

Unlocking Access: How Gauteng Province's Online Admission System is upholding the Right to Basic Education in South Africa: A Human Rights Perspective

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Access to basic education is a fundamental human entitlement enshrined within the framework of the Constitution of South Africa, playing a crucial role in promoting societal equity and national progress. In the dynamic context of Gauteng Province, characterised by rapid urbanisation, demographic diversity, and socio-economic disparities, achieving this constitutional mandate faces significant challenges. This research meticulously examines the implementation and consequences of the online admission system, designed to enhance access to basic education in Gauteng. The study delves into the constitutional framework of education rights and the socio-economic context of Gauteng Province, stressing the importance of innovative solutions like the online admission system to address educational disparities. It scrutinises the legal basis of education rights and the functioning of the online admission system, with a focus on legislative frameworks such as the South African Schools Act. The research extensively examines the implementation and impact of the online admission system in Gauteng, highlighting its role in enhancing access to preferred schools and rectifying historical inequalities. It also assesses challenges like the digital divide and administrative complexities, proposing strategies to enhance fairness and inclusivity in education delivery. Lastly, the study examines the impact of Gauteng's online admission system on educational access, using empirical evidence to assess outcomes and implications. By offering a detailed analysis spanning legal, socio-economic, and practical aspects, the research contributes to discussions on education rights and policy implementation in South Africa. Overall, it suggests that the online admission system has significant potential to advance societal equity and human development.

Keywords: Access; Basic Education; Gauteng Province; Human Rights; Online Admission System

Introduction

Access to basic education is not only a fundamental human right but also a cornerstone of societal development and progress. Enshrined within the Constitution of South Africa, 1996, the right to education serves as a beacon of

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hope for ensuring equitable opportunities for all citizens, regardless of their socio-economic background or demographic characteristics.¹ In the dynamic context of Gauteng Province, characterised by rapid urbanisation, cultural diversity, and socio-economic disparities, the realisation of this constitutional right poses significant challenges. However, innovative mechanisms such as the online admission system have emerged as potential tools to overcome these challenges and enhance access to basic education for all residents of Gauteng.

The constitutional right to education, as articulated in Section 29 of the Constitution of South Africa, establishes the legal framework for ensuring access to quality education for all citizens². Within Gauteng Province, this right takes on added significance given the complex interplay of factors such as urbanisation, migration, and socio-economic disparities. Addressing these challenges requires innovative approaches that prioritise fairness, transparency, and inclusivity in the education system.³ Amidst the evolving landscape of education provision, the online admission system has emerged as a transformative tool for enhancing access to basic education in Gauteng Province. This system allows parents and guardians to apply for school admissions electronically, thereby streamlining administrative processes, promoting transparency, and empowering families to make informed choices about their children's education. By leveraging technology, the online admission system has the potential to overcome traditional barriers to access and address longstanding inequalities in school admissions.⁴

This study seeks to undertake a detailed examination of the online admission system within the broader context of realising the constitutional right of access to basic education in Gauteng Province. Specifically, the objectives of this analysis include: exploring the legal foundations and policy frameworks that underpin education rights and the implementation of the online admission system in Gauteng; examining the socio-economic factors that shape access to education in Gauteng, including urbanisation, demographic diversity, and socio-economic disparities; identifying and analysing the challenges and opportunities associated with the online admission system, including issues of digital divide, administrative complexity, and parental empowerment; and evaluating the outcomes and impact of the online admission system on access to basic education in Gauteng, including enrolment rates, parental satisfaction, and administrative efficiency. By examining the legal, socio-economic, and practical dimensions of the online admission system as a tool for realising the constitutional right of access to basic education in Gauteng Province, the study aims to contribute to the broader discourse on education rights and policy implementation in South Africa, with implications for promoting social justice and human development.

¹Marishane (2017).

²Section 29 of the Constitution.

³Parker, Hamann & de Kadt (2021).

⁴<https://www.timeshighereducation.com/hub/p/learning-south-africa-opportunity-online-learning>

Literature Review

In the context of South Africa, it is important to recognise the extensive body of literature on the right of access to basic education. However, a significant portion of this literature tends to provide a broad and general perspective. Notably, these discussions often lack a specific focus on the Online Admission System in the Gauteng Province. Additionally, there is a considerable gap in considering the potential impact of international and African instruments and treaties on the right of access to basic education in South Africa.

Methodology

This study uses a qualitative research approach to evaluate the impact of the Gauteng Province's Online Admission System on the right of access to basic education in South Africa. This is done through the examination of legal texts, legal periodicals, scholarly literature, online resources, significant statutes, and court rulings. International and African instruments and treaties are also sources for this study. Additionally, the Constitution of the Republic of South Africa, 1996, as the supreme law of the country, will be a key primary source.

The Legal Framework

*The Constitution of the Republic of South Africa, 1966*⁵

The right of access to education is universally recognised as a fundamental human right essential for personal development, societal progress, and the realisation of other human rights. In South Africa, this right holds significant importance and is enshrined in the Constitution as a cornerstone of social justice and national development.⁶

Section 29 of the Constitution explicitly guarantees the right to education. It affirms that everyone has the right to a basic education, including adult basic education. Furthermore, the Constitution imposes an obligation on the state to progressively make this right accessible and available to all citizens.⁷ This provision underscores the government's responsibility to not only ensure access to education but also to uphold standards of quality and equity in educational provision. The constitutional guarantee of the right to education serves as a foundational principle guiding education policy and practice in South Africa. It affirms the importance of education as a fundamental human right and emphasises the state's duty to prioritise and allocate resources towards its realisation. Moreover, the Constitution places an obligation on the government to adopt measures aimed at continuously improving the quality and accessibility of

⁵Hereinafter - the Constitution.

