

LIST OF ACRONYMS

ACHRP	African Charter on Human Rights and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ALPSNEP	Admission of Learners to Public School and the National Education Policy
APOPS	Admission Policy for Ordinary Public Schools
BELA	Basic Education Laws Amendment Act
CELP	Centre for Education Law and Education Policy
CESCR	Convention on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
DBE	Department of Basic Education
DCSF	Department for Children, School and Families
EE	Equal Education
EFA	Education for All
FEDSAS	Federation of Governing Bodies of South African Schools
GDE	Gauteng Department of Education
GESAP	Gauteng Education Stakeholders Access to Education Capacity
GPDBE	Gauteng Provincial Department of Basic Education
GSEA	Gauteng School Education Act
ICCPR	International Covenant on Civil and Political Rights
ICHR	International Conference on Human Rights
ISCED	International Standard Classification of Education
MDG	Millennium Development Goals
MEC	Member of the Executive Council

NASGB	National Association of School Governing Bodies
NEPA	National Education Policy Act
NGO	Non-Governmental Organisations
OAU	Organisation of African Unity
OBE	Outcomes-Based Education
OECD	Organisation for Economic Cooperation and Development
PAM	Personnel Administrative Measures
SAAC	School Admissions Advisory Council
SAELA	South African Education Law Association
SANPQP	South African Professional Qualification for Principals
SASA	South African Schools Act
SBM	School Based Management
SDG	Sustainable Development Goals
SGB	School Governing Body
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WDE	World Declaration on Education

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KEYWORDS

Admission

Admission Policy

Basic Education

Co-operative and Collaborative School Governance

Principal

Public Primary Schools

Professional Management and Governance of Public Schools

Right to education

Stakeholder

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CHAPTER 1

INTRODUCTION AND CONTEXUALISATION

1. BACKGROUND TO THE STUDY

1.1 GENERAL

The right to basic education is one of the rights that confirm the dignity inherent in human beings. Lack of education and/or illiteracy has a negative effect on the dignity of a person. It is for this reason that, on 13 May 1968, an International Conference on Human Rights in Teheran made a proclamation (The Proclamation of Teheran Number 14), which stated the following:

The existence of over seven hundred million illiterates throughout the world is an enormous obstacle to all efforts at realising the aim and purposes of the Charter of the United Nations and the provisions of the Universal Declaration of Human Rights. International action aimed at eradicating illiteracy from the face of the earth and promoting education at all levels requires urgent attention.

The Proclamation of Teheran Number 14 at the time highlighted the need for the global community to put more effort into eradicating illiteracy, and promoting a culture of learning and realisation of the right to basic education. Admission or enrolment of children to basic primary education is the starting point towards achieving education for all. In brief, enabling children's rights to basic education through public primary school admission policies is critical. Churr (2015:2406), highlights the importance of education in very succinct terms:

Education is also regarded as one of the most valuable requirements pertaining to global progress and advancement. Not only does it equip the learner with the necessary abilities and skills for a meaningful occupation, but

it is also a suitable instrument to convey the fundamental tone of a human rights culture to a young and upcoming generation. Moreover, education is a way to set people free from their lack of knowledge, false notions and fear. Education furnishes people with dignity, self-respect and self-assurance, and is an important basic human right on which the realisation and fulfilment of other rights depend.

There are a number of legal and policy prescriptions in South Africa, discussed in paragraph 6.2.2, with implications for public schools regarding their management and implementation of admission policies, including but not limited to the South African Schools Act 84 of 1996 (SASA), the Admission Policy for Ordinary Public Schools (APOPS), Government Notice No. 2432 of 1998, GG 19377 (19 October 1998), General Notice 4138 of 2001 (*PG 129 of 13 July 2001*) on Admission of Learners to Public Schools and the National Education Policy Act 27 of 1996 (NEPA). Moreover, Section 29 of the Constitution of the Republic of South Africa of 1996 (Constitution of 1996) entrenches everyone's right to a basic education.

Any refusal or denial of learners' admission to school is a *prima facie* violation of their constitutional right to access to a basic education and it is inconsistent with, and in violation of Section 29 of the Constitution of 1996. General Notice 4138 of 2001 (*PG 129 of 13 July 2001*) specifically addressed the issues of admission of learners in public schools. Paragraph 3 of the Notice prohibits unfair admission practices and requirements.

Section 3 (3) of SASA 84 of 1996, discussed further in paragraph 6.2.2, states that "every *Member of the Executive Council* must ensure that there are enough school places so that every child who lives in his or her province can attend school as required by sub-sections (1) and (2)". The admission policies of public schools serve as criteria whose purpose it is to help determine how and which of the learners are to be placed in a school. The placement and admission may take into account several considerations, including but not limited to the capacity

of a school to admit special needs learners, learners with behavioural problems, and learners from a school's catchment area, language of teaching and learning, the quality of education provided and the interprovincial mobility of learners and others. Schools should ensure that they have the capacity and resources to accommodate all learners they admit into their schools.

At provincial level, the Gauteng Department of Education (GDE) has localised some of the national policy and legislative frameworks for admission and access to education. For instance, the provisions of SASA have been largely replicated in the Gauteng School Education Act 6 of 1995 (GSEA), discussed in-depth in 6.2.3 *infra*.

There are also practices related to admission that may impact on the realisation of the right to basic education. In 2015 the GDE, for example, introduced an online application system whose purpose is, among others, to provide directives regarding the management and administration of admissions in the public ordinary schools and to ensure uniformity in the implementation of admission processes (Gauteng Department of Education, 2016). The online application system was introduced to ensure that the Department has all the necessary information relating to admissions in a central repository for planning and reporting purposes. The system has not been without its challenges, some of which may threaten the realisation of the right to a basic education.

Measures to achieve improved and quality education are addressed in the Plan of Action: Improving Access to Free and Quality Basic Education for All of 14 June 2003 (Department of Basic Education, 2003). The Plan addresses many issues that collectively are key to quality basic education and relate to the efficiency and effectiveness of access to basic education. The Plan is best read with the Education White Paper 6, Special Education Needs: Building an Inclusive Education System (Department of Education, 2001) that outlines the processes that will ensure inclusive education for all learners, and in particular

the transformation of education, the promotion of social justice and equal education for all.

Human rights in education, in particular Section 29 of the Constitution of 1996, and the regulatory powers of the SGB and the Head of Department (HOD) find themselves at cross-roads once there is an issue of denial of admission to the school by the SGB or when the Head of Department takes it upon himself or herself to admit a learner to a school. This relationship relates to co-operative or collaborative governance in public schools. SASA is premised on the idea of “co-operative governance” in schools (Heystek, 2011:457). According to the preamble of SASA, the new national system for schools – the system that commenced in 1997 – must be based, among others, on a foundation that upholds “the rights of all learners, parents and educators” and promotes “their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State” and must also set “uniform norms and standards for the education of learners at schools and the organisation, governance and funding of schools throughout the Republic of South Africa”.

Dating back to the Education for All (EFA) movement initiated in Jomtien in 1990, the issue of equitable access to education and its significance to human development and welfare has been a global concern. In terms of the May 2015 Incheon Declaration and Framework for Action Towards Inclusive and Equitable Quality Education and Lifelong Learning for All (Incheon Declaration) government ministers and other education stakeholders who gathered at the invitation of the Director-General of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in Incheon, Republic of Korea clearly stated the importance of access to education and its role “as main driver of development and in achieving the other proposed SDGs” (Incheon Declaration 2015, paragraphs 5 - 11). The 2030 Agenda for Sustainable Development Goals (SDGs) replaced the Millennium Development Goals (MDGs) in 2015.

Goal 2 of the MDGs addresses universal access to primary education by 2015. Goal 4 of the SGD requires education authorities to ensure inclusive, equitable and accessible quality primary and secondary education. The EFA requirements on access to education, as implemented through various mechanisms including the MDGs (which were replaced by the SGDs and re-affirmed in the Incheon Declaration) expect education authorities to reconsider the alignment between their admission policies and the right to equitable and accessible education.

This study explores stakeholder experiences of enabling children's rights to basic education through public primary school admission policies in the Gauteng Department of Education (GDE) in the Tshwane North District. It is located in education law and policy implementation as both fields of research and practice, and with particular reference to public school admission policies.

1.2 PURPOSE OF THE STUDY

The purpose of this study was to explore and understand the views and experiences of stakeholders (GDE representatives, SGBs, principals, experts on law and policy and parents) regarding access to the right to basic education through the implementation of public primary school admission policies. This investigation was prompted by legal battles between SGBs and Gauteng Department of Education (GDE) about admission issues.

1.3 PROBLEM STATEMENT

A number of challenges have been experienced regarding the issue of the right to access to basic education. There have been and there remains contestations whether the right to education also creates an obligation to admit learners unconditionally. Also, disputes have arisen regarding the professional school management represented by the principal, school governance represented by the school governing body (SGB) and the head of the specific provincial Department of Education (GDE) in implementing, developing and managing policy, and in adapting to any changes related to policy development, management and implementation (*Minister of Education v Harris* (CCT13/01))

[2001] ZACC 25 in paragraph 11; Botha, 2004:240; Van der Westhuizen & van Vuuren, 2007:433). For instance, the obligation to govern schools collaboratively regarding issues of common interest to all the stakeholders has created disputes that culminated in precedent-setting - litigation regarding the power and authority to admit learners in public schools. The cases include *Federation of Governing Bodies for South African Schools v Member of the Executive Council for Education, Gauteng and Another* [2016] ZACC14 (*FEDSAS* case), *MEC for Education in Gauteng Province and Others v Governing Body of Rivonia Primary School and Others* [2013] ZACC 34 (*Rivonia* case) and *Minister of Education v Harris* (CCT13/01) [2001] ZACC 25; 2001 (4) SA 1297 (CC).

An observation by the Constitutional Court in the *Federation of Governing Bodies of South African Schools* (*FEDSAS* case) is that, despite SASA being clear as to the power of the SGB to determine the admission policy, “[n]either the Schools Act nor any related national legislation, such as the National Education Policy Act, goes further than Sections 5 (5) and 5A (3) [of SASA] in describing a more extensive role for the governing body in the implementation of the admission policy or in the determination of capacity” (para. 40). The court’s observation in the *FEDSAS* case on the inadequate description of the powers of SGBs in the law reflects the extent of the challenge of the implementation of school admission policies in the light of the principle of cooperative governance to enable the realisation of the right to education.

In *Rivonia Primary School* case, the Constitutional Court nullified a decision taken by the SGB not to admit a learner in the school in excess of limit in the school’s admissions policy. The facts were that a little girl was refused admission by the Rivonia Primary School citing that the school has reached its full capacity, and that such an admission would be contrary to the admission policy that was adopted by the SGB of Rivonia Primary School “ostensibly to protect the interests of the school and its learners” (*Rivonia Primary School* case, par.82). Initially the South Gauteng High court ruled in favour of the department, which claimed it, had the final say in school admissions. The High Court in particular ruled that SGBs in Gauteng do not have the unqualified power to determine admission

policy at state schools. According to Judge Mbha, the ultimate arbiter of admission policies and capacity in public schools is the Department of Education, and not the SGB. This decision was overturned by the Supreme Court of Appeal in favour of the SGB. The Supreme Court of Appeal stated that the conduct of the Department, in particular “the instruction given to the principal of the Rivonia Primary School to admit the learner contrary to the school’s admission policy, and the placing of the learner in the school, were unlawful.” The decision of the Supreme Court of Appeal was contested by the Department in Constitutional Court. Interestingly, the Constitutional Court found that the Supreme Court of Appeal “erred in finding that the head of department could only exercise... power in accordance with the school admission policy” (Rivonia Primary School case, pa.27). The Rivonia Primary School admission saga and similar admission disputes in other schools brought to attention the issue of the enjoyment and protection of the right to basic education, and the role admission policies play in enabling the children’s rights to basic education.”

In my view, particularly in the context of the investigation in this study, the FEDSAS case and *Rivonia* School case, are demonstrative of the problems related to the right to basic education. In particular, the implementation of school admission policies poses questions on admission policies as enablers learners accessing public primary schools.

1.4 RATIONALE FOR THE STUDY

As a former teacher at a public primary school and still in constant contact with teachers, I was intrigued by the decision taken by the Constitutional Court of South Africa in the *Rivonia Primary School Case (Rivonia case)*, which set aside a decision taken by the SGB not to admit a learner to the school. The court’s decision prompted me to investigate the views and experiences of stakeholders, including School Governing Bodies, principals and parents with specific emphasis on public primary school admission policies. The decision in the Rivonia Primary School Case brought an array of questions to my mind; for instance, what does it imply for the SGB’s duty to determine the school

admission policy? Is the GDE henceforth responsible for learner admissions in public primary schools and will this result in the usurpation of SGBs' authority by the GDE? Does the responsibility rest with the GDE or the school through the SGB? My view was that the court's decision was setting a precedent which could affect the manner in which schools admit learners to public schools.

This study is necessary given the conflicting perceptions as to whose responsibility it is to admit learners to schools. Furthermore, the dearth of literature on public school admission policies prompted me to embark on the study with a view to providing information that could assist law and policy makers in the education sector.

1.5 RESEARCH QUESTIONS

1.5.1 Primary research question

What are stakeholder experiences of the realisation of the children's right to basic education through the implementation of public primary school admission policies?

1.5.2 Secondary research questions

- What is the function of admission policies in a public school according to the stakeholders?
- What are stakeholder experiences of their roles regarding the development and implementation of admission policies in public schools?
- What are stakeholder experiences of statutory and case law regarding admission policies of public primary schools?
- What are the stakeholder views and experiences of the causes of problems experienced and the impact thereof regarding the implementation of admission policies in public primary schools?

- What solutions do the stakeholders propose to prevent and manage problems regarding the implementation of admission policies in public primary schools?

1.6 RESEARCH AIMS AND OBJECTIVES

- To determine stakeholders' understanding of the function of admission policies in a public school.
- To gauge stakeholders' understanding of their roles regarding the development and implementation of admission policies in public schools.
- To establish stakeholders' understanding of statutory and case law regarding the admission policies of public primary schools.
- To establish stakeholders' views and understanding of the causes of problems experienced and the impact thereof regarding the implementation of admission policies in public primary schools.
- To suggest or propose solutions to prevent and manage problems regarding the implementation of admission policies in public primary schools.

1.7 RESEARCH DESIGN AND METHODOLOGY

The study followed a qualitative research approach and used a case study design.

Qualitative research, according to Denzin and Lincoln (2005:10), is a situated activity that locates the observer in the world of the subject. It involves an interpretive, naturalistic approach to the world, i.e. qualitative researchers study phenomena in their natural settings, attempting to make sense of, or interpreting phenomena in terms of the meanings people bring to them. A qualitative research design was deemed appropriate for this study as it allowed the researcher to interact with, and understand the views and opinions of the participants in their natural settings.

Document analysis and face-to-face in-depth interviews were used as data-collection strategies. They were considered appropriate for the study since the focus of this study was to explore stakeholder experiences of enabling children's right to basic education through public primary school admission policies in the Gauteng Department of Education (GDE) in the Tshwane North District. These two data-collection methods allowed the researcher to explore stakeholders' own accounts of their experiences.

According to Creswell (2014:14), researchers using case study designs as their research design develop "an in-depth analysis of the case, often a program, event, activity, process or one or more individuals. Cases are bounded by time and activity, and the researchers could detect detailed information using a variety of data collection procedures over a sustained period of time".

Mouton (2016:149) discusses case studies as ethnographic research and defines them as studies that are usually qualitative in nature and that aim to provide an in-depth description of a small number (less than 50) of cases". He also says (Mouton, 2016:150) that in this kind of design participant observation, semi-structured interviewing and the use of documentary sources constitute the sources of data. According to him (Mouton, 2016:150), the strengths of this design are high "construct validity; in-depth insights, establishing rapport with research subjects".

The relatively small number of participants, the use of semi-structured interviews and the use of documentary sources are all in line with the views of Creswell (2014) and Mouton (2016) and the strengths outlined by Mouton (2016) was convincing evidence of the suitability of this kind of design for this research project.

