We have two additional offices in Gauteng and the Eastern Cape, and we also have organisers and members in rural Kwa Zulu Natal and Limpopo.

Since 2008, Equal Education has run successful campaigns for improved school infrastructure, increased access to textbooks and teachers, and improved school sanitation. In September 2014, Gauteng Education MEC Panyaza Lesufi allocated R150 million to improve sanitation at 580 schools in the province, in response to EE's year-long campaign on the issue. In November 2013, Minister Angie Motshekga adopted national Minimum Norms and Standards for School Infrastructure, after nearly three years of active campaigning by EE.

EE has also run successful campaigns against late coming, corporal punishment, and the illegal exclusion of students on the basis of language, culture and pregnancy. While our campaigns are what we are most publicly known for, this work rests on our grassroots organising work with students and parents in townships and poor rural areas.

On **Friday 31 October 2014** EE members from over thirty township schools in the Western Cape intend to gather peacefully and lawfully at Keizergracht and march to the provincial legislature to hand over a memorandum to the new MEC for Education, Debbie Schafer. MEC Schafer has confirmed that she is willing and able to attend the march and to receive the memorandum.

Postal: PO Box 40114, Elonwabeni, 7791 **Head Office:** Washington Sqr, Capital Drive, Thembokwezi, Khayelitsha
E-mail: info@equaleducation.org.za ~ **Website:** www.equaleducation.org.za
Facebook: Equal Education fan page ~ **Twitter:** twitter.com/equal_education
Telephone: 021 387 0022 ~ **Fax:** 0865169396
Registered S10(1)(cN) and S18A(1)(a) Public Benefit Organisation (PBO) (Exemption Number 930 027 221)
Registered Non-Profit Organisation (NPO) (Registration Number 068-288-NPO)

The aim of Friday's march is to draw attention to the challenges faced by learners in schools in poor and working-class communities. Learners at these schools face huge challenges in pursuit of a decent education. Following a democratic process, learners at these schools have undertaken to campaign peacefully for quality infrastructure, sanitation and fencing, for libraries, computer centres and science labs and against drugs, gangsterism, corporal punishment and the illegal exclusion of pregnant learners. These learners have been preparing for months to express their right to protest against government's continued failure to ensure their rights to education, health and safety, dignity and equality.

The timetable for the day is as follows:

- School close at **13h30**. Taxis will transport them to Keizergracht thereafter.
- We will assemble at Keizergracht from **15h00** at the very earliest.
- We will be ready to depart from Keizergracht to the provincial legislature in Wale St at **15h30** at the very earliest.
- The amended route will take roughly 45 minutes to complete.
- Learners will return to Keizergracht from Wale St and depart Cape Town from **18h30** on taxis.

On **17 October 2014**, we submitted a notice of our gathering to the responsible offer at the City of Cape Town. A copy of the notice is included for your reference.

On **Friday 24 October** EE representatives met with representatives of the City of Cape Town, Traffic Police, Metro Police and the South African Police Service (the "stakeholders") to ensure that our march on the 31st of October runs smoothly and safely.

At the meeting, held in terms of the Gatherings Act, the government stakeholders raised five concerns pertaining to the time of the march, the route of the procession, the date of the march, the number of participants and the number of marshals. During the meeting and during a drive-through of the route attended by the Deputy Responsible Officer Mr Hollis-Turner and an official from the Traffic Police, Mr Jacques Brandt, we were able to reach consensus on how to achieve a successful demonstration.

Our consensus was reached on the following basis:

Regarding the date and time: As learners will soon begin to write their exams, Friday 31st is the last feasible date for them to gather before the end of the school year. School ends at 13:30 on Fridays. It is logistically impossible to collect learners and arrive in town ready to march any earlier than 15:30. We explained that EE does not, as a matter of principle, interfere in teaching and learning time, therefore we could not accede to the government stakeholders request that we convince principals to allow our members to leave school early.