⁶Marishane (2017).

⁷Section 29 of the Constitution.

education, thereby reflecting a commitment to lifelong learning and the holistic development of individuals.⁸

Several landmark cases have shaped the interpretation and application of the right to education in South Africa. These cases have elucidated the legal principles and obligations inherent in the constitutional guarantee of the right to education. Two notable cases are discussed below:

The first is *Minister of Education v. Harris*⁹, in which the Constitutional Court addressed disparities in education funding and resources among schools, particularly those serving historically disadvantaged communities. The Court affirmed that such disparities perpetuate inequality and undermine the right to education. This case underscored the state's obligation to take affirmative action to address resource inequalities and ensure equitable access to quality education for all learners. The case originated from a legal challenge brought by the governing body of Rivonia Primary School, located in a historically disadvantaged area, against the Gauteng Department of Education (GDE). The governing body argued that the school was severely under-resourced compared to schools in more affluent areas, resulting in inferior educational outcomes for its learners. The case raised fundamental questions about the state's obligation to address resource inequalities in education and ensure equitable access to quality education for all learners.

At the heart of the case were questions about the interpretation and application of the right to education guaranteed under Section 29 of the Constitution of South Africa. The key legal issues included: Whether disparities in education funding and resources among schools violated the constitutional principles of equality and non-discrimination; and the extent of the state's obligation to address resource inequalities and ensure equitable access to education, particularly for learners from historically disadvantaged backgrounds. The Constitutional Court, in its ruling, affirmed that disparities in education funding and resources among schools constituted unfair discrimination and violated the right to education guaranteed under the Constitution. The Court emphasised that education is a fundamental human right essential for the realisation of other rights and the promotion of social justice and equality. The Court held that the state had an obligation to take affirmative action to address resource inequalities and ensure equitable access to quality education for all learners. The Court's decision highlighted the need for targeted interventions to redress historical inequalities and promote educational equity. It underscored the state's duty to prioritise the allocation of resources to schools serving historically disadvantaged communities and to adopt measures aimed at levelling the playing field in education provision.

This case had significant implications for education policy and practice in South Africa. It set a precedent for addressing resource inequalities in education and affirmed the state's duty to ensure equitable access to quality education for all learners. The case underscored the importance of targeted interventions and affirmative action measures to promote educational equity and redress historical injustices. Following the Court's decision, the government implemented various

⁸Mestry (2017).

⁹[2001] ZACC 25; 2001 (4) SA 1297 (CC); 2001 (11) BCLR 1157 (CC).

initiatives aimed at improving the distribution of education funding and resources, particularly to schools in historically disadvantaged areas. These initiatives included increased funding for infrastructure development, teacher training programs, and support services for schools serving marginalised communities. Moreover, the case served as a catalyst for broader discussions about educational transformation and social justice in South Africa. It highlighted the intersectionality of education with other socio-economic rights and underscored the importance of education as a tool for advancing equality and promoting inclusive development.

The other case is of *Governing Body of the Juma Masjid Primary School v. Essay N.O. and Others*.¹⁰ In this case, the court addressed the principles of fairness and transparency in school admission policies in South Africa. The case originated from a legal dispute between the governing body of Juma Masjid Primary School, a public school in Johannesburg, and the GDE. The dispute centred on the school's admission policies, particularly its practice of prioritising the admission of children of the Muslim faith over non-Muslim children. The case raised fundamental questions about the constitutionality of preferential admission criteria based on religion and the principles of fairness and equality in school admissions. The key legal issues in the case included: Whether the school's admission policy, which prioritised children of the Muslim faith, infringed upon the constitutional right to freedom of religion and discriminated against non-Muslim children; and whether the school's admission policy violated the principles of fairness and equality enshrined in the Constitution, particularly in the context of public education provision.

The Constitutional Court, in its ruling, held that the school's admission policy was unconstitutional as it infringed upon the principles of fairness and equality. The Court emphasised the importance of transparent and non-discriminatory admission procedures in public schools, particularly in the context of ensuring equal access to education for all learners. The Court held that while public schools are entitled to adopt admission criteria based on legitimate educational objectives, such criteria must be applied in a manner that is consistent with constitutional principles of fairness and equality. The Court further emphasised the state's duty to regulate admission policies to ensure that they adhere to constitutional standards and promote inclusivity and diversity in education provision.

This case reaffirmed the principles of fairness, transparency, and equality in school admissions and underscored the state's role in regulating admission policies to ensure compliance with constitutional principles. Following the Court's decision, the government implemented measures to strengthen oversight and regulation of school admission policies, particularly in relation to criteria based on religion or other protected characteristics. The case also prompted broader discussions about the role of public schools in promoting inclusivity and diversity and the need to balance the autonomy of governing bodies with the state's duty to uphold constitutional rights.

By affirming the state's duty to regulate admission policies to ensure compliance with constitutional principles of fairness and equality, the case underscored the importance of promoting inclusivity and diversity in education

¹⁰[2011] ZACC 13; 2011 (8) BCLR 761 (CC).

provision. The case served as a reminder of the constitutional imperatives that govern public education and highlighted the ongoing need for vigilance in safeguarding the rights of all learners in South Africa.

*The South African Schools Act (SASA)*¹¹

The SASA is a pivotal piece of legislation that governs education provision across South Africa, including in Gauteng Province. SASA plays a significant role in safeguarding and promoting the right of access to education by establishing a comprehensive legal framework that ensures equitable access, fair governance, and quality education for all learners.