1.8 CLARIFICATION OF KEY TERMS AND CONCEPTS

According to De Vos, Strydom, Fouche & Delport (2005:32) "definitions are used to facilitate communication and arguments", particularly because they transform the study into an easy read through the presentation of terms and/or concepts in

an easy, simple, and clear manner, thus avoiding vagueness or ambiguity. Some of the terms and concepts used in the study are presented below.

1.8.1 Admission

Section 5 (1) of SASA provides that a public school must admit learners and serve their educational requirements without unfairly discriminating in any way. The concept *admission* is further contextualised in terms of items 8 and 9 of the Admission Policy for Ordinary Public Schools (APOPS), Government Notice No. 2432 of 1998, GG 19377 (19 October 1998), which state:

Item 8: The Head of Department must co-ordinate the provision of schools and the administration of admissions of learners to ordinary public schools with governing bodies to ensure that all eligible learners are suitably accommodated in terms of the South African Schools Act, 1996. Subject to this policy, it is particularly important that all eligible learners of compulsory school going age are accommodated in public schools.

Item 9: The admission policy of a public school and the administration of admissions by an education department must not unfairly discriminate in any way against an applicant for admission.

Section 5 (7) of SASA states that an application for the admission of a learner to a public school must be made to the education department *in a manner determined by the Head of Department* whereas Section 5 (8) deals with refusal of applications and compels the Head of Department to inform the parent in writing of such refusal and the reason therefor. Section 5 (9) allows a parent of a learner who has been refused admission to a public school or the learner himself to *appeal against the decision to the Member of the Executive Council*. From these provisions it is clear that departmental functionaries are involved in

admission processes at public schools. Paragraph 5.4 below locates this involvement in the principle of co-operative governance.

Furthermore, Section 3 (3) of SASA requires every Member of the Executive Council (MEC) to ensure that there are enough school places so that every child who lives in his or her province can attend school as required by sub-sections (1) and (2). This subsection signifies the vital role of the MEC in the admission of learners to public schools. Without his involvement in terms of Section 3 (3) of SASA admission is not possible.

In this study, *admission* therefore includes the placement of a learner at a school of choice, following an application for admission into the school, subject to the ability of the school to serve such a learner's educational needs without using unfair and unreasonable criteria that have intended or unintended consequences of excluding such a learner or disadvantaging other learners and depriving them of their rights.

1.8.2 Admission policy

There are a number of definitions about what a *policy* is. The following definitions of policy by a number of authors have been recorded by Sakikonda (2013:16). They include defining policy as “a mechanism employed to realize societal goals and to allocate resources”; as a “set of interrelated decisions taken by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified area”; as an instrument that “delimits action” or as part of that process that “entails the translation of the decisions into actions” (Sakikonda, 2013:16). Thus, a policy represents an expression of the manner in which an authority intends to regulate certain defined activities and relationships. It therefore provides guidelines for people who have to implement the policy.

The difference between policy and law is that law is the system of rules that a particular country or society recognises as regulating the actions of its members, and that it may be enforced by the imposition of penalties. Furthermore, if a law

is broken punishment could be imposed whereas non-compliance with a policy is not punishable by the imposition of penalties.

For the purpose of this study, *admission policy* means a regulatory framework that determines and governs the placement of learners in public schools in terms of the set criteria drawn up by the national and provincial departments and the relevant school governing bodies in line with the Constitution of the Republic of South Africa, 1996.

1.8.3 Basic education

In trying to understand what the concept *basic education* precisely means, Churr (2015:2410) begins by referring to the concept of education, quoting Dewey who describes it as follows:

Education in its broadest, general sense is the means through which the aims and habits of a group of people [live] on from one generation to the next. Generally, it occurs through any experience that has a formative effect on the way one thinks, feels, or acts. In its narrow, technical sense, education is the formal process by which society deliberately transmits its accumulated knowledge, skills, customs and values from one generation to another.

Churr refers to the 1995 White Paper on Education and Training that describes basic education as “a flexible concept which must be defined so as to meet the 'learning needs appropriate to the age and experience of the learner, whether child, youth or adult ...', and should also provide access to nationally recognised qualifications” (Churr 2015:2411). Murungi argues that the term *basic education* has its origins in the World Declaration on Education for All, and that basic education “is focused on the content of education, as opposed to the form in

which it is conducted, such as formal or informal education” (Murungi, 2015:3166).

According to the World Declaration on Education (WDE, 1990) the concept *basic education* includes an array of educational activities designed to meet the basic learning needs of learners in the setting of either formal schooling at primary and upper primary schools, and sometimes through non-formal and informal public and private educational activities. According to the International Standard Classification of Education (ISCED) (UNESCO, 2011:30), certain criteria are set to determine primary education, which include “systematic instruction in fundamental knowledge, skills and competencies”, learner entrance age and duration, and “instruction organized typically by one main class teacher” (UNESCO, 2011:30). Basic education corresponds to the first nine years of formal schooling and is made up of two levels, distinguished as Level 1 and 2. Level 1 should correspond to primary education and Level 2 to lower secondary. In cases where basic education is not divided into stages, Level 1 should correspond only to the first six years of schooling while the remaining three years should correspond to lower secondary education. It is clear that primary education and lower secondary education are understood as successive stages of basic education, with the latter completing the former.

According to Beckmann and Phatudi (2013:475), provisions and statements should be made explicitly to include pre-school education in the right to basic education. They further argue that it is in the “child’s best interests to have access to quality preschool education and it is the duty of the state to respect, promote and fulfil the rights in the Bill of Rights” – thus enabling pre-scholars to access knowledge and skills in preparation to enter the world of knowledge.

The UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment 13, defines the content and obligation of the right to education in terms of four components:

- *Availability*: Not only must education be free, but it must also be supported by adequate infrastructure and well-trained educators. Availability of school

places is a continuing problem in the GPDBE and has resulted in several court cases.

- *Accessibility:* Access to education must be free from all forms of unfair discrimination, and intentioned and positive steps must be taken to ensure that learners who have been marginalised do have fair access to the education system.
- *Acceptability:* The content of education must be fit for purpose, particularly it must be socially relevant and culturally appropriate; be of good quality dispensed by professionally qualified educators, and the schooling environment must be safe for all stakeholders.
- *Adaptability:* Education must be adapted to suit particular contexts.

For the purposes of this study basic education means that every learner who turns seven years in grade one and attends school until he/she turns fifteen years or is in grade 9. This explanation is in line with Section 3 (1) of the SASA.

1.8.4 Co-operative and collaborative school governance

Co-operative school governance is clearly addressed in Part 5 of the White Paper on Education and Training 1 of 1995 (Department of Education, 1995). Paragraph 29 (2) (e) of the White Paper lays the basis for the promulgation of SASA by stating that, for example, “[i]n secondary schools, the main stakeholders for purposes of governance comprise parents, teachers, and students. It is recognised that these stakeholders can play different roles with respect to different elements of school governance”. Parents, for example, are required to be meaningfully involved in and take responsibility for the education of their children. The White Paper states specifically that the SGB and the GDE should work together.

Chapter 3 of the Constitution of 1996 addresses co-operative government among the three spheres (as opposed to tiers or levels) of government. Chapter 3 of the Constitution provides that the three spheres of government must cooperate with one another in mutual trust and good faith by, among others, “(i) informing one

another of, and consulting one another on, matters of common interest; (ii) adhering to agreed procedures, and (iii) avoiding legal proceedings against one another". These principles are important in the context of my study and are relevant to the understanding of co-operative governance of schools as mandated by SASA. Stakeholders in public schools' governance are distinctive and interdependent, and yet interrelated for the common course of working in the best interests of the schools. As a system, co-operative governance is critical to proper management of schools.

Paragraph 29 (2) (b) of the White Paper of 1995 (Department of Education, 1995) stipulates that the "principle of an articulated provincial system of schools needs to be upheld. Therefore, the relationships of school governing bodies to education governance structures within provincial education systems need to be defined". Van der Merwe (2013:250) defines the relationship that has been developed on the basis of the White Paper as follows: "Public school governance is part of the country's new dispensation of democratic governance. It must be a genuine partnership between a local community and the provincial education department, with the latter's role being restricted to the minimum required for legal accountability".

1.8.5 Principal

Chapter 1 of SASA defines a *principal* as an educator who is appointed or acting as a head of a school. Thus, the duties and responsibilities of principals are linked to the professional leadership and the management of the school. Botha (2004:239) describes a school principal as the educational leader and manager of a school, and is therefore responsible for the work performance of all the people in the school (i.e. both staff and learners). Botha (2002:240) further asserts that one of the principal's jobs is ensure that human and capital resources spur on high performance levels in the school. Another researcher, Ediger (2002:90), labels the principal as the leader who has the responsibility that objectives set are the best interest of achieving best pupil performance. The principal is also a manager whose responsibility is to manage administrative tasks and supervise all teachers. In the words of Mahlangu (2015:1379)

principals have the responsibility “to inspire, motivate, and appeal to teachers through an array of skills and behaviours, which communicate their value to their schools”.

According to the Personnel Administrative Measures (PAM) No. 39684, the duties of the principal are to ensure that the school is managed satisfactorily and in compliance with applicable legislation, regulations and personnel administration measures as prescribed; to ensure that the education of the learners is promoted in a proper manner and in accordance with approved policies.

Countries like England and Scotland, for example, have gone further by fully professionalising the qualifications, training and certification of school principals through the *British National Professional Qualification for Headship* and the *Scottish Qualification for Headship* (Van der Westhuizen & Van Vuuren, 2007:437). In South Africa, the Draft Policy Framework for Education Management and Leadership Development of 2004 sought to introduce professional training for principals.

In 2004 the Department of Basic Education (DBE) released a draft paper entitled the South African National Professional Qualification for Principalship (SANPQP), which sought to implement mandatory professional certification as a minimum requirement for appointment to the post of principal realised in 2005. (For more on professional principalship see Bush, Kiggundu & Moorosi (2011); Van der Westhuizen & Van Vuuren, 2007:438 -439); Call for Comments on the South African Standard for Principalship, Notice 636 of 2014, and the Policy on the South African Standard for Principals (the Standard) published on 18 March 2016). It needs to be noticed that the educator unions have raised objections to the Standard alleging that the Department of Basic Education did not consult them in the development process and that the Department had therefore amended the conditions of service of principals unilaterally – the document is therefore still subject to debate in the Education Labour Relations Council.

1.8.6 Public primary schools

As opposed to independent schools established in terms of Sections 46 to 48 of SASA, public schools are provided by the MEC in terms of Section 12 of SASA whose first sub-section provides that the MEC must provide public schools for the education of learners out of funds appropriated for this purpose by the provincial legislature. In terms of Section 12 (3) of SASA a public school may include an ordinary public school for learners with special education needs or a public school that provides education with a specialised focus on talent, including sport, performing or creative arts. Section 52 (1) of SASA further states that “any school which was established or was deemed to have been established in terms of any law governing school education and the Republic of South Africa and which existed immediately prior to the commencement of this Act, other than a private school ... is deemed to be a public school”.

For the purpose of this study I used the definitions in Section 12 read together with Section 52 of SASA. In the South African education system, a public primary school starts with Grade R and ends with Grade 7. It includes three phases, namely the Foundation, Intermediate and Senior Phases.

1.8.7 Professional management and governance of public schools

The meaning of the concept school governance is derived from various sections of the White Paper of 1995 (See Section 5.4 above) and SASA and it refers to the functions of SGBs as articulated in specific provisions of SASA. Important to the notion of school governance, is the concept of self-governance of schools (Bush & Heystek, 2003:459), the practice of inclusivity and the decentralisation of duties and responsibilities to SGBs (Maluleke, 2016:358). Inclusivity refers to the participation of parents, educators, non-teaching staff, learners, and other people who are willing and able to make a contribution to the school, and decentralisation enables SGBs to make decisions regarding a number of school-related issues, given their location in the school environment (Motimele, 2005; Joubert & Bray, 2007:15). As Mestry (2006:48) observes, “the last ten years have seen major changes in the nature of the governance of schools”. As

a result of new legislation in South Africa, such as SASA, considerably more authority and responsibility for decision-making have been devolved to the school level than was previously the case.

According to Sections 16 (1, 3) of SASA, public schools are governed by SGBs and professionally managed by principals under the authority of the HOD. The SGB is thus placed trust relationship with the school. (SASA, Section 16(2)) Section 20 (1) (a) states as the major role of the SGBs the promotion of "... the best interests of the school and to strive to ensure its development through the provision of quality education" (Xaba, 2011:202). SGBs were considered the "unifying force" for schools by the Ministerial Review Committee during its 2004 assessment of the state of school governance in South Africa (DoE, 2004:82). This is despite the inherent or endemic presence of conflict in the SGB itself, according to the Ministerial Review Committee (DoE, and 2004:82).

In my view, the powers and functions that have been allocated to the SGBs in South African public schools are akin to what Christie (2010:699) refers to as school-based management (SBM), which "... entailed responsibilities for areas such as finance, staffing and school development being moved to school level" (Christie, 2010:700). However, concepts of school-based management and school-based governance remain discrete.

In the context of this study, and as informed by the relevant provisions of SASA, *professional management* of a public school refers to the professional management, in particular of instruction and learning by people with the necessary essential skills and knowledge. In my view, these essential skills and knowledge must constitute the core performance standards in a multi-personnel environment and should endow the principal with the competence needed in planning, controlling, developing and managing people, the assets of the school, and the time to achieve the pre-set goals and objectives of the school.

1.8.8 Stakeholder

According to Nthontho (2017:4), “a stakeholder’ in the school context is therefore anyone or an organisation with a stake or interest in the welfare and success of a school and its learners regardless of age. This includes children whose stake is personal success throughout school and future opportunities.” Furthermore, a stakeholder refers to a person who has interest or concern in the organisation at hand. In the context of education, a stakeholder is someone who has a vested interest in the success and welfare of a school or education system. This include all the parties that are directly affected by the success or failure of an education system, as well as those indirectly affected.

1.9 ASSUMPTIONS OF THE STUDY

- 1.9.1 SGBs and the GPDBE representatives have always considered the constitutionally protected right of learners to basic education when they deal with learner admission and placement issues. Of importance in the exercise of their respective powers and functions has been the best interest of the child standard.
- 1.9.2 SGBs and HOD have the requisite understanding and competency to deal with the plethora of enabling legislation, policies and procedures governing primary school admission policies and practices.
- 1.9.3 There is a professionally orientated and respectable working relationship between the representatives of the DBE and the SGBs.

1.10 VALIDITY AND RELIABILITY

Creswell (2014:201) posits that validity is one of the cornerstones of qualitative research. It enhances accuracy because the findings of the research are based on the perspectives the researcher, the participants or the readers of a particular story or report. To check the accuracy of my findings I employed the following strategies as identified by Creswell (2014:201):

- Used a rich, thick description to convey the findings; provided detailed descriptions of the setting, e.g. offering various different perspectives on a theme. The results became more realistic and richer.
- Clarified the bias I could have caused to the study as the researcher. This self-reflection created frank narrative and will reverberate well with readers. Good qualitative research contains researchers' comments by the researcher about how their background shaped their interpretation of the findings.
- The consistency of the researcher's approach across different researchers and projects indicates qualitative reliability (Creswell, 2014:201). He suggests that, to check the reliability, researchers should document every step and procedure they undertake in their study.

The following qualitative reliability procedures are suggested by Gibbs (2007) quoted by Creswell (2014):

- Check the transcripts to make sure that they do not contain obvious mistakes made during transcription.
- The researcher must ensure that there is not a drift in the definition of codes, a shift in the meaning of the codes during the process of coding by constantly comparing data with the codes and writing memoranda about the codes and their definitions.

Peer reviewers were involved to assist with the interpretation of the data to enhance trustworthiness and also to ensure validity and credibility. Member checking and triangulation were done to ensure validity and reliability in cases where some participants apparently did not give honest opinions.

