

Joint media statement: Education rights organisations and school communities to now monitor government's compliance with the school meals court judgment

"I am excited by this judgment but also sad that we had to resort to taking the Minister and the MECs to court for what they should have been doing for many learners who benefit and qualify from the feeding scheme. This victory comes at a time where many families struggle to access enough food and have to choose between buying data or food for their children to learn at home." – Tshepo Mabunda, EE learner member, Limpopo

"I am pleased about the news of the judgment that has come through and I know parents and children are also going to be pleased. Hunger is not a good thing especially when children aren't eating. It's good that children will now be able to eat. They are grateful, we are grateful." – Davhula Azwindini Ivone, school governing body Chairperson at Vhulaudzi Secondary School, one of the applicant schools in the case.

"I feel very confident about the judgment. Children who come from less privileged households [will] at least have something to eat either at school or at home, so the judgment really came through for a lot of learners across the country. [We should do] follow ups to make sure that learners really do receive such [food] parcels as expected" – Xolani Nkabane, EE post-school youth member, Gauteng

Today the work begins of monitoring that the order of the North Gauteng High Court in our school meals case is realised – that the rights of the over nine million learners who depend on the National School Nutrition Programme (NSNP) for a daily meal are indeed fulfilled by government, without delay.

On Friday, Acting Deputy Judge President Sulet Potterill **ruled** in a declaratory order that Basic Education Minister Angie Motshekga and eight Education MECs were in breach of their Constitutional duties for failing to roll out the NSNP to all eligible learners – whether back at school or at home.

Judge Potterill also handed down a supervisory interdict, requiring the Department of Basic Education (DBE) and provincial education departments to file plans for the resumption of the NSNP to all qualifying learners within 10 days of the judgment, and thereafter to provide the courts with progress reports every 15 days.

Equal Education and the governing bodies of two Limpopo schools were represented by Equal Education Law Centre and SECTION27 in the case against Minister Motshekga and eight Education MECs. We gratefully acknowledge the work of our counsel on the matter: Advocate Geoff Budlender SC, Advocate Tembeka Ngcukaitobi SC and Advocate Thabang Pooe.

Judge Potterill reflected in her judgment that the NSNP is "literally a lifesaving programme for the poorest of the poor child by providing them with at least one nutritious meal a day while being educated. A programme that must be saluted". In

assessing the ability of government to provide food to households through other feeding schemes she also reflected: “There is, and was, no viable substitute for the NSNP for the children”.

The [judgment](#) confirms the status of the right to basic education (section 29(1)(a) of the constitution) and the child’s right to basic nutrition (section 28(1)(a) of the constitution) as unqualified, immediately realisable rights. The judgment goes on to note that the implication of these rights being unqualified is that the State is obliged to provide these unqualified rights in circumstances when parents and caregivers are unable to, such as where they cannot afford to. The judgment affirms that nutrition – alongside school infrastructure, textbooks and scholar transport – is a central component of the right to basic education, and that basic nutrition and basic education are interdependent.

Regarding the DBE’s claim before the court that the various education departments were in fact rolling out the NSNP as per our demand, Judge Potterill remarked that it was “surprising and disturbing” that this claim was made under oath when the facts on the ground showed the contrary.

Equal Education, Equal Education Law Centre and SECTION27 will now be undertaking the crucial work of public education on the judgment, and monitoring its implementation on the ground.

In granting the supervisory order, Judge Potterill noted that the DBE had indeed “played fast and loose with the facts”, and that it was our court case that spurred the education departments into activity. The judgment states: “There is administrative chaos and confusion in the provinces requiring supervision of the Court”.

We are grateful to Professor [Jeremy Seekings](#) of the University of Cape Town, and Shaheda Omar of the Teddy Bear Clinic, for their efforts in submitting evidence in support of our case.

The Children’s Institute, represented by the Centre for Child Law, participated in the case as *amicus curiae* (friend of the court). Their intervention spoke to the interdependency of rights, and discussed the notion of regression in respect of the rights of the child – on this, the judgment reflected that Minister Motshekga and the Education MECs “proffered no justification whatsoever” for the suspension of the programme, and the subsequent retrogression of the rights of learners.

Judge Potterill states in her judgment: “Continued breach [of constitutional and statutory duties] by the Minister and MECs will leave millions of children hungry through the cold winter and as long as lockdown lasts. Hunger is not an issue of charity, but one of justice”.

In the interest of justice, we intend to monitor the implementation of the plans developed by the DBE and provinces. We celebrate this judgment as a victory which reaffirms learners’ constitutional rights to basic nutrition and basic education, and

which will go a long way in easing the hunger and strain experienced by families across the country during the period of lockdown.