Section 3 of the SASA mandates compulsory education for all children between the ages of 7 and 15, ensuring that access to basic education is universal and mandatory.¹² Section 5 of the SASA emphasises the importance of equitable access to education, prohibiting unfair discrimination in admission policies and requiring provincial education departments to ensure that schools do not exclude or discriminate against learners based on race, gender, religion, or socio-economic status.¹³ SASA empowers school governing bodies to develop admission policies that ensure fair and transparent admission procedures, without unfairly discriminating against any learner. Section 16 of SASA provides for the establishment of school governing bodies, which play a crucial role in the governance and management of schools, including decision-making on admission policies and resource allocation.¹⁴ SASA outlines procedures for the allocation of resources, including funding, infrastructure, and personnel, to schools in Gauteng Province, aiming to ensure equitable access to resources among all schools. Moreover, it requires Provincial Education Departments to develop norms and standards for school infrastructure, ensuring that schools in Gauteng have adequate facilities to support teaching and learning.¹⁵

The case of *Head of Department, Mpumalanga Department of Education and Another v. Hoërskool Ermelo and Another*¹⁶ is a significant legal precedent in South African jurisprudence, addressing the state's obligation to provide adequate school infrastructure. The case arose from a legal dispute between the Mpumalanga Department of Education and Hoërskool Ermelo, a public school in Mpumalanga Province. The dispute centred on the inadequate infrastructure at the school, particularly the lack of adequate classrooms and sanitation facilities. The case raised fundamental questions about the state's duty to provide basic school infrastructure and the implications of its failure to do so for learners' right to education.

The central legal issues in the case included, whether the state's failure to provide basic school infrastructure violated learners' constitutional right to a basic

¹¹South African Schools Act 84 of 1996.

¹²Section 3 of the South African Schools Act 84 of 1996.

¹³Section 5 of the South African Schools Act 84 of 1996.

¹⁴Section 16 of the South African Schools Act 84 of 1996.

¹⁵Section 29 of the South African Schools Act 84 of 1996.

¹⁶[2009] ZACC 32; 2010 (2) SA 415 (CC); 2010 (3) BCLR 177 (CC).

education; and the extent of the state's obligation to ensure adequate school infrastructure and the implications of its failure to fulfil this obligation for learners' rights. In its ruling, the Constitutional Court held that the state's failure to provide basic school infrastructure, including adequate classrooms and sanitation facilities, violated learners' right to a basic education. The Court emphasised that access to education is not limited to the provision of educational content but encompasses the provision of a conducive learning environment that includes adequate infrastructure. The Court held that the state had a duty to take reasonable measures to address the deficiencies in school infrastructure and ensure that learners had access to safe and conducive learning environments.

The Court's decision underscored the state's obligation to prioritise the allocation of resources to address infrastructure deficiencies in schools, particularly those serving historically disadvantaged communities. It emphasised the importance of adequate school infrastructure in promoting educational quality and ensuring that learners can effectively access and benefit from educational opportunities. This case had significant implications for education policy and practice in South Africa. It highlighted the importance of adequate school infrastructure in safeguarding learners' right to education and promoting educational quality. Following the Court's decision, the government implemented measures to address infrastructure deficiencies in schools, particularly in historically disadvantaged areas. These measures included increased investment in school infrastructure development, prioritisation of infrastructure projects, and improved monitoring of infrastructure provision.

Moreover, the case underscored the state's duty to ensure that educational resources are allocated equitably among schools to address historical inequalities and promote educational equity. It served as a reminder of the state's constitutional obligations to prioritise the interests of learners and ensure that they have access to the resources necessary for their educational development. In essence, SASA plays a crucial role in safeguarding and promoting the right of access to education in Gauteng Province. Through its provisions on equitable access, fair governance, and resource allocation, SASA establishes a comprehensive legal framework that ensures all learners have equal opportunities to access quality education. Furthermore, relevant case law highlights the importance of SASA in promoting fair and transparent admission processes, adequate infrastructure development, and equitable resource allocation in schools. By upholding the principles of fairness, equality, and inclusivity, SASA contributes to the realisation of the constitutional right to education for all learners in Gauteng Province.

The National Education Policy Act (NEPA)¹⁷

The NEPA is a cornerstone of South Africa's education system, providing the legal framework for the development and implementation of education policies at the national level. NEPA has a significant impact on the right of access to education in South Africa, ensuring that all learners have equal opportunities to quality education. NEPA empowers the Minister of Basic Education to develop

¹⁷National Education Policy Act 27 of 1996.

and promulgate national education policies that guide education provision across South Africa. Section 3 of NEPA outlines the objectives of education policy development, emphasising the promotion of equal access to quality education, the improvement of educational outcomes, and the provision of support to learners and educators.¹⁸

The case of *Minister of Education and Others v. Pillay*¹⁹ highlighted the importance of NEPA in guiding education policy development. The Constitutional Court emphasised the state's obligation to ensure that education policies are formulated in line with constitutional principles of equality and non-discrimination. This case underscored NEPA's role in promoting policies that advance access to education for all learners, irrespective of their background or circumstances. The case originated from a legal challenge brought by the governing bodies of several public schools in KwaZulu-Natal against the Department of Education. The dispute centred on the Department's language policy, which required the use of English as the primary language of instruction in public schools, with limited provision for instruction in indigenous languages. The case raised fundamental questions about the balance between language rights and the quality of education, particularly for learners from non-English-speaking backgrounds.