1.11 LIMITATIONS OF THE STUDY

This study was an exploration of stakeholder experiences of public primary school admission policies and children's rights to a basic education.

Stakeholders involved in this study were the GDE representatives, School Governing Body Federations, SGBs, principals and parents. For this study, there were different views on the number of schools chosen and data collection method employed to conduct the research.

According to 2014 statistical report in South Africa published in March 2016, there are 2 070 public ordinary schools in Gauteng Province alone. There might be concerns why only four public primary schools were chosen out of so many and why the study employed only a qualitative research approach. The number of schools relates to the fact that admissions at primary school level have been a contentious issue between schools and parents. It was for this reason that the study was limited to only four public primary schools that were involved in admission litigation.

1.12 CONTRIBUTION AND SIGNIFICANCE OF THE RESEARCH

The following are the envisaged significance and contributions of the findings of this research:

- The findings of may be of importance to school admission policy makers in all public schools in South Africa.
- The findings may assist policy makers in finding common ground and understanding between public schools and the GPDBE. Moreover, they should shed light on problems regarding cooperative governance.
- In addition, the findings of this study could enhance aspirations by the Department of Basic Education in cooperation with SGBs, principals and parents to ensure that each child at school-going age realises the aim of access to quality education in South Africa.
- Policy makers, officials and schools may be assisted to design long-term mechanisms of how to make admission processes at schools smooth.
- The findings could give some indication if the implementation of admission policies serve the best interests of children.

The findings could also shed light on the extent to which admission policies promote or obstruct a culture of human rights and respect for children's rights. It is because of these reasons that this study differs from other studies that deal with school admission policies.

1.13 CHAPTER PLANNING

This study consists of five chapters. Chapter 1 demarcates the field of study and outlines the research design and methodology. It includes a statement of the research problem, research questions, research objectives, delimitation and limitations, and serves to provide an overview of the entire study.

Chapter 2 contains a literature review, setting out in a thematic approach current scholarship and debates engendered by such scholarship. It explores critical issues emanating from and guided by the research question and sub-questions. The chapter helps refine the design and could help improve the empirical work and the data analysis. Specifically considered in this chapter are the continental and international legal frameworks on both the right to education and public school admission policies and practices. In respect to admission policies and enrolment practises, countries considered are Canada, Ghana, Zimbabwe, Namibia, Finland, Kenya, Wales, England and the United States. These countries were identified for this study because, among others, they show some common and interpretable pattern in respect to school practices, including having similar education systems from a historical point of view. Some of these countries influenced the development of basic education policies in South Africa.

Chapter 3 explicates the research methodology used in the study; and the conceptual framework of the chapter. It addresses the rationale for the study and the research design employed. It addresses issues such as the sampling design and procedures; methods of data collection, interpretation and analysis; reliability, authenticity, validity; and study limitations. Moreover, this chapter

contains the theoretical review that underpins major policy implementation approaches, such as, for example, the human-rights based approach to the implementation of admission policies in public schools.

Chapter 4 deals with the analysis and interpretation of data.

Chapter 5 provides an overview of the study, the findings, conclusions and recommendations arising from the study. It also contains a personal assessment of the significance, value and success of the study.

1.14 CONCLUSION

This chapter provides the background to the study and explicates the fundamental right to a basic education that hinges on the inherent right to human rights. A number of legal and policy frameworks regulating management and implementation of admission policies in South Africa are highlighted in this chapter.

The purpose of this study has been revealed to the reader. The primary and secondary research questions formulated to answer the primary research question are of notable importance as they are answered at the end of the thesis. This chapter further explains the rationale for the study that justifies its being conducted.

Another important aspect of Chapter 1 is the clarification of the key terms and concepts relevant to the study; they include admission, admission policy, and basic education, co-operative and collaborative school governance, principal, public primary schools and professional management of basic schools.

Processes of ensuring validity and reliability of the study are also addressed in this chapter. Lastly, the limitations of the study and possible contributions of the findings of this study are outlined.

CHAPTER 2

LITERATURE REVIEW

2.1 INTRODUCTION

2.1.1 General

In conducting a study on stakeholder experiences of enabling children's rights to basic education through public primary school admission policies, there is a need to focus the research in the study with relevant prior studies. Therefore, in this chapter, using a thematic approach, a literature review is conducted, looking specifically at issues of access and the right to education, and the prevailing approach by school authorities on the issue of learner admission and how it is management. A summary of existing works and legal frameworks, including both legislation and case law in South Africa and other countries on admission and children's right to a basic education is provided as a reference point. This approach is in line with Section 39 (1) of the Constitution of 1996 that requires that "when interpreting the Bill of Rights, a court, tribunal or forum (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; (b) must consider international law, and (c) may consider foreign law".

According to Randolph (2009:5), conducting a literature review is "a means of demonstrating an author's knowledge about a particular field of study, including vocabulary, theories, key variables and phenomena, and its methods and history. Conducting a literature review also informs the student of the influential researchers and research groups in the field." The overall goal of the literature review in this study entitled *Stakeholder experiences of enabling children's rights to basic education through public primary school admission policies*, was to identify development in the general field of study, and to identify where in the general field of study new contribution can be made. I attempted to answer the following questions: What has been written about this topic before, if any? What

are the existing relevant debates? What are the key ideas and findings in the current literature on the topic, the specific problems identified and what are the gaps in the literature that call for further research?

2.1.2 Thematic approach to literature evaluation, analysis and interpretation

The literature review is organised thematically to address, among others, issues of the interpretation and application of the learner admission policies in primary schools; the effect of the interpretation and application of the learner admission policies on parents and learners; the nature and the extent of the involvement of the DBE in learner admissions; South African law on the right to education in the context of learner admissions, and the final decision-making body on learner admissions at primary schools. The thematic approach in this literature review was considered important to situate the study within the broader scholarly debate and to provide a context for a study that has grown organically from current trends. Of equal importance was the contextualisation of children's right to a basic education as it is described below under Section 2.3. Furthermore, knowledge gained from the literature review on school admission policies as enablers of the children's right to basic education forms the basis for the methodology of the study, deepening the understanding of how stakeholders experience admission in public primary schools and the basic right to education for every child.

Although researchers must be objective when analysing an existing body of knowledge on a particular subject, subjectivity and the yearning to contribute one's niche contribution to the body of existing knowledge cannot be ignored. However, any researcher should take a balanced approach in the evaluation, analysis and interpretation of data and or information sources. In this study, as part of the thematic literature review, I considered those studies that appear to deny or negate the need to conduct the study, and clearly indicated why the position taken by such other studies does not necessarily address or deny what

I set out to do. Thus, conflicting opposing findings and interpretations are of value to this study, and contribute towards the general validity of the study outcomes.

2.2 LIMITATIONS OF EXISTING LITERATURE

Despite an extensive body of research on primary education in South Africa, no study that has been conducted extensively on stakeholder experiences of enabling children's rights to basic education through public primary school admission policies has been found. A scrutiny of the available literature and scholarship on basic education has revealed that many of these studies address issues regarding curriculum reform, safety and security in schools, school governance and school governing bodies, teacher development and professional training, and management and leadership. Notable are the many studies dealing with school curriculum transformation in South Africa dating back to Curriculum 2005, its abandonment in 2000, and the introduction of Outcomes-Based Education (OBE) to guide curricular reform in South Africa and its implementation, successes and challenges (Schwarz & Cavener, 1994:330; Brandt, 1994:7; Brady, 1995:10; Jansen, 1995:247; Jansen, 2007; Berger, 2003:26; Modisaotsile, 2012:4; Mouton, Louw & Strydom 2012:211; Malan, 2010:24) and other studies such as the one by Malan (2000:28), who is of the view that "OBE is firmly rooted in past educational approaches and does not represent a paradigm shift as advocated by OBE proponents".

Issues of school safety and a conducive learning environment have been studied and discussed extensively (Masitsa, 2011:164; Prinsloo, 2005:358. Van Jaarsveld, 2011:25; Xaba, 2006:558; Styron & Styron, 2011:3). On teacher development and continuing education, teacher job satisfaction, and the impact of the discharge of the role of principals in this regard, the a review of the literature led to a number of pertinent studies (Boitshwarelo, 2009:12; Cave & Mulloy, 2010:11; the Centre for International Development, University of Sussex, 2003; the Centre for International Education, University of Sussex, 2011; Johnson, Monk & Hodges 2000; Mestry, Hendricks & Bisschoff, 2009; O'Sullivan, 2000:525; Ono & Ferreira, 2010: 525; Stein, 2011:45; Walker, 1994:68; Weldon,

2010:356). These studies in general demonstrate best efforts taken to ensure that teachers are fit and proper persons to teach in public schools.

Studies on job satisfaction are also numerous (Wong, Wong & Peng, 2010:61; George, Louw & Badenhorst, 2008:142; Bishay, 1996:149; Hongying, 2007:13). A number of studies address school governance and the role of SGBs (Beckmann, 2002:154; Bush & Heystek, 2003:129; Van Wyk, 2004:50; Dladla, 2013:23). Thought-provoking research has been conducted on different aspects related to school governance and the different roles of SGBs (Xaba, 2004:560; Van Wyk, 2004:50; Karlsson, 2002:230; Xaba, 2011:560), including but not limited to the roles of SGBs in improving performance in school (Quan-Baffour, 2006:9); the oversight role over school finances (Rangongo, 2016:20); their role in the governance of Section 21 schools (Nyambi, 2004:3); their role in the appointment of teachers (Gina, 2006; Beckmann & Prinsloo, 2009:173; Sigudla, 2002:16) and how they helped to transform the education landscape in South Africa (Mkentane, 2003:18).

All of the above are relevant to the child's experience of primary education. However, as noted above, little existing literature deals explicitly with the experiences of stakeholders – principals, SGBs, parents, and heads of departments regarding admission policy as the enabler of children's rights to basic education through public primary school admission policies. This is so despite the issue of learner admission being one of the critical considerations towards achieving the learners' rights to basic education as demonstrated through a few decided cases in South Africa, and in other international and foreign scholarship and jurisprudence. According to Franklin and McLaren (2015:17), "School admissions policies, if unlawfully determined or implemented, can have the unfortunate and unlawful effect of maintaining segregation based on race, language, culture or socio-economic class if not properly monitored". Admitting a learner to a school could, unfortunately, also have the unintended consequence that a learner may be admitted to a school which may not be able to serve his/her educational requirements adequately. Franklin and McLaren.

(2015:17) make a critical observation that is relevant to this study and that, in my view, has great merit but is very limited in scope.

2.3 CONTEXTUALISATION OF THE CHILD'S RIGHT TO BASIC EDUCATION

2.3.1 International framework

Eide, Krause and Rosas (1995:195) argue that the importance and the peculiarity of the right to basic education results from the fact that it contains aspects of all three generations of rights, namely civil and political rights; economic, social and cultural rights, and group rights. As noted by Churr (2015:2408), this right intersects with many other rights. It is not value neutral (Claude 2005:37). The intersection of the right to education with other rights was concisely stated by Claude (2005:37) when he wrote the following:

Education is intrinsically valuable as humankind's most effective tool for personal empowerment. Education takes on the status of a human right because it is integral to and enhances human dignity through its fruits of knowledge, wisdom and understanding. Moreover, for instrumental reasons, education has the status of a multi-faceted social, economic and cultural human right. It is a social right because in the context of the community it promotes the full development of the human personality. It is an economic right because it facilitates economic self-sufficiency through employment or self-employment. It is a cultural right because the international community has directed education toward the building of a universal culture of human rights. In short, education is the very prerequisite for the individual to function fully as a human being in modern society.

It is clear from the literature that the inviolability of the right to basic education must be protected and promoted as one of the objectives of the conception of

human rights. It is submitted that in regulating the right to basic education, international and continental treaties, charters, declarations and conventions would require that, in regulating and implementing admission policies in public primary school, states should not approach this in a manner that would limit the exercise of this right or make the realisation of the right to basic education impossible. The regulation of the exercise of the right to basic education must therefore be consistent with the state's obligation under both international and regional law.

With regard to education rights, Article 26 (2) of the Universal Declaration of Human Rights (UDHR) provides that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms". This is a very important proclamation because signatories to the UDHR are obliged to protect and promote fundamental human rights contained therein, including the rights of children. According to Eide *et al.* (1995:195), the right to education as contained in the UDHR is the only right for which international law places a duty on signatories to ensure compulsory education of children until the end of their primary education. Remarkably, Claude (2005:39) posits that Article 26 of the UDHR is the most contentious of the provisions in that it links this right to specific educational goals, including: "(1) the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms; (2) the promotion of understanding, tolerance and friendship among all nations, racial or religious groups; and (3) the furthering of the activities of the United Nations for the maintenance of peace".

The observation by Claude (2005:39), it may be argued, relates to what should be the content of the right to basic education. However, it may also be argued that it reflects on the political nature of the right to basic education.

There are other relevant United Nations instruments addressing specific rights identified in the UDHR. For example, the UN Convention on the Rights of the Child (CRC) of 1989; the International Covenants on Civil and Political Rights (ICCPR) of 1966, and the Convention on Economic, Social and Cultural Rights

(ESCR) of 1966 (Lee, 2012:5). The CRC was regarded as ground-breaking in the history of children (Freeman & Veerman, 1992:14) and entered into force on 2 September 1990. Article 2 of the CRC obliges state parties to provide equal opportunities for children, thus highlighting the understanding that children's rights are also human rights worthy of protection and promotion by any reasonable means necessary. The CRC was one of the best embodiments promoting of the United Nations' Resolution 13 86 (xiv) of the Declaration of the Child adopted by the General Assembly on 20 November, 1959.

The ESCR was adopted and opened for signature, ratification and accession by the United Nations General Assembly resolution 2200 A (XXI) on 16 December, 1966, and came into force on 2 January 1976. Article 13 (1) of the ESCR makes provision for the right to education with states parties recognising the right of everyone to education as a tool to developing human personality and dignity. Therefore, Article 13 (2) (a) for the purposes of this study, stipulates, "Primary education shall be compulsory and available free to all". The ESCR goes further by giving "parents and legal guardians the right to choose educational institutions for their children other than those provided by the state" in Article 13 (3).

The ESCR in its General Comment 13 of 1999 provides the key essential features of the basic right to education, which include availability, accessibility, acceptability (admission) and adaptability (Skelton, 2013:9).

2.3.2 African continental and regional frameworks

From a continental perspective, the African Charter on Human Rights and Peoples' Rights (ACHRP), sometimes called the Banjul Charter, was adopted by the Organisation of African Unity (OAU) in Nairobi, Kenya, on 27 June, 1981 and came into force and effect on 21 October, 1986. Article 17 (1) of the ACHRP states that "*every individual shall have the right to education*". The Charter has been central in the evolution of human rights instruments in Africa. Importantly, the ACHRP provided a framework for the establishment of the African Commission on People and Human Rights as a supervisory mechanism that was later supplemented by the African Human Rights Court. The ACHRP may be

viewed as a direct response by the OAU to ACHRP and the acceptance of its principles.

Specific to children, the African Charter on the Rights and Welfare of the Child (ACRWC), which was adopted in Addis Ababa, Ethiopia, on 11 July, 1990 and that entered into force on 29 November, 1999 contains a provision on education. Article 11 (1) states that “every child shall have the right to education”. Article 11 in fact contains one of the more elaborate provisions on the right to education, and places mandatory obligations on state parties to ensure the realisation of this right. Among others, Article 11 (2) of the ACRWC addresses the key objectives of education, including but not limited to the promotion and development of the child’s personality, talents and mental and physical abilities. Article 11 (3) calls on state parties to “take all appropriate measures with a view to achieving the full realisation” of the right to education. Notably, Article 11 (4) requires state parties to allow “legal guardians to choose for their children schools” as a form of respect to rights and duties regarding education. The ACRWC is similar to the UN Convention on the Rights of the Child. Important to note, and indicative of the centrality of the rights of children in the African human rights discourse, is the fact that the ACRWC has the Committee on the Rights and Welfare of the Child as its monitoring body.