A timeline of the events that forced us to go to court:

- **18 March:** schools close and the National School Nutrition Programme (NSNP) is suspended.
- **26 March:** Lockdown commences – millions of families lose their sources of income, and food insecurity increases.
- **10 April:** [Open letter](#) from EE, EELC, SECTION27, Children's Institute and the Centre for Child Law to Minister Motshekga, challenging her assertion that the DBE would not “be able to” roll out the nutrition programme during the lockdown. We only received a response a month later, on 11 May 2020, in which the DBE stated that the NSNP would only resume once schools reopened.
- **17 April:** EELC and SECTION27 write a letter to the Presidency and DBE, on behalf of EE, urging for the reinstatement of the NSNP for all learners.
- **20 April:** Alongside the Children's Institute and the Centre for Child Law, EE, EELC and SECTION27 call for an [urgent joint Parliamentary Portfolio Committee meeting on children's access to food](#) with Parliament's the Portfolio Committees on the Departments of Basic Education and Social Development.
- **11 May:** Meeting of Council Education Ministers (CEM) where it was decided that the NSNP would be provided to all learners when schools reopened, based on context sensitive models.
 - The distribution of food parcels, food vouchers or staggered time-slots for receiving school meals were all ideas punted by the CEM.
- **19 May:** Minister Motshekga publicly commits to providing the NSNP to all learners when schools reopen. DBE Director General Mathanzima Mveli confirms this decision in a letter to the SA Human Rights Commission, and later again on 26 May in a public meeting with civil society organisations hosted by the National Education Collaboration Trust (NECT).
- **20 May:** Standard Operating Procedures for Covid-19 in schools published, detailing guidelines for resuming the NSNP safely. The Western Cape Education Department circulates a guideline on the provision of school meals, indicating the province would feed all learners, including those not attending school.

- **22 May:** Limpopo circular on NSNP contradicts the earlier commitments of Motshekga and Mveli, instructing NSNP service providers to cater only for grades 7 and 12 – the grades due to return to school soonest.
- **1 June:** Minister Motshekga makes a statement publicly, delaying the reopening of schools to 8 June and backtracks on commitments made prior to resume the NSNP for all qualifying learners, regardless of whether or not they had returned to school.
 - She says: *“We would have wished also even to provide nutrition for grades that we have not phased in. But I had requested the sector and the MEC[s] to say maybe we need to wait a little. Get ourselves to acclimatise to the new environment, manage that which we are still struggling to get right before we can introduce new programmes...”*
 - No plans are mentioned for learners who could not yet return to school.
- **2 June:** SECTION27, EE, EELC write to Minister Motshekga seeking clarity on intentions regarding the NSNP, threatening legal action if plans were not made available. In [a statement released the next day](#), we argued that “The proposed suspension of the NSNP is a regressive measure in violation of various rights enshrined in the Constitution”.
- **6 June:** Minister responds to our 2 June letter, confirming that all learners will receive meals based on context-specific plans and it “will take a gradual process to acclimatize with the new environment.”
- **8 June:** Schools reopen for grades 7 and 12 across the country, but the NSNP does not resume for learners who are at home.
 - Our research shows that many schools did not in fact have enough food even for the grades 7 and 12 learners who had returned.
- **9 June:** Mveli presents to the National Command Council on the state of readiness for reopening of schools, indicating that supplies of food received by schools varied from province to province. In KZN, for example, only 74 schools had received food supplies.
- **12 June:** EE and two school governing bodies in Limpopo launch an urgent application to the North Gauteng High Court [*Equal Education and others v. Department of Basic Education and others 2020*]. Testimonies (affidavits) from learners, caregivers, teachers and school governing bodies demonstrated the extent of the hunger and suffering felt in the absence of the NSNP.
- **15 June to 19 June:** Our impending legal action spurs the DBE into hurried action. On 19 June, the DBE sent a circular to all provinces compelling provincial departments to start feeding all learners from 22 June.

- o Circulars published by various provinces indicating that provinces are making plans to reinstate the NSNP for all learners on “context-specific plans”.
 - o A snap survey by our teams showed that this was another broken promise – that not all learners were being fed from 22 June, and that “chaos and confusion” characterised the rollout of the NSNP during the period.
- **2 July:** Court hearing of the urgent application *Equal Education and others v. the Department of Basic Education and others* is heard virtually by Judge Potterill. We argued that the rights to basic education and basic nutrition are interdependent and that the decision not to roll out the NSNP to all qualifying learners – where plans had been made to do so safely, and promises had been made to that effect – was irrational, unreasonable and unlawful. Judgment was reserved.
- **17 July:** Judgment handed down – a victory for EE, the Limpopo SGBs, EE Law Centre, SECTION27, and over nine million learners and their households. A supervisory order requires Motshekga and the Education MECs to file plans to the court for the full resumption of the NSNP within 10 days and updates thereafter every two weeks.