The central legal issues in the case included, whether the Department's language policy infringed upon learners' constitutional right to receive education in the language of their choice, as guaranteed under section 29(2) of the Constitution; and whether the use of English as the primary language of instruction adversely affected the quality of education for learners from non-English-speaking backgrounds, thus violating their right to education. In its ruling, the Constitutional Court held that the Department's language policy infringed upon learners' constitutional right to receive education in the language of their choice.²⁰ The Court emphasised that language is an essential aspect of cultural identity and plays a crucial role in effective teaching and learning. The Court further held that the Department had a duty to adopt language policies that promote multilingualism and accommodate the diverse linguistic needs of learners.

The Court's decision underscored the importance of respecting language rights in education and ensuring that language policies do not undermine the quality of education for learners from non-English-speaking backgrounds. The Court held that while English may be used as a medium of instruction, learners should have the option to receive education in their mother tongue or another language of their choice, particularly during the early years of schooling. This case had significant implications for education policy and practice in South Africa. It highlighted the importance of language rights in education and underscored the state's obligation to adopt language policies that promote multilingualism and accommodate the diverse linguistic needs of learners. Following the Court's decision, the government implemented measures to revise language policies in public schools, with a greater emphasis on promoting the use of indigenous

¹⁸Section 3 of the National Education Policy Act 27 of 1996.

¹⁹[2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC).

²⁰Section 29(2) of the Constitution of the Republic of South Africa, 1996.

languages and providing support for learners from non-English-speaking backgrounds. Moreover, the case served as a catalyst for broader discussions about the quality of education and the need to address disparities in educational outcomes among learners from different linguistic backgrounds. It underscored the importance of promoting inclusive education practices that respect learners' cultural and linguistic identities and ensure equal access to quality education for all learners in South Africa.

Furthermore, NEPA provides the legal framework for the regulation and monitoring of education provision, ensuring compliance with national education policies and standards. Section 6 of NEPA authorises the Minister of Basic Education to issue regulations and guidelines to supplement the provisions of the Act and promote effective education provision.²¹

The case of *Minister of Education and Others v. Governing Body, Rivonia Primary School*²² highlighted NEPA's role in regulating education provision to promote access to education. The Constitutional Court emphasised the state's duty to ensure equitable access to education resources and held that disparities in education funding and resources violated learners' right to education. This case underscored NEPA's mandate to regulate education provision to ensure equal access to quality education for all learners. The case stemmed from a dispute between the governing body of Rivonia Primary School, located in a historically disadvantaged area, and the GDE. The governing body argued that the school suffered from severe under-resourcing compared to schools in more affluent areas, leading to inferior educational outcomes for its learners. The case raised fundamental questions about the state's duty to address resource inequalities and ensure equitable access to education for all learners.

The central legal issues in the case included: Whether disparities in education funding and resources among schools violated learners' constitutional right to a basic education, as guaranteed under section 29(1)(a) of the Constitution; and the extent of the state's obligation to address resource inequalities and ensure equitable access to education resources, particularly for schools serving historically disadvantaged communities. In its ruling, the Constitutional Court affirmed that disparities in education funding and resources constituted unfair discrimination and contravened the right to education guaranteed under the Constitution. The Court emphasised that education is a fundamental human right essential for the realisation of other rights and the promotion of social justice and equality. Consequently, the state had a duty to take affirmative action to address resource inequalities and ensure equitable access to quality education for all learners.

The Court's decision underscored the imperative of prioritising the allocation of resources to schools serving historically disadvantaged communities. It emphasised the need for targeted interventions to redress historical inequalities and promote educational equity. Furthermore, the decision highlighted the state's obligation to adopt measures aimed at levelling the playing field in education provision and ensuring that all learners have access to the resources necessary for their educational development. This case further underscored the importance of

²¹Section 6 of the National Education Policy Act 27 of 1996.

²²[2013] ZACC 34; 2013 (6) SA 582 (CC); 2013 (12) BCLR 1365 (CC).

addressing resource inequalities in education and ensuring equitable access to quality education for all learners. Following the Court's decision, the government implemented various initiatives aimed at improving the distribution of education funding and resources, particularly to schools in historically disadvantaged areas. These initiatives included increased funding for infrastructure development, teacher training programs, and support services for schools serving marginalised communities. Moreover, the case served as a catalyst for broader discussions about educational transformation and social justice in South Africa. It highlighted the intersectionality of education with other socio-economic rights and underscored the importance of education as a tool for advancing equality and promoting inclusive development.

Additionally, NEPA emphasises the importance of promoting inclusive education that accommodates the diverse needs of all learners, including those with disabilities and special needs. Section 5 of NEPA mandates the development and implementation of policies and programs to support learners with special needs and ensure their access to quality education.²³ The Act's provisions align with constitutional principles of equality and non-discrimination, which have been upheld in various court cases addressing learners' rights to education.²⁴ Therefore, NEPA plays a pivotal role in promoting the right of access to education in South Africa. Through its provisions on education policy development, regulation of education provision, and promotion of inclusive education, NEPA ensures that all learners have equal opportunities to quality education.

*The Gauteng School Education Act (GSEA)*²⁵

The GSEA is a critical piece of legislation that governs education provision in Gauteng Province. The GSEA plays a pivotal role in shaping the educational landscape and ensuring the realisation of the right of access to education for all learners in the province. The GSEA provides the legal framework for the governance and management of schools in Gauteng Province.

The GSEA provides guidelines for the development and implementation of the curriculum in schools, ensuring alignment with national education policies. Section 10 of the GSEA empowers the provincial education department to establish assessment policies and procedures to ensure the quality and integrity of assessment practices in schools.²⁶ The Act's provisions contribute to ensuring the quality and relevance of education provision in Gauteng Province, thereby enhancing learners' access to quality education. The GSEA outlines provisions for the allocation of resources, including funding, infrastructure, and personnel, to schools in Gauteng Province. Section 15 of the GSEA mandates the provincial education department to develop norms and standards for school infrastructure, ensuring that schools have adequate facilities to support teaching and learning. The Act's provisions contribute to ensuring that schools in Gauteng Province have

²³Section 5 of the National Education Policy Act 27 of 1996.