The commitment of African states to respect, protect, promote and fulfil the right of every child to basic education, including all other rights in the ACHRP, was reiterated in the Pretoria Declaration on Economic, Social and Cultural Rights in Africa (Pretoria Declaration) , which was adopted at a seminar in Pretoria in September 2004. Its participants included 12 African States, national human rights institutions, non-governmental bodies (NGOs) and representatives of the African Commission. The Declaration was later adopted by the African Commission at its 36th session in December 2004. Paragraph 8 of the Pretoria Declaration refers to Article 17 of the ACHRP, making specific reference to certain provisions, including the provision of free education, and special schools and facilities for physically and mentally disabled children, thus addressing the issues of children’s special needs to access basic education.

Items 2.3.1 and 2.3.2 demonstrate the importance of recognising children's right to a basic education. The children's' basic right to education as stipulated in Section 29 (1) (a) and (b) and (2) of the Constitution. In my view, admission policies are the enablers of the right to education.

2.4 SOUTH AFRICAN CONSTITUTIONAL AND LEGISLATIVE FRAMEWORKS RELEVANT TO THE RIGHT TO BASIC EDUCATION

The literature reviewed shows that the Constitution elevates the status and urgency of the right. The right to basic education is immediately realisable. It is not, as in the case of a number of other socio-economic rights, made subject to progressive realisation within available resources" (Berger, 2003:235). Section 29 of the South African Constitution of 1996 guarantees the right to a basic education. The relevant provisions of Section 29 of the Constitution state the following:

(1) Everyone has the right –

- (a) to a basic education, including adult basic education; and
- (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account –

- (a) equity
- (b) practicability
- (c) the need to redress the results of past racially discriminatory laws and practices.

The right to a basic education must be realised and promoted on an equal basis in line with Section 9 of the Constitution of 1996, generally called the equality clause. Section 9 (2) of the Constitution reads as follows:

Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

General Notice 4138 of 2001 (*PG 129 of 13 July 2001*) prohibits discrimination and refusal to admit learners to public schools by stating the following:

Admission policies for schools must not unfairly discriminate against any learner in any way, and in particular –

- (a) a school must admit learners without unfairly discriminating on grounds of race, ethnic or social origin, colour, gender, sex, disability, sexual orientation, religion, conscience, belief, culture, language, pregnancy, HIV/AIDS status, or any other illness;
- (b) a governing body of a school may not administer any test related to the admission of a learner to a school, or direct or authorise the principal or any other person to administer such test; and
- (c) no learner may be refused admission to a school or discriminated against in any way on the grounds that his or her parent -
 - (i) is unable to pay or has not paid the school fees, registration fee or deposit determined by the governing body;
 - (ii) does not subscribe to the mission statement of the school and code of conduct of the school; or
 - (iii) has refused to enter into a contract in terms of which the parent waives any claim.

Prior to the General Notice 4138 of 2001 (*PG 129 of 13 July, 2001*), the National Education Policy Act 27 of 1996 (NEPA) addressed the learner admission issue.

It stated that “[t]he admission policy of a public school and the administration of admissions by an education department must not unfairly discriminate in any way against an applicant for admission (Section 9)”.

Prohibition of discrimination in public school admission policies and practices is an important departure from the Apartheid school system that was based on racial division and exclusion. The state has a constitutional obligation to ensure that children are admitted to public schools and are provided with adequate education.

Arendse (2011:120) provides a brief yet enlightening analysis of the right of access to basic education and how it must and should be realised in South Africa. He argues that no child should be denied admission to public primary schools because of the child’s socio-economic background and that South Africa is obliged to make free primary education accessible to impoverished children. Murungi (2015:3161) asserts that “Section 29 of the Constitution, which grants everyone the right to education, is one of the most hotly debated sections of the Bill of Rights for a range of reasons, including its significance for the realisation of other rights”. It is important that section 29 uses the word *everyone*, thus making the right available to everyone. Making basic education available as a right to everyone was, for example, addressed by the Western Cape High Court in *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa* 2011 5 SA 87 (WCC) para. 52 (the Western Cape Forum Case) “on the rights of children with severe and profound intellectual disabilities to basic education,” which concluded that “the State has a duty to provide equally for the education of all children, including those with severe and profound disabilities” (Murungi, 2015:3165).

The importance and inviolability of the basic right to education was also highlighted by the North Gauteng High Court in South Africa in the school textbook case of *Minister of Basic Education v Basic Education for All* [2016] 1 All SA 369 (SCA), hereafter called the BEFA case. Kollapen J, in paragraph 20 (2), declared that “failure by the Limpopo Department of Education and the

Department of Basic Education to provide text books to schools in Limpopo is a violation of a right to basic education”.

Chürr (2015: 2408) makes an important observation about Section 29 of the Constitution of 1996, in particular that “one should also note that Section 29 does not refer to all universally accepted education rights. Free and compulsory education does not form part of the right to a basic education, although provision is made for compulsory education in section 3(1) of the South African Schools Act” (2015:2409). However, Chürr’s observation does not emphasise the fact that compulsory education does not necessarily imply free education.

With reference to the words of Thomas Jefferson, the American Founding Father and its former president about the importance of education in a democratic country, Berger (2003:614) laments the fact that the emphatic enshrinement of the right to basic education in South Africa is far from being realised.

An analysis of South African case law on basic education, particularly Constitutional Court jurisprudence such as, for example, the *Governing Body of the Juma Masjid Primary School v Essay NO* (Juma Masjid Case) and *Minister of Basic Education v Basic Education for All* (BEFA Case), and the High Court cases of *Madzodzo v Minister of DBE* (Madzodzo Case) demonstrates how the importance of the right to basic education is judicially enforced. Although the Madzodzo Case dealt specifically with the issue of infrastructural norms and standards, it demonstrated the importance of other interdependencies to the full realisation of the right to basic education. Admission to a public primary school does not necessarily translate into the enjoyment of the right to basic education. Other factors, such as infrastructure for an environment conducive to learning and facilities for special needs of learners are important components and enablers in the realisation of the right to basic education, which, are broadly covered under the four key elements of the right to basic education as contained in the ESCR in its General Comment 13 of 1999. This was confirmed in other cases, including *Centre for Child Law v Government of the Eastern Cape Case No 504/10*, Eastern Cape High Court 2011, which dealt with under-resourced

schools in the Eastern Cape. Though both cases were settled by the parties, the central argument was that under-resourcing or the lack of adequate facilities in the schools was a violation and denial of the learners' right to basic education (MacConnachie & MacConnachie, 2012:556). Reference here could also be made to the BEFA textbook case of Limpopo (see above) is also relevant in this regard.

According to Skelton (2013:2), the Juma Masjid Case gave meaning to and underscored the extent of the right to basic education as contained in Section 29 (1) (a) of the Constitution of 1996. So did the BEFA Case ruling by the Supreme Court of Appeal in 2015. The relevant part of the Constitutional Court per Nkabinde J in the Juma Masjid Case (par. 34) reads:

It is important, for the purposes of this judgment, to understand the nature of the right to 'a basic education' under section 29 (1) (a). 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'. This right is therefore distinct from the right to 'further education' provided for in Section 29 (1) (b). The state is, in terms of that right, obliged, through reasonable measures, to make further education 'progressively available and accessible.

In the BEFA Case, which made reference to the Juma Masjid Case when addressing the issues of non-provision of textbooks to learners, Navsa J stated (par. 36):

Section 29 (1) (a) has 'no internal limitation requiring that the right be "progressively realised" within "available resources" subject to

“reasonable legislative measures”.’ The Constitutional Court stated emphatically that the right to a basic education entrenched in Section 29 (1) (a) is ‘immediately realisable’ and may only, in terms of Section 36 (1) of the Constitution, be limited in terms of a law of general application that is ‘reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

Woolman (2013:473) applauded the Juma Masjid Case as having “created a framework, grounded on various constitutional norms (Sections 8, 28 & 29 of the Constitution), that allowed various parties to address problems before them creatively, ensuring continued access to a basic education”. In this case, the court ruled that learners’ rights under Section 29 of the Constitution were satisfied, following arrangements made to place them after the school was evicted from the property privately owned by the Juma Masjid Trust.

Skelton (2013:3) observes that the right to basic education is “an immediately enforceable right, not subject to progressive realisation”. However, she continues to warn against assuming that the realisation of this right is easily attainable, given the historical context of basic education in South Africa, which because of “our Apartheid history is a gargantuan challenge” (2013:4). A similar observation is made by MacConnachie and MacConnachie (2012:556), who point out the infrastructure challenges. A study conducted by Unterhalter (2012:260 - 262) that looked at the realisation of the right to basic education in South Africa and Kenya pursuant to the MDGs, among others, attests to the strides made in South Africa to achieve the goal of providing universal and primary education to children.

Section (5) (1) of SASA and Section 29 (1) of the Constitution of 1996 are intertwined and should be understood with the same intensity. It is important to note that children may not be able to enjoy their right to basic education if not first admitted to a public school. Section 5 of SASA emphasises that learners should be admitted to public schools without being discriminated against in any way, whereas Section 29 of the Constitution emphasises the right to a basic

education. The challenge here is that admission to public schools could easily be impeded if schools do not take into consideration the importance of the right to basic education.

2.5 INTERNATIONAL PERSPECTIVES ON PUBLIC SCHOOL ADMISSIONS

2.5.1 The Organisation for Economic Cooperation and Development

In 2012, the Organisation for Economic Cooperation and Development (OECD) produced an informative publication on school management and access to education relevant to this study (OECD, 2012). In this comparative study, the OECD explored the similarities and/or differences of school systems. In particular, the study attempted to investigate and evaluate the management of public schools in the education systems in OECD and identified partner countries. The OECD study also investigated how school admission criteria considerations such as “students’ academic achievement, religious affiliation, academic and/or non-academic interests, or relationship with other family members who have attended, and others lead to inaccessibility of education and to socio-economic stratification of communities” (OECD, 2012:40). The situation is complicated by the education reforms in the OECD study countries that “tended to give more autonomy and authority to parents and students to choose schools that better meet their educational needs or preferences” (OECD, 2012:44).

According to the OECD study, for example, “in 15 OECD countries and 13 partner countries and economies, the socio-economic backgrounds of students who attend schools that admit students based on academic performance are more advantaged than those of students who attend schools that do not admit students based on this criterion” (OECD, 2012:40). Included among these OECD countries and partner countries were the United States of America, the United Kingdom, Canada, Greece, Germany, Chile, Slovenia, the Slovak Republic, Austria, Poland, Qatar, Dubai (UAE), Panama, Colombia, Peru, Argentina, Brazil, Uruguay, and Trinidad and Tobago. The study further revealed that in the

United States, Australia, New Zealand, Slovenia, Portugal, Ireland, Canada, Chile, Mexico, Spain, Argentina, Uruguay, Kazakhstan, Brazil, Albania, Colombia, Peru, Panama and Dubai (UAE) there are schools that admit learners “based on parents’ endorsement of the instructional or religious philosophy”.

Admission based on instructional and religious grounds as criteria is linked to the historical experiences of some of these countries. The considerations mentioned in the OECD Report are similar to those that are/have been at play in some South African public schools’ admission practices.

2.5.2 Policies and practices in Canada

Canada has a federal government and 13 provinces and territories. The schooling system is organised into elementary schools (primary schools) and secondary schools (high schools). According to Withworth (1995:404), education authority in Canada is devolved with each province having a department of education. Schools are led by principals with the help of school boards. The boards are groups of elected members of a community with delegated authority from the provinces to manage and govern some aspects of public education in their areas. In this respect, the Canadian School Boards are to a certain degree similar to South African SGBs. The boards establish or formulate policies, and procedures for the implementation of such policies. Galway and Wiens (2013:5) state that, depending on whether the boards exercise local authority – such as hiring and dismissal staff, and providing school facilities or exercise provincial authority – such as taxation, textbook selection and curriculum, the Canadian school boards also run the business of the school through their leadership and oversight of the operations at the school.

Schools in provinces have general and specific admission requirements. For example, in terms of the rules and admissions eligibility of the Toronto School Board, the admission criteria are based primarily on age and residency (boundary) requirements (Toronto District School Board, 2002). This, of course, has not avoided the stratification of admissions in terms of the socio-economic

circumstances of learners and parents. Other admission policies are designed to give effect to Section 23 of the Canadian Charter of Rights and Freedoms that guarantees minority language rights. The relevant part of Article 23 of the Charter, read with Section 293 of the Education Act (ROS) of 1990 provides as follows:

23. (1) Citizens of Canada

- a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
- b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.

This admission criterion is similar to some of the schools in South Africa that admit learners primarily on their ability to comply with the language of teaching adopted by the school; for example, Afrikaans or English adopted as a medium of instruction. The implementation of admissions policies is the responsibility of the admission boards that have a discretion to consider admission applications of the children whose parents cannot be considered holders of French-language education rights under section 23 of the Canadian Charter of Rights and Freedoms (Ontario Ministry of Education, 2009).

2.5.3 Policies and practices in England

A study by Riggall and Sharp (2008:2) provides an in-depth and informative account of the structure of primary education in England and other relevant matters. To start with, the control of the decentralised education system is said to be allocated to the national government and the central Department for Children, Schools and Families (DCSF). Other management responsibilities lie

with “the Local Authorities (LAs), churches, voluntary bodies, governing bodies of schools and head teachers” depending on the type of school in question (Riggall and Sharp, 2008:2). Stasz and van Stolk. (2007:8) argue that admission criteria and practices in these English schools are based on many varied factors, including parents’ endorsement of the school’s instructional and religious philosophy; the socio-economic background of the applicants (OECD, 2012) and some on “lottery admissions” due to over-subscription.

The Education Reform Act of 1988, referred to as the “most significant piece of legislation to have entered the education system in post-war Britain” by Evans, Penney & Bryant (1993:321) addresses learner admission in public schools. Section 26 (1) of the Act read with the provisions of Section 27, for example, precludes the fixing of the number of learners to be admitted to a school by the school authority, although exceptions may be allowed for fixing of numbers in the relevant age group as part of the admission criteria pursuant to Section 26 (3) of the Act. The provision of Section 27 (9) of the Act further obligates the school admission authorities to comply with the parents’ preferences of where their children must be placed, unless “... compliance with the preference would prejudice the provision of efficient education or the efficient use of resources”. Section 30 (1) (6) of the Act makes a very important concession, allowing for an agreement between the local education authorities and the governors of aided or special agreement schools “in respect of the admission of pupils to the school for preserving the character of the school”.

In general, education law and practice in England subscribe to the right of each child to be educated. To this end, the School Admissions Code has been enacted to regulate “admissions in the state schools system, including Academies, Trust Schools, and Boarding schools” and acts as a framework to “set admission standards that promote fair admissions and equal access” (Stasz and van Stolk, 2007:1). However, the government of England has been found not to comply with the framework nor to promote access to education meaningfully. According to a report to the United Nations Committee on the Rights of the Child by Andersen, Claridge, Dolring and Hall (2008:25), the government has failed to

provide and ensure access to education to many categories of children, particularly those with special needs.

A document of the Department of Education titled “Excellent Education Everywhere, Presented to Parliament by the Secretary of State for Education by Command of Her Majesty in March 2016” proposes to bring changes in the public education system. According to Paragraph 7 of the document, one of the changes is the simplification of the admission system to make it more accessible and more understandable to parents. The changes include “creating a single route for escalating any complaints about the maladministration of appeals” in admission processes.

I am mindful that the existing Canadian and English systems and related reforms informing this study at the time of writing may have changed at the time of the conclusion of this study. However, I have used the most recent material that I was able to access.