Regarding the route and number of participants and marshalls: The City of Cape Town representative advised that the property comprising the Grand Parade is privately owned, as such separate permission would have to be sought in order to gather on the Grand Parade. In addition, the City of Cape Town representative advised that a portion of the property is allocated for a flea market and there would be no physical space for

our members to gather, and furthermore that there would be no space for our taxis to park. We accepted these concerns and agreed to amend the route so as to proceed from Keizergracht.

The remaining concern was the claim that there would be increased traffic in the city centre on this date. This was alleged but no evidence provided to substantiate it. In any case, during the drive-through of the amended march route, Mr Brandt from Traffic Police explained to the deputy responsible officer that they would be able to satisfactorily divert traffic on the day in question, even in the event of high traffic volume.

Over the past seven years of EE's existence we have conducted peaceful, orderly and highly-disciplined demonstrations in various towns and cities across the country including Johannesburg, Bhisho, Matatiele, Pretoria, Polokwane and Cape Town. Our largest march on Human Rights day in 2011, mobilised 20 000 learners, parents, prominent leaders and supporters calling upon Minister Angie Motshekga to promulgate the Norms and Standards for School Infrastructure mentioned previously. Not a single EE event has seen an instance of violence or damage to property.

We were therefore surprised and concerned to hear from Ms Everts in a telephone conversation on Monday 27th October that the City's decision regarding our notice to gather may require that we conclude proceedings and disperse by 16h00. It was clear to those present at the morning meeting and at the afternoon drive-through that to limit the timeframe of the march in this way would effectively prohibit it.

We raised this concern with the Deputy Responsible Officer via an email to Ms Everts on Monday afternoon, and requested a written confirmation of the City's decision regarding the march. We have yet to receive such confirmation.

The constitutional right to assemble peacefully in order to present petitions, for the advancement of the constitutional rights to equality, dignity, safety and security of the person, basic education and freedom of expression, must be weighed against the alleged increase in traffic congestion that may occur between approximately 15:30 and 16:45.

We submit that our right to assemble to assert fundamental rights far outweighs minor inconvenience to outgoing traffic, especially given the opinion of the Traffic Police representative that the march will not cause a *serious* disturbance for non-participants and can be accommodated by the City with relative ease.

We respectfully request that we receive an answer as soon as possible so that we continue our preparation for the 31st of October confidently and with the support of the relevant authorities.

Yours faithfully,

Yoliswa Dwane
Chairperson

Brad Brockman
General Secretary

☎: 021 387 0022 ~ 🖷 Fax: 0865169396 ~ info@equaleducation.org.za

"EES 5"

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
MAGISTRATE OFFICE CAPE TOWN
Private Bag/Privaatsak X9017, CAPE TOWN/KAAPSTAD, 8001- Tel. (021) – 4011 503
Fax/Faks 086 629 1165
Enquiries / Navrae: Mrs/Mev S Dollie

11/5/2

29 October 2014

Attention : Nishal Robb
Equal Education
Washington Square, Capital Drive
Tembokwezi
KHAYELITSHA
7784

Dear Sir / Madam

PERMISSION IN TERMS OF THE PROVISIONS OF THE REGULATION OF GATHERINGS ACT, 1993 (ACT 205/1993) TO HOLD A DEMONSTRATION OR GATHERING IN THE VICINITY OF THE BUILDING OF PARLIAMENT

EQUAL EDUCATION : 31 OCTOBER 2014
YOUR APPLICATION : 29 OCTOBER 2014

By virtue of the powers vested in me by Section 7(2)(b) of the Regulation of Gatherings Act, 1993 (Act 205/1993) your organisation is hereby authorised to stage a demonstration/gathering on 31 October 2014 within the area contemplated in Section 7(1)(b)(i) Schedule 1 [vicinity of buildings of Parliament], in accordance with the approval by the City Council of Cape Town and the conditions set out in their letter dated 28 October 2014.

Yours faithfully

M M DIMBAZA
CHIEF MAGISTRATE : CAPE TOWN