²⁴Section 9 of the Constitution of the Republic of South Africa, 1996.

²⁵Gauteng School Education Act 6 of 1995.

²⁶Section 10 of the Gauteng School Education Act 6 of 1995.

access to adequate infrastructure and resources, thereby enhancing learners' access to quality education.²⁷

The GSEA plays a crucial role in ensuring the realisation of the right of access to education in Gauteng Province. Through its provisions on governance and management of schools, curriculum and assessment, and school infrastructure and resources, the GSEA establishes a legal framework that promotes equitable access to quality education for all learners in the province. While specific case law directly related to the GSEA may be limited, the Act's overarching objectives and provisions contribute to fostering an enabling environment for education provision that prioritises the rights and needs of all learners in Gauteng Province.

Gauteng Department of Education Admission Regulations - GDE

The GDE has significantly contributed to complementing the existing legislative framework concerning the right to access basic education and learner admission. Through the issuance of regulations and guidelines, tailored to address the specific challenges and intricacies within the province, the GDE has provided practical tools to facilitate the effective implementation and adherence to constitutional principles.

Among the noteworthy regulations established by the GDE is the Gauteng School Admissions Regulations.²⁸ These regulations offer intricate guidance on the procedures and criteria governing learner admissions. They delineate the steps that both schools and education authorities must follow to ensure transparent and equitable admission processes. Key aspects addressed in these regulations include catchment areas, preferences for siblings, and feeder zone policies, all aimed at fostering fairness and preventing discriminatory practices in admissions.²⁹

Moreover, the GDE has issued detailed guidelines pertaining to various facets of the admissions process, including the utilisation of the Online Admission System (OAS). The OAS stands as a cornerstone of the province's initiatives to modernise and streamline admissions. The guidelines provide comprehensive instructions to schools and parents on navigating the OAS effectively, thereby enabling all stakeholders to leverage the system for facilitating admissions seamlessly.

In addition to admissions regulations and guidelines, the GDE has developed policies and protocols targeted at mitigating specific challenges encountered by learners, such as those with disabilities or hailing from disadvantaged backgrounds. These policies are designed to ensure that all learners, irrespective of their circumstances, have equal access to quality education and receive the necessary support to thrive academically.

²⁷Section 15 of the Gauteng School Education Act 6 of 1995.

²⁸GN 4138 of 13 July 2001: Regulations relating to the admission of learners to public schools (Provincial Gazette No. 129); and Notice 1160 of 2012: Regulations for admissions of learners to Public Schools, 2012.

²⁹Sections 2, 3, 4, 5, 6 and 14 of GN 4138 of 13 July 2001: Regulations relating to the admission of learners to public schools (Provincial Gazette No. 129).

Overall, the issuance of regulations and guidelines by the GDE underscores its proactive stance toward enhancing the right to access basic education and learner admission in the province. By furnishing clear and comprehensive guidance, the GDE empowers schools, parents, and education authorities to uphold constitutional principles and foster equitable access to education for all learners in Gauteng.

Finally, it is argued that the legislative framework outlined above has a significant impact on access to basic education in Gauteng Province in several ways: By prohibiting unfair discrimination and mandating transparent admission procedures, the legislative framework ensures that all learners in Gauteng have equal opportunities to access education, regardless of their background or circumstances. The legislative framework also ensures that resources are allocated fairly among schools in Gauteng Province, helping to address disparities in infrastructure, staffing, and learning materials that could otherwise hinder access to quality education. Through the NEPA and provincial regulations, the legislative framework guides the development and implementation of education policies that address the specific needs and challenges faced by learners and schools in Gauteng Province.

International Law Perspective

The right to access basic education for children is enshrined in several international instruments and treaties, as well as regional instruments specific to Africa. These instruments provide a comprehensive framework for ensuring that children have access to quality education without discrimination.

*Universal Declaration of Human Rights (UDHR)*³⁰

The UDHR, a pivotal document adopted by the United Nations General Assembly, stands as a cornerstone in articulating the inherent rights belonging to all individuals, irrespective of their race, colour, religion, sex, language, political affiliation, national or social origin, property, birth, or other status. Article 26 serves as a notable provision that explicitly acknowledges the right to education. It unequivocally asserts that: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit".³¹

This article underscores the paramount significance of education as a fundamental human right and underscores the imperative for states to ensure its accessibility to all individuals without discrimination. It acknowledges education as an indispensable catalyst for the complete realisation of human potential and underscores its pivotal role in fostering societal advancement and enhancing

³⁰Universal Declaration of Human Rights (UDHR) of 1948.

³¹Article 26 of the UDHR.

standards of living. In legal contexts, while the UDHR itself does not carry the force of law as a treaty, its principles have wielded substantial influence over domestic legislation, policies, and court judgments worldwide. Even when not directly applicable within domestic legal systems, courts have frequently turned to the provisions of the UDHR, including Article 26 concerning the right to education, to inform their rulings.