2.5.4 Policies and practices in Finland

The provision of free basic education in Finland has a long history. The Compulsory Education Act of 1921, for example, made provision for all Finnish children aged seven to 13 to obtain a compulsory six-year basic education. Currently compulsory basic education is provided for nine years to children between the ages of seven and 16 years in terms of Section 9 (1) read with Section 25 (1) of the Basic Education Act of 1998 (Ministry of Education and Culture, 2014). According to Lampinen (2003:84), Finnish school admission policies and practices have been guided by the principles of inclusion and equal rights. A study conducted in 2007, *Improving School Leadership, Finland*, reported that “the principle underlying pre-primary, basic and upper secondary education is to guarantee basic educational security for all, irrespective of their place of residence, language and economic standing” (Ministry of Education, 2007:9).

Admission to schools in Finland is subject to certain factors, including the performance of the child during the basic (comprehensive) school (Aho, Pitkänen & Sahlberg 2006:56) and the proximity of the school to the home of the learner with the Finnish municipalities required to assign pupils to a school near their home (Section 4 of the Basic Education Act). In terms of Section 6 (1) of the Basic Education Act determining where the child will be placed is made based on considerations of factors such as access to public transportation and to day-care services.

The proximity of the school to the home of the learner as the admission requirement in Finland is similar to that of admission requirements to public schools in South Africa.

2.5.5 Policies and practices in the United States of America

The United States is one of the countries that consider admission of learners on criteria that include parents' endorsement of the school's instructional and religious philosophy, and the socio-economic background of the learners. The education system in the United States of America has a history of grappling with a myriad of issues, including a separate but unequal schooling system. According to Boyer (1983:189), the 1950s, 1960s and 1970s saw a wave of significant efforts to make American public education equally accessible to everyone. One of the ground-breaking developments in this regard was the American Supreme Court ruling in the 1954 case of *Brown v. the Board of Education of Topeka* (Brown v Board of Education, 1954). The ruling was that all learners were entitled to equal access to public education and that separate but equal schools were inherently discriminatory.

Efforts to ensure equal opportunities of access to American public schools were continued in the 21st century, one of the latest being the now defunct No Child Left Behind Act of 2001. The Act came into operation in 2002 to create a framework for equal educational opportunities and a transformed public education system. The literature review reveals that the American public

education system has very flexible admission criteria, which, as indicated above, allow some schools to set their own admission criteria on the basis of which they may select learners on a variety of considerations, which appear similar to the ones that are maintained in South Africa. It is apposite to note that school admission practises and policies in the United States vary depending on states and counties.

One important school admission practice in the United States is the *lottery system* for over-subscribed schools. The manner in which it operates in Charlotte-Mecklenburg, North Carolina, for example, is that the parents submit to the relevant educational authority the names of their top-three schools of choice for placement. However, the feeder-school or boundary school criteria still apply because the learner may be assigned to “a neighbourhood ‘home school’” if the top three choices cannot be assigned (Stasz and van Stolk, 2007:4).

2.5.6 SUMMARY

Similar to the South African waiting list approach, any learner that could not be assigned to a home school would be assigned a place in any other under-subscribed school on a first-come first-served basis. There are notable differences and similarities regarding admission requirements of the four countries compared to those in South Africa. For example, admission policies in Canada are formulated by the School Boards that are similar to SGBs in South Africa. Similarly, admission criteria for admission to public schools in the Canadian school system are the ability to speak the language decided upon by these boards. The difference between South African school admission criteria to those of England is that in England the national government has control of their education systems whereas in South Africa this responsibility rests with the provinces.

Another similarity to the South African education system is that of Finland. School admission policies in Finland are guided by the principles of inclusion and equal

rights. The USA and SA are still grappling with principles of inclusion and equal rights.

2.6 SOUTH AFRICAN PERSPECTIVE ON PUBLIC PRIMARY SCHOOL ADMISSIONS AND PRACTICES

2.6.1 A historical perspective

It would be remiss to try to understand and give an account of public school admission policies implementation and practices in South Africa without understanding the educational, political and historical framework against which the schooling system in South Africa was designed in the Apartheid era. However, this study did not conduct an exhaustive literature review of the history of public education system during the Apartheid era as it has been thoroughly reported by other researchers (Wills, 2012:20). The Apartheid government created separate education systems with blacks subjected to the infamous Bantu Education. Bantu Education was a reflection of legislative enactment of the findings of the report of the 1949 Eiselen Commission by the white National Party. As Wills (2012:20) noted, the implementation of the Bantu Education Act of 1953 reflected the separation of races in South Africa and promoted the belief that black education was solely for the purposes of the domestication of blacks and the inculcation of the whites' life views. Disparities in resources provided to black and white dominated schools, which to a certain degree still persist today, were the order of the day. According to Hunter (2014:10), the Bantu Education system purposefully limited the African child's educational opportunities and access to education in general.

The national admission policies in South Africa reflect the organisation of the education system under a national DBE with nine provincial departments. Generally, admission to public schools in South Africa rests on the common framework developed by the national DBE published in 1998 (Sandikonda, 2013:33). In this regard, SASA is an important piece of legislation that makes provision for a harmonised system of the governance, funding and organisation of public education in South Africa. Among other things, SASA sets out the

functions of school governing bodies in respect of issues relating to the admission of learners, including determining who bears the responsibility for formulating admission policy and who should implement such policy (Sections 20 and 21).

2.6.2 National sphere: School admission policy and legislative framework

There are numerous legislative and policy framework provisions designed to regulate the issue of admission and access to public schooling education, and also relevant to ensuring the achievement of the requirements of Section 29 of the Constitution of 1996 through admission policies. As noted in paragraph 1.1, the following the main normative frameworks governing learner admissions at South African public schools are the South African Schools Act of 1996 (SASA) and the Admission Policy for Ordinary Public Schools (APOPS) of 1998. These are periodically or as and when necessary supplemented by procedural guidelines and notices such as, for example, the General Notice 4138 of 2001 (PG 129 of 13 July 2001) on Admission of Learners to Public Schools.

Section 3 (3) of SASA seeks to ensure availability of schooling facilities by requiring that “every *Member of the Executive Council* must ensure that there are enough school places so that every child who lives in his or her province can attend school as required by sub-sections (1) and (2)”. The availability of schooling infrastructure is important to enable the government through its functionaries to admit learners in public. As noted in paragraph 1.1, the capacity of the school and fit for purpose is one of the important considerations when admitting learners at schools. Therefore, schools should ensure that they have the capacity and resources to accommodate all learners they admit into their schools.

Section 5 (1) of SASA states that “a public school must admit learners and serve their educational requirements without unfairly discriminating in any way”. The function of the SGBs is, inter alia, to determine the admission policy of the school (Section 5 (5) of SASA). Among other things, Sections (16) 1 and 3 in

SASA set out the respective roles of SGBs and principals in respect of the governance and professional management of public schools. Another important provision is contained in sections 7 and 8 of SASA. Section 5 (7) of SASA states that an application for the admission of a learner to a public school must be made to the education department *in a manner determined by the Head of Department* whereas Section 5 (8) deals with refusal of applications and compels the Head of Department to inform the parent in writing of such refusal and the reason therefor. Section 5 (9) allows a parent of a learner who has been refused admission to a public school or the learner himself to *appeal against the decision to the Member of the Executive Council*. SASA seeks to provide public schools admission environment that is not discriminatory based on any conceivable grounds. Section 5 (2) of SASA, for instance, states that testing as a condition for admission is illegal. Therefore, schools are not allowed to administer or ask learners to undergo HIV tests before being admitted. Schools are not allowed to administer drug tests or language tests as a condition for admission. Testing may be a form of discrimination, which is unlawful.

APOPS sets out as its purpose “to provide a framework to all provincial departments of education and governing bodies of public schools for developing the admission policy of the school”. Paragraph 6 of the policy states that the “Head of Department is responsible for the administration of the admission of learners to a public school. The Head of Department may delegate the responsibility for the admission of learners to school officials of the Department”. The policy further states, in Paragraph 7, that the “admission policy of a public school is determined by the governing body of the school in terms of section 5 (5) of the South African Schools Act, 1996 (No. 84 of 1996)”. The policy must not be inconsistent with the Constitution and SASA. The provisions of APOPS are aligned to those of SASA. For instance, section 21 of APOPS state that “Persons classified as legal aliens must, when they apply for admission for their children or for themselves, show evidence that they have applied to the Department of Home Affairs to legalise their stay in South Africa”. Therefore, you cannot even discriminate against non-South African or place on them requirement meant to exclude them unlawfully from admission, determining if they are documented

with the Department of Home Affairs. This requirement of section 21 of APOPS is also reflected in section 27(g) of the Refugees Act of 1998, which states that “[r]efugees as well as refugee children are entitled to the same basic health service and basic primary education, which inhabitants of the Republic receive from time to time”. Section 2 (6) (3) of APOPS further prohibits discrimination on learner admission based on language requirements.

The Department of Education *Annual Report 1999* (1999:12) reported that the aim of APOPS was to achieve uniformity on how admission policies and practices are dealt with in the different provinces, including stopping the abuse of under age and over age admission.

The General Notice 4138 of 2001 (*PG 129 of 13 July 2001*) specifically addressed the issues of admission of learners in public schools. Paragraph 3 of the Notice prohibits unfair admission practices and requirements, which is a provision carried in section 5(1) of SASA.

An enlightening appraisal of the progress made towards access to the right to education in South Africa, which by itself is a human right, has been made by Skelton (2013:22) who observed that the right to education is interweaved with other principles of “availability, accessibility, acceptability and adaptability” (the so-called 4 As) as already confirmed by numerous court judgments. I agree with the position highlighted by Skelton (2013:22) that access to education generally and in the context of this study goes beyond admission. Thus, although the study looks at admission as a central consideration, other variables that affect the translation of admission of learners to primary schools into tangible and results-driven processes and the realisation of access to education will be considered. This may include the availability and adequacy of educational resources, funding and feeder school areas. In other words, admission that cannot be linked to opportunities to serve children’s educational needs adequately and without unfair discrimination does not really constitute admission in an educationally meaningful way.

Issues affecting basic education in South Africa were succinctly expressed by the Minister of Basic Education, Mrs A Motshekga, in a foreword to the DBE's Five-Year Strategic Plan 2015/6 - 2019/20:

The previous Department of Basic Education Strategic Plan highlighted some of the key challenges that characterised our education system. Among the challenges listed were poor learning outcomes across all grades, insufficient benchmarked measurement of learning outcomes, insufficient access to quality teaching and learning materials, unproductivity and ineffective use of time in the classroom and a general lack of access to basic education.

In light of the above discussion on the national normative framework and the view expressed by the Minister of Basic Education, it is submitted SASA and APOPS fulfil a critical role of ensuring that state's obligation under section 29 of the Constitution to enable and promote access to the right of basic education are satisfied. In particular, the application of both the SASA and APOPS ensures fairness, lawfulness, and equity in learner admission practices at public primary schools.

2.6.3 Provincial sphere: Gauteng Province school admission practices

As noted in paragraph 2.6.2, SASA provides for a uniform system for the organisation, governance and funding of schools; to amend and repeal certain laws relating to schools, and to provide for matters connected therewith. Public school admission policies and practices in provincial education departments should therefore be aligned with national policies and legislation as briefly discussed above. However, nothing prevents provincial authorities from enacting province-specific policies and legislation as long as they do not derogate unlawfully from the provisions of national legislation and of the Constitution.

At provincial level, the GDE has localised some of the national policy and legislative frameworks for admission and access to education. The GDE has the Gauteng School Education Act of 1996 (GSEA) “provide for the determination of provincial education policy; to provide for the establishment of councils to assist in the process of making education policy; to provide for the co-ordination, monitoring and evaluation of education policy; and to provide for matters connected therewith,” and “to provide for the provision and control of education in schools, and matters connected therewith”.

Section 5 (1) (a) of GSEA on directive principles of schools’ education policy states that “The Member of the Executive Council shall determine school education policy in the Province within the framework of the following principle: (a) every person shall have the right to basic education and to equal access to schools and centres of learning.” The Act addresses a number of issues, including determining who has the “responsibility for making and implementing education policy” (GSEA, Section 3) and the scope of the education policy, which includes issues such admission criteria and the learner-educator ratio. Gauteng Province introduced Regulations for Admission of Learners to Public Schools, which regulates how admissions should be handled. The Gauteng Regulations of 2012 espouses the essence of the provisions in APOPS, particularly with regard to prohibition of discrimination in admission policies and practices.

In order to realise the purpose of the GSEA with regard to admission of learners, in 2015 the GDE introduced an online application system whose purpose is, among others, to provide directives regarding the management and administration of admissions in the public ordinary schools and to ensure uniformity in the implementation of admission processes (Gauteng Department of Education, 2016). The online application system was introduced to ensure that the Department has all the necessary information relating to admissions in a central repository for planning and reporting purposes.

As already indicated, the post-1994 South African public education system has seen a transition from among other things a racially segregated education system to one national education system for all. The remnants of the segregated system are still present in the school admission practices leading to landmark judgments, such as the one by the Constitutional Court in the *Rivonia* case. In 2015, the GDE launched its online admission system requiring parents to apply for their children to be admitted to Grade 1 and 8 for the first time in schools in Gauteng through a centralised portal. According to the GDE, the new system is designed to further broaden access and to eliminate unjustifiable impediments to learner admissions (GDE, 2015).

2.6.4 School level perspective: School admission policy and regulations

Pursuant to SASA, the education policy in South Africa is set up in such a way that different schools within the same provinces will have their own individualised admission policies deriving authority from both the national and the provincial policies and legislation.

In terms of Section 5 (5) of SASA the SGB has to determine the school's admission policy, subject to the admission process not being unfairly discriminatory and the policy itself meeting certain requirements stipulated by the provisions of SASA. For example, according to SASA and the GSEA, such admission policy developed and implemented by SGBs may not exclude a learner or deny admission to the learner on the grounds that the parents of the learner are unable or will be unable to pay the school fees (SASA, Section 5 (3) (a)) and that the parent does not subscribe to the mission statement of the school (SASA, Section 5 (3) (b)). Furthermore, pursuant to section 2 (6) (3) of APOPS the school admission policy must not unfairly discriminate against learners based on their language. Nor can the SGB school admission policy refuse to admit pupils on the grounds of religion or ethnicity. Such a refusal will be inconsistent with section 2 of SASA, read with section 5(1). Any refusal or denial of learners' admission to school is a *prima facie* violation of their constitutional right to access to a basic

education and it is inconsistent with, and in violation of Section 29 of the Constitution of 1996.

In general, the SGBs' admission policies must not be inconsistent with national and provincial laws and policies.

2.6.5 Summary of the School Admission Policies in South Africa

The discussions in paragraphs 2.6.2 to 2.6.4 above mapped the school admission laws and policies in South Africa. The overarching normative framework is mandated at national level by SASA and APOPS, and the relevant national regulations and code of conducts. These have been implemented at provincial level. For instance, in Gauteng GSEA is the main legislative instrument designed to implement SASA and APOPS, and to put in place a uniform regulatory regime for public schools admissions through the province of Gauteng. GSEA is implemented at school level through the devolution of admission policy making powers to the SGBs, whose policies must also be aligned to both the SASA and APOPS. However, as noted in case law, the powers of the SGBs are not unfettered. The department may intervene if it is of the view that school admission policies are implemented discriminately.

The common thread of the national, provincial and school level admission environment is that the policies and practices must promote, protect and enhance the right of access to basic education, which is entrenched in section 29 of the Constitution. Unfair discrimination, in whatever shape or form, is not allowed and cannot be promoted through the provincial and school level admission policies.

2.7 PIVOTAL JURISPRUDENCE AND JUDICIAL PRECEDENCE ON THE MANAGEMENT AND IMPLEMENTATION OF LEARNER ADMISSION POLICIES

2.7.1 Importance of case law

The debate on the management and implementation of primary school admission policies owes its currency and prominence to key South African Constitutional Court and other decisions including the 2016 *FEDSAS* case; *Rivonia Primary School* case; and the *Harris* case. These cases contextualised the admission policies and provided some direction on how they should be interpreted and implemented. In particular, the decisions highlighted the need to govern schools collaboratively in issues of common interest to all the stakeholders. There are other relevant court decisions dealing with other enablers of the right to education. Paragraphs 2.7.2 and 2.7.3 synthesise briefly the *Rivonia Primary School* case and the 2016 *FEDSAS* case respectively.

2.7.2 Rivonia Primary School Case

The *Rivonia Primary School* case concerned a prospective grade 1 little girl (7 years old) who was refused admission by the Rivonia Primary School arguing that the school had reached its full capacity, and that such an admission would be contrary to the admission policy that was adopted by the SGB of the school “ostensibly to protect the interests of the school and its learners” (*Rivonia Primary School* case, par. 82). The case was finally decided in the Constitutional Court. Initially the South Gauteng High Court ruled in favour of the Department, which claimed it had the final say in school admissions. In this case, the school relied on Section 5 (5) of SASA to seek declaratory and interdictory relief to nullify the Department’s decision to override the school’s admission policy. Section 5 (5) of SASA states “subject to this Act and any applicable provincial law, the admission policy of a public school is determined by the governing body of such school”. The Gauteng High Court had ruled that SGBs in Gauteng do not have unqualified power to determine admission policy at state schools. According to Judge Mbha, the ultimate arbiter of admission policies and capacity in public schools is the Department of Education, and not the SGB. In coming to this decision, the High Court stated that providing “basic education across race and class requires government intervention in the preliminary power of SGBs to determine admission policies,” and that “leaving schools to determine their admission policy, including the power to determine their capacity ... one unwittingly creates

space privileged schools can use and manipulate that power to fortify rather than dismantle existing inequalities".

The Supreme Court of Appeals reversed this decision prompting the Department to take the matter to the Constitutional Court. The rationale for the overruling of the High Court decision by the Supreme Court of Appeal was that the conduct of the Department, in particular "the instruction given to the principal of the Rivonia Primary School to admit the learner contrary to the school's admission policy, and the placing of the learner in the school, were unlawful".

However, the Constitutional Court ruled that the Supreme Court of Appeals had "erred in finding that the head of department could only exercise ... power in accordance with the school admission policy". The Constitutional Court admonished both parties for the way in which they had conducted themselves. According to the Court, it was disappointing that the parties sacrificed *bona fides* and mutual trust, trying to maintain their different positions before they engaged the courts as final arbiters of their dispute. In particular, the court called on both the school and the Department to appreciate the fact that "the partners in the governance and management of schools need to engage with one another in mutual trust and good faith on all material matters relating to that endeavour" (*Rivonia* case, par. 73). The court found that the HOD's actions were procedurally unfair by placing the child in the school and instructing his officials to go to the school and physically seat the child at an empty desk (*Rivonia* case, par. 68).

The court found that the Rivonia SGB "[d]esiring to safeguard its own authority" patently failed to act in the best interests of the learner in question (par. 76). The Court said "... the school governing body may ... determine capacity as part of its admissions policy. However, this power is subjected to other provisions ..., which state that the department maintains ultimate control over the implementation of the decisions", but should be careful not to abuse its confirmatory powers (*Rivonia* case, par. 77).

The Constitutional Court ruling in the *Rivonia* case set out a clear and authoritative delineation of the limits of the role of the SGBs (Dieltens & Enslin, 2002:10) and that of the national and provincial Departments of Basic Education. In particular, it sent a clear message about the co-operative governance of schools, which does not allow a system of unfettered powers. After the *Rivonia* decision, it is hoped that all the stakeholders will set aside power plays and collectively look for solutions that will be in the best interest of the learners. To quote the Constitutional Court:

[t]he Constitution provides us with a reference point – the best interests of our children. The trouble begins when we lose sight of that reference point. When we become more absorbed in staking out the power to have the final say, rather than in fostering partnerships to meet the educational needs of children. (par. 2).

Magome (2013:18) has scolded the DBE for the alleged knee jerk reaction to the case and indicated that requiring a change of law on powers of SGBs to determine school admission policy further complicates the issues, thus leading to uncertainty on the interpretation of the Constitutional Court decision.

2.7.3 FEDSAS Case

The *FEDSAS* case, which followed the decision by the High Court in the *Rivonia* case, deals substantively with the issues addressed in the *Rivonia* case. An observation by the Constitutional Court in the *FEDSAS* case is that, despite SASA being clear as to the power of the SGB to determine the admission policy, “[n]either the Schools Act nor any related national legislation, such as the National Education Policy Act, goes further than Sections 5 (5) and 5A (3) [of SASA] in describing a more extensive role for the governing body in the implementation of the admission policy or in the determination of capacity” (par. 40).

The court’s observation of the inadequate description of the powers of SGBs in the law in the *FEDSAS* Case, in my view, reflects the extent of the challenge of

the implementation of school admission policies in the light of the principle of cooperative governance. Unfortunately, there is a dearth of research on public primary schools and learner admissions, the interpretations and appreciation of the ramifications of learner admission policies, their implementation and relationship with the constitutionally guaranteed right to basic education.

2.8 EXPERIENCES OF STAKEHOLDERS ON PUBLIC PRIMARY SCHOOL ADMISSION POLICIES

2.8.1 Overview of stakeholders

Stakeholders in basic education include the national government, provincial government, principals, SGBs, teachers, parents and learners (Woolman, 2013:338).

2.8.2 Admission policy implementation and experiences of principals

Because this study investigates the experiences of stakeholders on admission policies as enablers to the right to basic education, it is appropriate to consider as part of the literature review a brief historical account of the institution of the principalship, since principals are central to the implementation of admission policies. Also, it is important to note that, in terms of Section 1 of SASA, *principal* means an educator appointed to or acting as the head of a school. According to Mazibuko (2010:74), this is a managerial role in that the school principal is required to perform different tasks to ensure that the individual's and school's needs and goals are fulfilled. The school principal has to give direction to the activities of the school through leadership, including that of directing the activities of the educators and the learners (Mazibuko, 2010:74). The principal plays a critical management role because, as noted by Mazibuko (2010:74), the school principal "also manages, controls and monitors these activities". This in my view, is akin to the role of the chief operations officer of an institution.

The school principalship in South Africa has a very interesting history, which includes influences of the Apartheid system of segregated development in all spheres of life – economic and socio-political spheres. Maile (2012:205) points out the problems that beset educators “who were not properly trained for their job” as among the factors calling for the institution of the principalship at schools. He continues to reflect on the fact that the “principalship was regarded as another job, which even though senior, could be executed by any educator who excelled in teaching”. With the advent of the constitutional democracy the view of the principalship as just another job changed. The professionalisation of the principalship became a requirement or an imperative for good governance and was ushered in by the White Paper on Education and Training of 1995 (Maile, 2012:205).

The limited literature review, and largely the reported case law, would suggest that school principals, together with SGBs, have had a torrid and roller-coaster type of an experience in the interpretation and implementation of schools’ admission policies. A typical experience is the *Rivonia* case in 2013. The actions by the HOD brought a serious situation of uncertainty in Gauteng schools with the school principals having to second-guess what next regarding their role in the administration and implementation of schools’ admission policies. It is for this reason, which came as some relief to principals in their obligation to implement learner admission policies that the Constitutional Court stated that “a decision to overturn an admission decision of a principal, or depart from a school’s admission policy, must be exercised reasonably and in a procedurally fair manner”.

In the light of the ruling of the Constitutional Court schools found themselves in catch 22 situations because the court found that the position or arguments proffered by Rivonia Primary School were inherently in violation of Section 28 (2) of the Constitution, which provides that a child’s best interests are of paramount importance in every matter concerning the child and Section 29 (1) (a), which states that everyone has the right to a basic education.

2.8.3 Admission policy implementation and perspectives of the Department of Basic Education

In the *FEDSAS* case the court decided on the question of the HOD overriding acts, which in his or her view, are contrary to a policy and offend the Constitution. The *FEDSAS* case addressed the powers of a provincial department in relation to policies. In both these cases the Constitutional Court held that the scheme of the Schools Act in relation to admissions indicated that the Provincial Department maintains ultimate control over the implementation of admission decisions. Thus, the court held that the “Gauteng Regulations afforded the Gauteng HOD the specific power to overturn a principal’s rejection of a learner’s application for admission” (*Rivonia* case, para. 52). Issues of the interpretation and application of the admission policies in the context of balancing the relationship between the role of the school leadership and management and that of DBE in the admission of learners remain contentious.

It would seem that the balancing of responsibilities in respect of admission policies and co-operative governance remains contentious. According to Lesufi (2017:21), the issue of primary school admission policies cannot be separated from transformation of the schooling system in general. There is a need to revisit the powers of the SGBs, which necessitates the proposed amendments to the SASA through the Basic Education Laws Amendment Bill (Lesufi, 2017:21).

2.8.4 Admission policy implementation and perspectives of parents and learners

According to the Economic and Social Rights 3rd Report (3rd Economic and Social Rights Report), parents have some issues and dissatisfaction with APOPS, and some requested some exceptions to the admission policy, “whether on grounds of special aptitude, expectation or convenience” (3rd Economic and Social Rights Report 1999/2000:8). However, the Department refused any consideration of exceptions to the general admission rules. *Bussinesstech* (2017) highlighted the litigious nature of the relationship between SGBs and the Department, referring particularly to the *FEDSAS* case (2011). Feeder zone legislation has also come

under the spotlight as one of the admission policy measures. Govender (*Sunday Times*, 6 May 2016) reported in the Equal Education (EE), (which consists of learners, parents, teachers and community members), took part as friends of the court in the feeder zone case by FEDSAS, arguing that the system will exclude historically poor black learners who will primarily live in historically poor and marginalised black areas from admission or enrolment into affluent areas.

A review of case law shows that parents had to approach courts in certain cases to overturn the adverse effects of the implementation of the school's admission policies. The Court in *Matukane and others vs Laerskool Potgietersrus*, 1996 (3) SA 223 (TPD), for example, addressed the issue of discrimination. It ultimately found that black children subjected to discriminatory practices, and ordered not to refuse to admit any child on grounds of race, ethnic or social origins, culture, colour or language.

As is the case with all policy and law in South Africa, the admission policy must also be in line with the Constitution of 1996 and must not be used to discriminate unfairly against learners. According to Gordon (2013:4), the court's ruling in the Rivonia Primary School dispute is one of those that brought a sigh of relief to the poor and marginalised communities of South Africa, albeit in part. Access to education has been, and remains, a thorn in the side of the South African education authorities. It has been a major challenge for many years. The effect of the ruling in the *Rivonia Primary School* case is manifold and positively in the best interest of the learners on the face of it. Although the court ruling may be questionable in some respects, it reinforces the applicable law to the effect that a learner, or the parent of a learner who has been refused admission to a public school, may appeal to the MEC against the decision in terms of Section 5 (9) of SASA and Paragraph 43 of NAPOPS. However, the decision has left open some interpretation and application gaps and questions that may leave parents and learners in a position of uncertainty relating to the admission policies of schools.

2.8.5 Admission policy implementation and perspectives of School Governing Bodies

Woolman (2013:339) provides the following two propositions regarding Chapter 4 of SASA as it relates to the SGB, namely that “SGBs operate as a flexible, polycentric tier of self-governance” and that “the state has regularly tweaked the powers of SGBs in order to make it more transparent, more responsive and more accountable to the broad South African community of learners that they are meant to serve”. Important in the observation of Woolman is the concept of decentralised powers granted to the SGBs and how the state’s interference with these powers was necessary. According to Woolman (2013:339), the powers granted to SGBs in SASA deliberately disguise the real intention of creating SGBs, which is to “provide communities with the illusion that they have genuine control over the governance of their school”.

From the submission to courts made by SGBs in the cases that dealt with the powers and authority to determine the nature and the implementation of admission policies, it would seem that the perspective of SGBs is that they are given little scope by the Head of Department to take decisions on admission where they deem fit. This view is not held by Woolman (2013:339), who accuses the SGBs of selective reading of SASA, which may be correct in part. However, it is a fact as demonstrated by the contentions around public school admission policies that the once wide-ranging decision-making functions and responsibilities of SGBs have not remained unfettered. A typical example is the South African Basic Education Laws Amendment Act, October 2017 (BELA) that is rejected by SGBs as taking away some of their core powers and responsibilities, including the appointment of principals. The management of admission policies has proven a complicated exercise, as discussed below in Section 2.9.

The court, in the *FEDSAS* case in 2016, tried to strike an appropriate balance between the right of learners to access basic education and the right of the SGBs to determine the admission policy. The court further looked into the right of SGBs to implement their admission policies, which led to a dispute concerning the validity of amendments to the Regulations for Admission of Learners to Public Schools in Gauteng (Regulations), promulgated in 2012. An application to

overturn the amendments was filed by the Federation of Governing Bodies for South African Schools (FEDSAS).

SGBs consider proposed amendments under BELA as an attempt by the Department to erode and usurp their powers, including the powers to determine and administer school admission policies. However, the Department considers the amendments as aiming to “promote social inclusion, create social consciousness and foster a strong sense of belonging in all of us” (Lesufi, 2017:21).

2.9 INTRICACIES OF THE MANAGEMENT OF ADMISSION POLICIES

The intricate nature of the relationship between the SGB and HOD as discussed, among others, by Van der Merwe (2013:240) means that there should be an efficient, effective, and sound working relationship among all stakeholders namely SGBs, principals, parents and learners, the community and the “Gauteng Department of Education (GDE)”.

2.9.1 Co-operative governance of schools

As already noted in paragraph 2.6.2 above, South African education legislation, such as SASA and related policies and regulations, have located the governance of public schools with some important powers including the development of admission policies in SGBs. The SGBs are then required to exercise these powers and implement the policies in co-operation with the GDE, the principal and the parents and other stakeholders. This inter-relationship between school governance and administration has informed my choice to consider the theory of co-operative governance.

The article by Gauteng Education MEC Lesufi titled *Education cannot be held to ransom by the haters of transformation* (Lesufi, 2017:21) points to long-standing and deeply-seated contradictions and challenges relating to co-operative governance between SGBs and the Department. Co-operative governance in

schools has not been without its challenges and needs to strike an appropriate balance of relations, as is stated by Maluleke (2015:6). Du Plessis (2016:10) argues that the application of co-operative governance between the SGBs and the GDE is flawed in that the state imagined that only SGBs need to be accountable to the state when in essence SGBs are obliged to hold the state accountable. Du Plessis further warns that “the relationship between public school governing bodies and the state should be informed by close cooperation, a cooperation that recognises the partners’ distinct but inter-related functions. The relationship should therefore be characterised by consultation, cooperation in mutual trust and good faith”. Both the DBE and the GDE, for example, are “co-responsible and bear equal but distinct accountability” (Maluleke, 2015:6) for the delivery of education to citizens in their respective spheres of operation. SASA is premised on the idea of *co-operative governance* in schools (Heystek, 2011:457). According to the preamble to SASA, the new national system for schools (the system that commenced in 1997) must be based, among others, on a foundation that upholds “the rights of all learners, parents and educators” and promotes “their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the state” and must also set “uniform norms and standards for the education of learners at schools and the organisation, governance and funding of schools throughout the Republic of South Africa”.

2.10 INTER-RELATION AMONG LANGUAGE RIGHTS, SCHOOL ADMISSIONS, AND THE RIGHT TO BASIC EDUCATION

It has been evident from the scholarly discussions and case law that there is a strong inter-connectedness amongst issues of language rights, school capacity, parents’ right to choose a school for their children and the right to basic education in general. An observation from the *Madzodzo case*, discussed in item 2.4 of the study, is that there are other interdependencies to the full realisation of the right to basic education as covered in section 29 of the Constitution. This is so despite the fact that unlike other rights the right to basic education is generally immediately realisable (see Chürr 2015; Murungi 2015; Skelton 2013; Arendse 2011; Berger 2003). To begin with, section 29(2) of the

Constitution, which is discussed in item 2.4 of this study, provides language protections in education. The relevant provision states that:

- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account –
 - (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.