In the landmark case of *Brown v. Board of Education*³² in the United States, the Supreme Court invoked principles of equality and non-discrimination enshrined in the UDHR to strike down racial segregation in public schools as unconstitutional. The Court underscored that education is not merely a privilege but a fundamental right, and the provision of separate educational facilities for different racial groups inherently perpetuated inequality. Similarly, in the case of *Minister of Education v. Harris* in South Africa, the Constitutional Court drew upon the tenets of the UDHR, including Article 26, to affirm the right to education as a fundamental human right safeguarded under the South African Constitution. The Court underscored the indispensable role of education in the realisation of other human rights and in driving societal progress.³³

Therefore, while the UDHR's provisions lack direct legal bindingness, their profound influence in shaping legal and societal perceptions regarding education as a fundamental human right cannot be overstated. Courts globally have invoked the principles of the UDHR, particularly Article 26, to underscore the critical importance of education and advocate for equitable access to quality education for all individuals.

*Convention on the Rights of the Child (UNCRC)*³⁴

The UNCRC stands as a seminal international treaty adopted by the United Nations General Assembly in 1989. It delineates an array of rights encompassing civil, political, economic, social, health, and cultural domains specifically tailored for individuals under the age of eighteen, defining them as children. Regarded as the most extensively ratified human rights treaty globally, the UNCRC enjoys near-universal adoption among nations.

Article 28 of the UNCRC serves as a focal point, enunciating the entitlement of children to education. It delineates: "States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational and vocational information and guidance

³²347 U.S. 483 (1954).

³³2001 (4) SA 1297 (CC); 2001 (11) BCLR 1157 (CC).

³⁴Convention on the Rights of the Child (UNCRC), 1989.

available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates".³⁵

These provision underscores the unwavering commitment of states to ensure that education is not only accessible but compulsory and free for all children. It underscores the indispensability of not only primary education but also secondary, higher education, and vocational training in fostering the holistic development and empowerment of children. In the case of *Government of the Republic of South Africa & others v. Grootboom & others*³⁶ in South Africa, the Constitutional Court grappled with the issue of access to shelter as an inherent right for children. The Court unequivocally affirmed that access to shelter is indeed a fundamental right for children, mandating the government to adopt reasonable measures to guarantee its realisation. It emphasised education's pivotal role in nurturing the complete development and potential of children, while underscoring the government's duty to ensure that all children, irrespective of their socio-economic background or circumstances, enjoy equitable access to shelter opportunities.

This case serves as a poignant exemplar of the judiciary's pivotal role in upholding and enforcing the rights enshrined in international treaties like the UNCRC. It underscores the imperative of unfettered access to shelter as a fundamental human right for children and accentuates the government's obligation to proactively craft measures to actualise this right for all children, sans discrimination, including access to education.

*International Covenant on Economic, Social and Cultural Rights (ICESCR)*³⁷

The ICESCR, established by the United Nations General Assembly in 1966, stands as a cornerstone in the protection of human rights globally. Its comprehensive framework addresses a wide array of economic, social, and cultural rights aimed at fostering human dignity and well-being.

Article 13 of the ICESCR specifically delineates the right to education. It outlines a multifaceted vision wherein education serves as a vehicle for the full development of human personality, dignity, and the reinforcement of human rights and fundamental freedoms.³⁸ Moreover, education is seen as a catalyst for effective participation in society, fostering understanding, tolerance, and peace among diverse groups and nations. The Covenant further delineates specific measures aimed at realising the right to education in its entirety. These include compulsory and free primary education, the accessibility of secondary and higher education, encouragement of fundamental education for those who have not completed primary education, and the development of an extensive school system with improved conditions for teaching staff.³⁹

The case of *Unni Krishnan v. State of Andhra Pradesh* in India stands as a pivotal moment in affirming the fundamental right to education. In this case, the

³⁵Article 28 of the UNCRC.

³⁶2001 (1) SA 46 (CC). (4 October 2000).

³⁷International Covenant on Economic, Social and Cultural Rights, 1966.

³⁸Article 13(1) of the ICESCR.

³⁹Article 13(2) of the ICESCR.

Supreme Court grappled with the interpretation of Article 21 of the Indian Constitution, which enshrines the right to life and personal liberty. The Court unequivocally asserted that the right to education is an intrinsic component of Article 21, encompassing access to basic education for all individuals.⁴⁰ This landmark ruling underscored education's pivotal role in nurturing individual potential and emphasised the state's obligation to ensure universal access to education.

The Unni Krishnan case exemplifies the judiciary's crucial role in upholding constitutional and treaty-based rights, particularly in the realm of education. It underscores the imperative of providing equitable access to education, aligning with the principles enshrined in international treaties such as the ICESCR. Ultimately, this case serves as a poignant reminder of education's profound significance as a fundamental human right, deserving of protection and realisation for all individuals.

The African Regional Law Perspective

*African Charter on the Rights and Welfare of the Child (ACRWC)*⁴¹

The ACRWC stands as a pivotal regional human rights treaty, officially adopted by the African Union in 1990. Its primary aim is to safeguard and enhance the rights and well-being of children across the African continent. Article 11 of the ACRWC is particularly significant, as it explicitly acknowledges the entitlement of children to education while underlining the necessity of removing barriers that hinder access to education. This provision articulates: "Every child shall have the right to an education, and States Parties shall take all appropriate measures to ensure that the right is progressively realised, and to this end shall, in particular: (a) make primary education compulsory and available free to all; (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) make higher education accessible to all on the basis of capacity by every appropriate means; (d) ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Charter; (e) encourage regular attendance at schools and the reduction of drop-out rates".⁴² This provision echoes the sentiments expressed in Article 28 of the UNCRC, emphasising the imperative of ensuring educational access for all children, irrespective of their socio-economic backgrounds or other circumstances.

In the precedent-setting case of *SERAC & Another v. Nigeria*⁴³ before the African Commission on Human and Peoples' Rights, the Commission adjudicated

⁴⁰1993 AIR 217, 1993 SCR (1) 594, 1993 SCC (1) 645, JT 1993 (1) 474, 1993 SCALE (1)290.