The interpretation given by the DBE to section 29(2) of the Constitution is that it means that learners are allowed to select any one of the eleven official languages of South Africa, which are protected in section 6(1) of the Constitution. Furthermore, the education language rights protected in section 29(2) of the Constitution finds direct and indirect protection in other sections of the Constitution such as section 9(3) that prohibit discrimination on the grounds of language. Clearly stated in subsection 2 of section 29 of the Constitution is that the language right in education comes with conditionalities. It is language right in education is expressly limited by considerations of practicability. Likewise, section 4 of the National Education Policy Act (NEPA), which sets out the principles according to which the Minister of Basic Education must determine language policy, requires that the language policy must be directed towards the right of every learner to be instructed in the language of his or her choice, where this is reasonably practicable. Equally noteworthy is section 6 of the SASA, discussed in detail in item 2.6.2 of this study, which addressed how language policy in public schools must be dealt with.

The requirement of practically with respect to education language rights has consequences to other rights, freedoms and privileges related to education. If, for example, the parent chooses to seek admission of his/her child in a particular school which has capacity to take in learner the issue does not end there. It must also be asked if it practicable to teach that learner mathematics in isiZulu, should the parent so request. Maintaining a proper balance in issues relating to education language is a delicate exercise. But, the protection that the schools can give to different languages within the context of admissions and the right to basic education can be enhanced through different approaches to school medium structuring: First approach: A single-medium school makes provision for only one medium of instruction. In this set up all learners in all grades will receive their education in whatever language of instruction the SGB has opted for in its language policy, with the other languages taught as first additional languages or second additional languages. Second approach: In a parallel-medium school only one medium of instruction exists, at the same time offering more than one language of teaching and learning (LOLT). The third approach is a dual-medium school. In a dual medium school education is provided through two languages of learning and teaching, for example English and Afrikaans or English and isiXhosa. The learners receive their education in both languages

The issue of education language, particularly in learner admission disputes, has been the subject of several cases (see case aw discussed in item 2.7 of this study, for example). In case of *Matukane and Others v Laerskool Potgietersrus* ('Matukane'), an attempt by the SGB to excluded black learners seeking English-medium instruction from a parallel-medium school was found by the Court to constitute unfair discrimination. Consequently, the court directed the school to admit the learners in question, contrary to the provisions of the school's language policy. This issue of the powers of the SGB to determine the language policy, in particular language rights of learners, was further discussed in the case of *Laerskool Middelburg v Departmentshoof, Mpumalanga Department van Onderwys* ('Laerskool Middelburg'). In this case, which dealt with a dispute arising out of the provincial education department instructing an

Afrikaans-medium school to admit 20 learners seeking English-medium instruction, the Court held that the learners' right to choose their medium of instruction took precedence. Interestingly, the court held that this right could not be undermined where there was a need to share the school facilities with other language and cultural groups. The events and the facts in *Governing Body, Hoërskool Overvaal and Another v Head of Department of Education Gauteng Province and Others* [2018] 2 All SA 157 (GP), which is discussed further in item 4.2.3.1 – 4.2.3.4 of this study, demonstrate the challenges of language rights on the one hand and rights to basic education on the other hand. In this case, the dispute was whether an Afrikaans medium school had the capacity to admit 55 English-speaking learners. In this case the court held that forcing the single-medium Afrikaans school to place the 55 English-speaking learners at short notice and in the face of compelling evidence that the school was full to capacity, was contrary to the general norms and standards pertaining to language policy in terms of s 6 of the South African Schools Act 84 of 1996. The Department was said not to have the authority on it could justify having overridden the school's language policy. Also, that the Department had exceeded its powers, and the decision to force the SGB to admit the 55 English-speaking learners was in conflict with the constitutional principle of legality and thus illegal. In my view, both *Hoërskool Overvaal* and *Laerskool Middelburg* are typical cases that call for the balancing of the competing interests of the stakeholders while at the same time having to make sure that constitutional obligations of the state are taken into account and no rights are unreasonably limited.

2.11 CONCLUSION

The preliminary literature review points to a dearth of studies in South Africa addressing in-depth certain contested areas of school admission practices and policies and the implementation thereof in public schools. The role of the important functions that principals fulfil with regard to the leadership and management of the schools, together with the SGB has been highlighted. The regulatory framework for the right to education, and for access to education,

which includes the relevant admission policies and regulations, has also been analysed.

Admission policies and practices of a number of appropriate countries abroad have been explored. This overview of other countries has led to a number of observations for further interrogation during the main study. To start with, the issue of learner admissions in public schools in these jurisdictions is complex and fraught with uncertainties, despite the existence of policies and other legal frameworks. The common factor in the admission policies examined is that their existence or origins are linked to their socio-economic circumstances and political histories. The issue of the stratification of admission criteria as is the case in countries investigated in the OECD study remains relevant.

In summary, admission policies and implementation in South Africa are not entirely different from African continental and international practices. There are many similarities, for instance between South Africa and Zimbabwe in that both countries' education systems consist of primary, secondary and tertiary education. There are also several differences but in all these jurisdictions, as in South Africa, the principals has a primary obligation to ensure proper implementation of the admission policies, assisted by bodies with some resemblance to South Africa's SGBs.

CHAPTER 3

RESEARCH METHODOLOGY

3.1 INTRODUCTION

The two previous chapters provided the background to this study on stakeholder experiences of enabling children's rights to basic education through public primary school admission policies. An introduction and background to this study are provided in Chapter 1 that briefly outlined the research methodology.

Chapter 2 provided a holistic national and international overview of fundamental topics related to this study. The chapter contained a thematic reflection on relevant literature, highlighting the limitations of existing literature and surveying continental, regional and international legal frameworks relevant to children's right to basic education. South African constitutional and legislative frameworks relevant to the right to basic education, international perspectives on public school admissions, African continental perspectives on public primary school admissions, South African perspectives on public primary school admissions and practices, seminal jurisprudence and judicial precedence on the management and implementation of learner admissions policies and intricacies of the management of admission policies are addressed.

This chapter focused specifically on the research methodology of this thesis with special attention to the methods of collecting and analysing data.

3.2 RESEARCH PARADIGM

De Vos (2005:6) opines that the term *paradigm* originated in linguistics, and that it entails numerous forms that a word can take in some languages according to the declension or conjugation of that word, especially in the model for similar nouns.

Quoting Denzin and Lincoln, Creswell (2013:299) describe the term *paradigm* as the philosophical position taken by the researcher setting out beliefs that provides guidance to the research conduct. He further asserts that it defines for its holder, “the nature of the world, the individual’s place in it, and the range of possible relationships to that world”. The term *paradigm* is further called “the net that contains the researcher’s epistemological, ontological and methodological premises” (Creswell, 2013:299).

According to Burton and Bartlett (2009:18), a research paradigm describes models of research that reveal a general agreement on the nature of the world and how to investigate it. A paradigm is a network of coherent ideas about the nature of the world and of the purpose of researchers that, observed by a group of researchers, conditions the patterns of their thinking and underpins their research actions. Thus, within a paradigm there would be a common agreement on the research methods that are relevant, satisfactory, and acceptable for gathering data and also those that are satisfactory.

Thomas Kuhn used the term *paradigm* in two ways in his 1962 monograph *The Structure of Scientific Revolutions*:

1. To represent a particular way of thinking that is shared by a community of scientists in solving problems in their field.
2. To represent the commitments, beliefs, values, methods, outlooks and so forth shared across a discipline (Schwandt, 2001:183-4).

When selecting the most suitable paradigm a number of variables are considered including: what the researcher regards as real, what and how the researcher knows, the prevailing literature on the subject, and the theoretical perspective(s) regarding the subject under study. (see Figure 3.1).

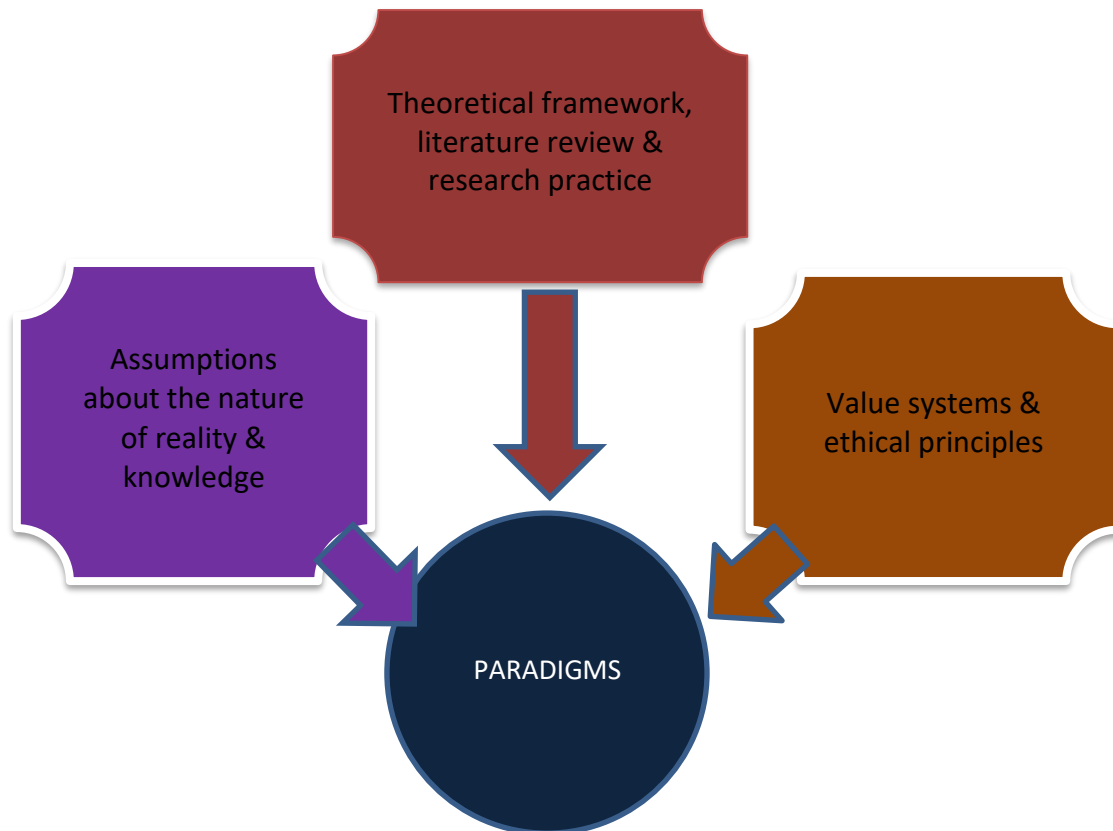


Figure 3.1 Factors influencing the choice of a paradigm (Chilisa & Kawulich, 2012:12)

An interpretivist paradigm was used in this study. Creswell (2011:39) and Yanow and Schwartz-Shea (2011:18) claim that interpretivist researchers discover reality through participants' views, their own background and experiences and through other information on participants.

Goldkuhl (2012:13) identified the following characteristics of the interpretivist paradigm:

- The key character of interpretive knowledge is understanding.
- In interpretivism, the main type of the investigation's field studies and data generation is conducted through interpretation.
- The researcher is engaged in understanding, whereby understanding is seen as a value on its own.

Furthermore, I decided on an interpretivist paradigm due to the fact that it is more suitable in a qualitative research approach. Another aspect that informed the

choice was the compulsion to understand the essence or the core of stakeholders' experiences of enabling children's rights to basic education through public primary school admission policies.

In addition, the interpretivist paradigm played a pivotal role in answering the primary research question in Section 1.3 in Chapter 1: *What are stakeholders' experiences of public primary school policies and children's rights to a basic education?* The secondary research questions assisted the researcher to elicit important information from the participants in this study. For easy reference I included secondary research questions, purpose of the study, aims and the rationale for the study below. These are discussed in Chapter 1 items 1.3.2, 1.2, 1.4 and 1.5 respectively.

3.2.1 Secondary research questions

- What is the function of admission policies in a public school according to the stakeholders?
- What are stakeholder experiences of their roles regarding the development and implementation of admission policies in public schools?
- What are stakeholder experiences of statutory and case law regarding admission policies of public primary schools?
- What are the stakeholder views and experiences of the causes of problems experienced and the impact thereof regarding the implementation of admission policies in public primary schools?
- What solutions do the stakeholders propose to prevent and manage problems regarding the implementation of admission policies in public primary schools?

3.2.2 Purpose of the study

The purpose of this study was to explore and understand the views and experiences of stakeholders (GDE representatives, SGBs, principals, experts on law and policy and parents) regarding access to the right to basic education through the implementation of public primary school admission policies. This

investigation was prompted by legal battles between SGBs and GDE about admission issues.

3.2.3 Research aims and objectives

- To determine stakeholders' understanding of the function of admission policies in a public school.
- To gauge stakeholders' understanding of their roles regarding the development and implementation of admission policies in public schools.
- To establish stakeholders' understanding of statutory and case law regarding the admission policies of public primary schools.
- To establish stakeholders' views and understanding of the causes of problems experienced and the impact thereof regarding the implementation of admission policies in public primary schools.
- To suggest or propose solutions to prevent and manage problems regarding the implementation of admission policies in public primary schools.

3.2.4 Rationale for the study

As a former teacher at a public primary school and still in constant contact with teachers, I was intrigued by the decision taken by the Constitutional Court of South Africa in the *Rivonia* case, which set aside a decision taken by the SGB not to admit a learner to the school. The court's decision prompted me to investigate the views and experiences of stakeholders, including School Governing Bodies, principals and parents with specific emphasis on public primary school admission policies. The decision in the *Rivonia* case brought an array of questions to my mind; for instance, what does it imply for the SGB's duty to determine the school admission policy? Is the GDE henceforth responsible for learner admissions in public primary schools and will this result in the usurpation of SGBs' authority by the GDE? Does the responsibility rest with the GDE or the school through the SGB? My view was that the court's

decision was setting a precedent which could affect the manner in which schools admit learners to public schools.

This study is necessary given the conflicting perceptions as to whose responsibility it is to admit learners to schools. Furthermore, the dearth of literature on public school admission policies prompted me to embark on the study with a view to providing information that could assist law and policy makers in the education sector.

3.3 CONCEPTUAL FRAMEWORK

Having formulated the problem statement and research question(s), and having gained insight into the existing literature, it is important to determine theoretical and conceptual frameworks that exist in relation to the chosen subject and to choose from the frameworks appropriate for the study.

There are numerous factors relevant to realising children's rights to basic education through public primary school admission policies. These include public schools' admission policy implementation processes, co-operation and decision making by stakeholders in the leadership and governance of the schools, and the realisation of children's basic right to education.

This study is embedded in the socio-political context and the human rights and constitutional framework within which schools in South Africa operate.

3.3.1 Conceptual framework outline

A conceptual framework is founded on the theoretical framework. It helps the researcher by delimits the field of study, and providing a blueprint of how the research problem will have to be addressed. Shields and Hassan (2006:13) refers to conceptual framework as a tool outlining possible courses of action. It may also be described as a desired and preferred approach to addressing the

research idea or thought. Thus, conceptual framework provides coherence for an empirical inquiry.

For the purposes of this study, I considered two concepts that underpin the approach about how I understood, planned and executed the research. These included co-operative governance and some appropriate rights-based concepts. These concepts enable the reader to evaluate the thesis critically and are relevant to the study undertaken with existing knowledge or academic literature.

Moreover, the conceptual framework chosen is supported by key conceptual principles that include access to education and stakeholder co-operation and collaboration.

3.3.2 Human rights-based Approach (HRBA)

According to the Office of the United Nations High Commissioner for Human Rights (2006:16), “[a] human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights”. The attributes of this conceptual approach are that it identifies who the holders and/or custodians of the rights to basic education are, and what their entitlements are. It places corresponding duties and obligations on the state to make the enjoyment of the right possible through public primary schools’ admission policies and practices.

The basic human right to education is guaranteed in Section 29 of the Constitution of 1996. However, the regulatory powers of the SGB and the HOD find themselves at cross-roads once there is an issue of denial of admission to the school by the SGB or when the HOD takes it upon himself or herself to admit a learner to a school. It has been confirmed by case law on school admission policies that the implementation of admission policies must also ensure that the objectives and processes involved are carried out taking into account the relevant rights to a basic education in the Constitution of 1996. Such actions or

processes also address the learners' human rights. This is the rationale for me having used a human rights-based approach to my study.