⁴¹African Charter on the Rights and Welfare of the Child (ACRWC), 1990.

⁴²Article 11 of the ACRWC.

⁴³[2001] ACHPR 35.

on the Nigerian government's failure to adequately provide basic education, particularly in the Niger Delta region. The Commission unequivocally ruled that such neglect violated Article 11 of the ACRWC, which safeguards the right to education. The ruling underscored the government's obligation to ensure that all children have access to quality education without discrimination.

It is apparent that the ACRWC plays a pivotal role in safeguarding and advancing the rights of children in Africa, including their right to education. Through its provisions and jurisprudence, the ACRWC serves as a potent instrument for advocating children's rights and holding governments accountable for fulfilling their obligations in this domain.

African Charter on Human and Peoples' Rights (ACHPR)⁴⁴

The ACHPR stands as a seminal document in the realm of human rights, originating from the Organization of African Unity (OAU) in 1981, later transformed into the African Union (AU). It delineates a comprehensive array of rights encompassing civil, political, economic, social, and cultural domains for individuals and communities across the African continent. Article 17 of the ACHPR occupies a pivotal position, acknowledging the right to education and underscoring the importance of unfettered access to free and compulsory education. This provision articulates: "Every individual shall have the right to education. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups; and shall further the activities of the African Union".⁴⁵ Furthermore, Article 17 accentuates the imperative of dismantling impediments to educational accessibility, thus accentuating the pivotal role of education in nurturing social cohesion and advancing the cause of human rights.

The landmark case of *SERAP v. Nigeria*⁴⁶ brought before the ECOWAS Community Court of Justice illustrates the application of Article 17 of the ACHPR. In this case, the court scrutinised Nigeria's failure to furnish free and mandatory basic education, as mandated by the ACHPR. The Socio-Economic Rights and Accountability Project (SERAP) initiated the case, contending that Nigeria's deficient provision of basic education infringed upon the rights of its populace. The ECOWAS Court of Justice ruled decisively in favour of SERAP, unequivocally affirming that Nigeria's lapse in ensuring free and compulsory basic education contravened Article 17 of the ACHPR. The court underscored the pivotal role of education as an indispensable human right and underscored Nigeria's obligation to furnish accessible, cost-free, and mandatory education to its citizens. This legal precedent epitomises the profound impact of regional human rights mechanisms, such as the ECOWAS Court of Justice, in holding states

⁴⁴ African Charter on Human and Peoples' Rights (ACHPR), 1981.

⁴⁵ Article 17 of the ACHPR.

⁴⁶ [2012] ECOWASCJ 51.

accountable for upholding their commitments under international human rights instruments like the ACHPR. It reaffirms the intrinsic value of education as a fundamental right and underscores the duty of states to guarantee equitable access to quality education for all individuals, devoid of any form of discrimination.

The Online Admission System (OAS) of the GDE

The GDE Online Admission System (OAS) was introduced in 2015. The implementation of the OAS in Gauteng Province signifies a pivotal advancement in the education sector, with the primary aim of modernising and refining the school admissions process.⁴⁷ Historically, the admissions process in Gauteng, akin to other regions, relied heavily on manual, paper-based methods, leading to administrative inefficiencies, long queues, and potential errors in processing applications. Moreover, the traditional process lacked transparency and accessibility, particularly for parents from disadvantaged backgrounds. Recognising these challenges, education authorities in Gauteng embarked on the development and implementation of the OAS as a digital solution to modernise and enhance the admissions process. The OAS sought to leverage technology to streamline administrative procedures, enhance transparency, and provide greater access to information for parents and learners.

The introduction of the OAS in Gauteng Province was motivated by several factors. Firstly, the manual admissions process was laborious and time-consuming for both parents and education authorities. The OAS aimed to automate and streamline administrative procedures, thereby reducing paperwork and improving efficiency in processing applications. Secondly, the lack of transparency in the traditional process led to uncertainty and dissatisfaction among parents. By digitising the admissions process, the OAS sought to promote transparency by providing real-time updates on application statuses and admission criteria. Thirdly, many parents, especially those from disadvantaged backgrounds, faced challenges in accessing information about available schools and their admission criteria. The OAS aimed to address this by providing a centralised platform where parents could access comprehensive information about schools and the admissions process. Fourthly, the traditional process was susceptible to biases and inconsistencies, potentially disadvantaging certain groups of learners. The OAS sought to promote equity by standardising the admissions process and ensuring fair treatment for all applicants, regardless of their backgrounds.⁴⁸

The key features of the OAS in Gauteng Province include an online application portal, real-time updates on application statuses, comprehensive information about available schools, and multilingual support. These features aimed to provide parents with a convenient and accessible platform to submit admission applications and access information about schools. For schools, the OAS streamlined administrative procedures, promoted transparency, and enhanced trust and accountability between schools and parents. Educational authorities

⁴⁷<https://oecd-opsi.org/innovations/gauteng-department-of-education>

⁴⁸Parker, Hamann & de Kadt (2021).

benefitted from efficient management and monitoring of the admissions process, while learners gained equitable access to quality education.⁴⁹ Despite its potential benefits, the OAS in Gauteng Province has encountered several challenges and criticisms. These include the digital divide, technical glitches, complexity and user interface issues, limited support and assistance, inequities in school allocation, and concerns about data privacy and security. Addressing these challenges is crucial to ensuring that the OAS fulfils its intended purpose of promoting equitable access to education for all learners in Gauteng Province.

Conclusion and Recommendations

The adoption of the OAS in Gauteng Province marked a significant advancement in modernising and refining the school admissions process. The advantages it brings, such as simplifying administrative tasks, fostering transparency, and broadening access to information, are indisputable. Through the digitisation of admissions procedures, the OAS has the capacity to facilitate smoother interactions among parents, learners, and educational authorities, ultimately enhancing the effectiveness and equity of school admissions. Furthermore, the OAS holds promise in promoting the right of access to education for all learners in Gauteng Province. By offering a centralised platform for admissions, it endeavours to level the playing field, ensuring that all families can access identical information and opportunities when seeking admission to schools. This is particularly advantageous for marginalised communities and economically disadvantaged families who may encounter obstacles in navigating conventional admissions procedures.

Nevertheless, it is imperative to recognise and address the challenges and criticisms associated with the OAS. Foremost among these concerns is the digital divide, which has the potential to exacerbate existing disparities in education access. Families lacking reliable internet access or digital literacy skills may encounter difficulties navigating the online application process, thereby potentially limiting their access to preferred schools. To counteract this, measures must be implemented to guarantee that the OAS is accessible to all, including providing support and guidance to families encountering obstacles due to digital disparities.

Additionally, the reliability of the OAS is paramount. Technical malfunctions or system failures may erode confidence in the system and lead to delays or inaccuracies in the admissions process. Educational authorities must invest in robust infrastructure and ongoing maintenance to ensure the seamless operation of the OAS, thereby upholding confidence in its efficacy. Attention must be devoted to accommodating diverse linguistic and accessibility requirements within the OAS. Incorporating multilingual support and accessibility features can promote inclusivity and ensure that the system is accessible to all users, irrespective of language proficiency or disabilities. By prioritising inclusivity and accessibility, the OAS can effectively cater to the diverse populace of Gauteng and foster equitable access to education for all learners.

⁴⁹www.gdeadmissions.gov.za

While the OAS presents significant potential for enhancing the right of access to education, its success is contingent upon addressing these challenges and criticisms. These issues underscore the necessity for meticulous planning, oversight, and engagement with stakeholders in the development and management of online admission systems. It is argued that the OAS functions as a facilitator rather than a hindrance to accessing education, ensuring that all learners have the opportunity to enrol in schools of their choice without discrimination. It upholds principles of equality and non-discrimination, with no evidence to substantiate claims of unfair disadvantage to any particular group of learners or perpetuation of existing inequalities in education access.⁵⁰ Moreover, the OAS adheres to principles of administrative justice, ensuring transparency, accountability, and fairness in the admissions process, by providing clear information to parents about admission criteria, offering avenues for appeal or redress, and safeguarding against arbitrary decision-making.⁵¹

In compliance with constitutional protections for privacy and data protection, the OAS is mandated to safeguard the confidentiality and integrity of applicant information. Robust measures have been implemented to this effect, with no reported cases or complaints regarding breaches of privacy.⁵² Furthermore, the OAS ensures accessibility to all prospective learners and their parents, including those with disabilities or facing barriers related to digital literacy or internet access. Measures are in place, such as District Offices providing assistance to parents who require help with the application process, to accommodate diverse needs and ensure equitable participation. It is argued further that any limitations on constitutional rights imposed by the OAS are justifiable within the framework of the limitation clause, as they are deemed reasonable and necessary in a democratic society. Restrictions on parental choice or preferences are purported to serve a legitimate purpose and are arguably proportionate to that purpose.⁵³ Moreover, the GDE conducted meaningful consultations with relevant stakeholders, including parents, learners, and education experts, during the development and implementation of the OAS. The system undergoes annual reviews, with identified gaps addressed, ensuring that it reflects the needs and concerns of affected parties and strengthens its legitimacy.

Moreover, the legislative framework delineated above exerts a profound influence on access to basic education in Gauteng Province across several dimensions. By proscribing unjust discrimination and stipulating transparent admission procedures, the legislative framework guarantees that all learners in Gauteng enjoy equal prospects of accessing education, irrespective of their socio-economic background or personal circumstances. Moreover, this framework ensures equitable distribution of resources among schools in Gauteng, thereby mitigating discrepancies in infrastructure, staffing, and educational materials that could impede access to quality education. In essence, the legislative framework governing the right to access education assumes a pivotal role in fostering fair and

⁵⁰Section 9 of the Constitution of the Republic of South Africa, 1996.

⁵¹Section 33 of the Constitution of the Republic of South Africa, 1996.

⁵²Section 14 of the Constitution of the Republic of South Africa, 1996.

⁵³Section 36 of the Constitution of the Republic of South Africa, 1996.

inclusive education delivery. Through its mandates for impartial admission protocols, equitable resource allotment, and effective policy execution, these laws contribute substantively to the actualisation of the constitutional entitlement to education for all learners in Gauteng.

Finally, the OAS can be considered a constitutional tool for realising the right of access to basic education. It aligns with constitutional principles and rights, including the right of access to basic education, equality, administrative fairness, privacy, accessibility, proportionality, and meaningful engagement with stakeholders. Challenges to its constitutionality would likely revolve around its adherence to these principles and its impact on the realisation of fundamental rights and freedoms. The OAS also aligns with international law instruments, alongside their corresponding case law interpretations. These instruments serve as fundamental legal frameworks aimed at safeguarding and promoting children's right to access basic education. They furnish governments with essential guidelines for formulating policies and allocating resources to guarantee that education is not only available but also accessible and of commendable quality for all children, irrespective of their socio-economic background or individual circumstances. As Nelson Mandela said "It is not beyond our power to create a world in which all children have access to a good education. Those who do not believe this have small imaginations".⁵⁴

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⁵⁴<https://www.iol.co.za/news/south-africa/mandelas-passion-for-education-408357>.

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