The implementation of school admission policies must be based on a system of rights and corresponding obligations established by South African law, in particular the Constitution of 1996 and also by international law. In 1990, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) produced the Education for All (EFA) instrument that resonates with the SASSA provisions regarding school admission in many respects because it contains six principles (goals) that address the provision by state parties of access to quality education for all people without any form of unfair discrimination (UNICEF, 2007; UN Special Rapporteur on the Right to Education and the UNESCO Asia & Pacific Regional Bureau for Education, 2004).

In terms of the UNESCO Education for All document, HRBA is central to education policy and informs the position that education is an inalienable right to be enjoyed by everyone in the form of the right to access education and the right to quality education. The approach further addresses states' obligations in terms of the ICCPR of 1966; the Convention on ESCR of 1966 and the UDHR of 1948 – Resolution 217 (III) of the UN General Assembly on 10 December 1948. South African education policy implementation complies with HRBA because the unlike other rights that are subject to progressive realisation, Constitution of 1996 guarantees immediate enjoyment of the right to education.

The value that the HRBA adds to my study is that its application acknowledges that admission of children to schools is legally and morally the right thing to do as part of the human development process. At the centre of this framework is the argument that human rights, such as the right to basic education, should be transposed from a purely constitutional provision to enforcement through effective practices by the Head of Department and SGBs. Moreover, there is complementarity between HRBA and the co-operative governance approach discussed in Section 3.3.3 below because the two concepts collectively address

the principles of legality, non-discrimination and equality, participation, empowerment and accountability.

Discussing HRBA in journalism, Rose (2013:101) regards "... the advancement and protection of human rights as essential to the development of society". The same can be said with the necessary qualification about HRBA in basic education and admission policies. The limitations of HRBA in some areas, such as development, are of course documented (Vandenhole and Gready, 2014:11), but this does not diminish the value and importance of the approach in this study.

3.3.3 Co-operative governance

Co-operative governance or networked governance, to use the words of DeGroff and Cargo (2009:6), is the sharing of different duties and responsibilities among the stakeholders, who have in certain cases been noted to interfere in one another's powers. Co-operative governance in higher education in South Africa has been extensively discussed (Cloete and Kulati, 2003:2), particularly with regard to a governance model that involves state supervision as contained in the 1997 White Paper on Higher Education (Cloete and Kulati, 2003:2).

Co-operative governance is equally relevant to the administration of basic education in South Africa. South African education legislation such as SASA, and related policies and regulations have vested the governance of public schools with some important powers, including the making of admission policies, in SGBs. According to Heystek (2011:18), SASA is premised on the idea of "co-operative governance" in schools. Importantly, the preamble to SASA requires that the new national system for schools (the system that commenced in 1997) must be based, among others, on a foundation that upholds "the rights of all learners, parents and educators" and promotes "their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State" and which must also set "uniform norms and standards for the education of learners at schools and the organisation, governance and funding of schools throughout the Republic of South Africa".

SGBs are required to exercise these powers and implement the policies in co-operation with the DBE, the GDE, the principal and the parents and other stakeholders. The nature of the relationship, argues Maluleke (2015:46), is such that the provincial department and SGBs are jointly in charge of the “planning, decision-making, and control of admission of learners in public schools as part of the decentralisation of powers, authority and functions”.

The interrelationship between principals, SGBs and the GDE has informed the concept of co-operative governance in this study. The choice has also been informed by Constitutional Court decisions including the *FEDSAS* case that adjudicated a power conflict regarding learner admissions between the powers of the SGB and those of the Head of Department. Co-operative governance in schools has not been without its challenges and needs to strike an appropriate balance of relations, as has been noted by Maluleke (2015:47). The DBE and the GDE, for example, are “co-responsible” (with the DBE determining norms and standards and the GDE providing education) for the delivery of education to citizens in their respective spheres of operation (Maluleke, 2015:6).

Co-operative governance (government) is also contemplated in Chapter 4 of the Constitution of 1996. Maluleke (2015:1) notes that the Constitution of 1996 “categorises education as a Schedule 4 function”; thus education is in essence a concurrent function and responsibility of the national and the provincial authorities who must share the location of control in education albeit with “distinct accountability for the delivery of education to citizens” (Maluleke, 2015:6). Interesting to observe is the point that co-operative governance is critical to service delivery (Maluleke, 2015:2), which in the context of this study would entail ensuring that public school learners are provided with equal and fair access to education as a service. Maluleke’s (2015:2) comment that education is the responsibility of the national and provincial authorities that must share the location of control in education, albeit with distinct accountability, is somewhat misleading. Although it is true that education is a concurrent function, it should be noted that it is a “functional area of concurrent national and provincial

legislative competence” in terms of Schedule 4 of the Constitution. What is shared is the competence to make laws but the duty to provide schools and education rests with the provincial authorities while the DBE is basically responsible for providing norms and standards for the various functions in education.

Using co-operative governance as an important aspect of the chosen conceptual framework of this study, I investigated how to best strike a balance between the different stakeholders while aiming to maintain their distinct and yet interdependent roles. The benefit of the co-operative governance (government) concept is that it seeks to ensure on-going good relationships between the stakeholders that are all committed to one common goal even in their distinctiveness.

In figure 3.2 below I offer a model of multi-stakeholder co-operative governance in public primary schools as it relates to learner admissions

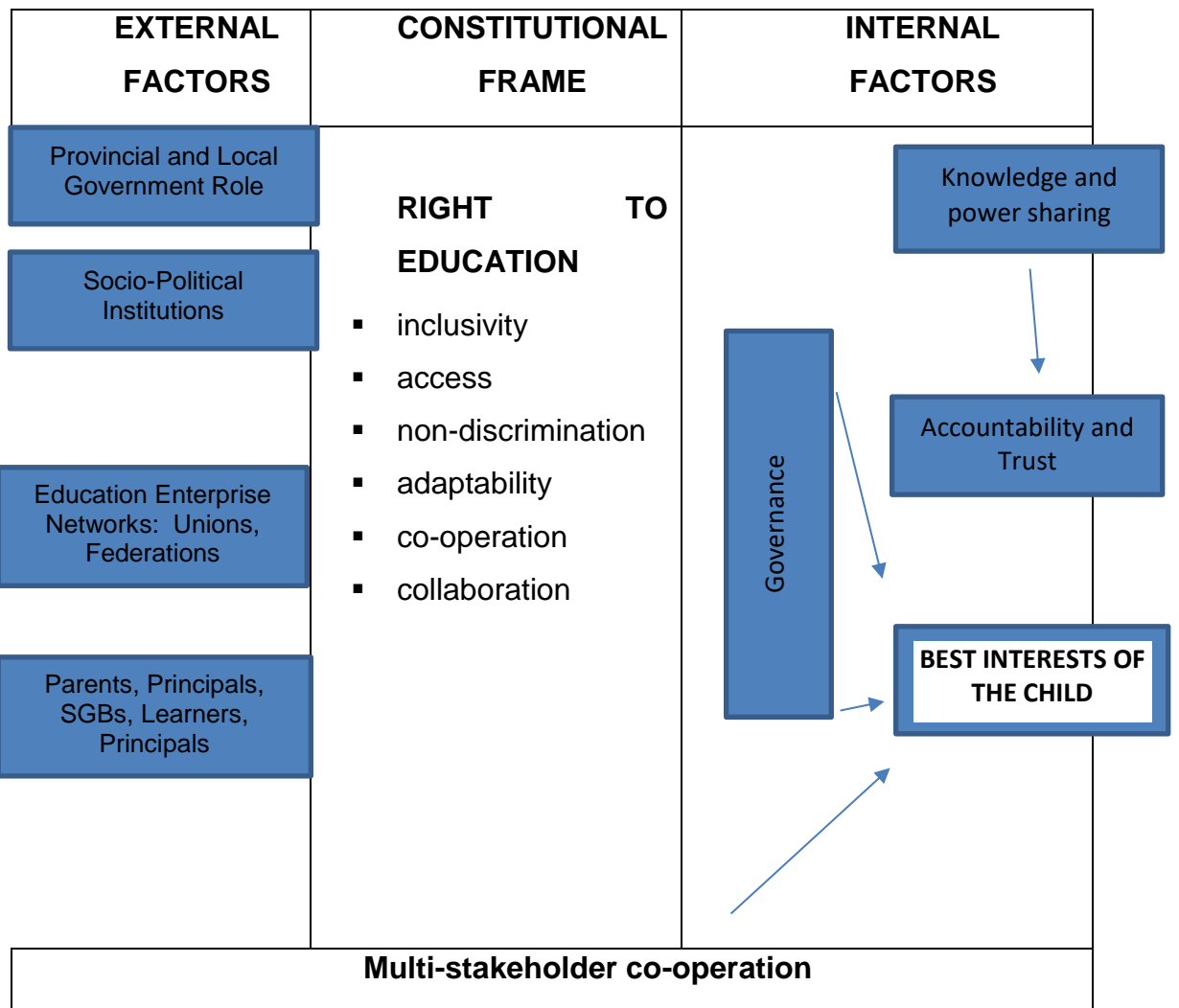


Figure 3.2: Framework for co-operative governance in public primary school admissions

The figure represents the constitutionally desired frame on access to education; the relevant stakeholders in the education landscape as external factors, and the governance and fiduciary pillars as internal factors, which form the core of the principles of co-operative governance in general. Depicted as central to the internal factors are the best interests of the child that should govern all admission processes and learner admission decisions in particular.

Using the principles of co-operative governance as stated above will ensure that the best interests of the learners are promoted through admission policies and practices and help ensure that education will always be of paramount

importance. There are undoubtedly some challenges with the implementation of co-operative governance as reflected by the debates surrounding the proposed amendments to SASA through the Basic Education Laws Amendment Bill (BELA), regarding which the Gauteng Department of Education considers the amendments as aiming to “promote social inclusion, create social consciousness and foster a strong sense of belonging in all of us” (Lesufi, 2017:21).

The BELA is a draft amendment bill that proposes to make changes to SASA and the Employment of Educators Act 76 of 1998 (EEA), in order to align them with developments in the education landscape. In particular, the BELA seeks to ensure that teaching and learning in basic education takes place in an environment respects, protects, promotes and fulfils the right to basic education as enshrined in Section 29 (1) of the Constitution of 1996. Furthermore, the BELA seeks to make changes and clarify certain provisions in SASA, and to make provisions for certain matters not in the existing legislation. Of notable importance to this study is the amendment of Section 5 of the SASA to give the HOD a final authority and day in the admission of learners at public schools. The intention of the proposed amendment to section 5 of SASA to clarify and put to bed the confusion about who has the controlling authority in respect of admissions to public schools.

The decision in the *Rivonia* case has shed some light on who has the final authority in the admission of learners to public schools. The court found that the Department maintains ultimate control over the implementation of the admission decisions. It will be remiss not to mention that, even if the amendments are set out to effect change in the education sector, they are not (yet) law and will only be law once promulgated as law and published in an appropriate legal notice.

The implications of BELA are that it creates a “gap” where corporative governance in public schools is concerned in that it seeks to limit the powers of the SGB in the implementation of admission policies.

3.4 RESEARCH APPROACH AND DESIGN

3.4.1 Research approach

To answer the research questions for this study, the researcher employed a qualitative research approach. Creswell (2013:48) explains that “qualitative research begins with assumptions and the set of interpretive/theoretical frameworks that inform the study of research problems addressing the meaning individuals or groups ascribe to a social or human problem”. Creswell (2013:48) further explains that qualitative research is conducted in a natural setting, relies on the researcher as key instrument in collecting data, uses multiple methods, focuses on participants’ perspectives, their meanings, their multiple subjective views and is reflective and interpretive.

An interpretivist paradigm is explained by Cohen and Crabtree (2006:101) as the sharing of beliefs about nature and reality. It employs relativist ontology (which proposes that reality is constructed inter-subjectively through meaning and understanding) and transactional or subjectivist epistemology, which assumes that we cannot separate ourselves from what we know. This explanation affirms that the researcher’s values are unavoidably part of all the steps of the research process. Also, that the truth is determined through dialogue between the participants and the researcher.

In the opinion of McMillan and Schumacher (2001:166), a research design is “a plan for selecting subjects, research sites, and data collection procedures to answer the research question(s)”. McMillan and Schumacher’s definition of a research design is similar in part to that of Lichtman (2006:22). Lichtman defines qualitative research as a means that assumes that the researcher collects, organises and analyses information with his/her eyes and ears as filters through in-depth interviews and/or observations of participants in their normal and social settings.

I chose a qualitative approach because it allowed me to engage in robust dialogue with the participants to construct collaboratively a meaningful reality

regarding their experiences of enabling (realising) children's rights to basic education through public primary school admission policies. It further enabled me to engage with the participants through in-depth face-to-face interviews. Participants' responses helped me understand their views and shared experiences in primary school admission policies.

Creswell (2014:46) identifies the following characteristics of qualitative research:

- It is conducted in a natural setting (the field), a source of data for close interaction.
- It relies on the researcher as key instrument in data collection.
- It involves using multiple methods.
- It involves complex inductive and deductive reasoning.
- Qualitative research focuses on participants' perspectives, their meanings, and their multiple subjective views.
- It is situated within the social, political and historical contexts or settings of participants or research sites.
- It involves an emergent and evolving design rather than a tightly prefigured design.
- It is reflective and interpretive (i.e. sensitive to researchers' biographies or social identities).
- It presents a holistic complex picture.

3.4.2 Research design

Multiple definitions of what a research design is are provided for by different authors. For example, Nieuwenhuis (in Maree, 2011:70) defines a *research design* as a plan or trajectory relevant philosophical assumptions to specifying the selection of participants to the study, the data gathering techniques to be employed and the data analysis to be done. Likewise, Creswell *et al.* (2011:53) view a research design as a procedure for collecting, analysing, interpreting and reporting data in research studies. It is a guideline for researchers to make logic of their interpretations at the end of their studies. Similarly, Seabi (in Maree,

2017:81) defines a research design as a plan or structure for the selection participants and research sites, and for the collection data procedures appropriate to the research questions.

It is clear from the definitions above that the three authors agree on what a research design is. In my view a research design is a process or plan or strategy used to identify research location and participants, and to collect, analyse and interpret data to answer a research question or explain a phenomenon.

Creswell (2013:155) asserts that a much narrower range of sampling strategies is required for phenomenological studies, and that it is important that all participants are familiar with the phenomenon being studied. Some of the primary schools I chose had been involved in disputes regarding the admission of learners in the schools; and are generally familiar with issues of learner admission at every admission period. I chose the parents from the same schools. Apel (2011:34), defines a phenomenon as a concept within a scientific practice that is both potential evidence for and an object of explanation of further scientific claims.

Linked to interpretivist paradigm, this study employed phenomenological research design.

3.4.2.1 Phenomenological research

Creswell (2013:76) asserts that a phenomenological study describes the common meaning several individuals of their lived experiences of a concept or a phenomenon. He further explains that the basic purpose of phenomenology is to reduce individual experiences with a phenomenon to a description of the universal essence. Creswell (2014:14) describes phenomenological research as a design of inquiry coming from philosophy and psychology in which the researcher describes the lived experiences of individuals about a phenomenon as described by participants.

I chose phenomenological research as it allowed me to gather data in the form of conducting individual interviews in order to forge a common understanding of the participants' lived experiences of enabling children's rights to basic education through public primary school admission policies.

3.5 METHODS OF DATA COLLECTION

Creswell (2014:145) posits that data collection is an involved process that includes obtaining permission for the collection of data, implementing a good and suitable qualitative sampling strategy, developing means for recording information both digitally and on paper, storing the data, and anticipating and mitigating ethical issues that may arise. According to Creswell (2014:145), therefore, data collection is a "circle" of interrelated activities relevant to answering the research questions. (see Figure 3.3).

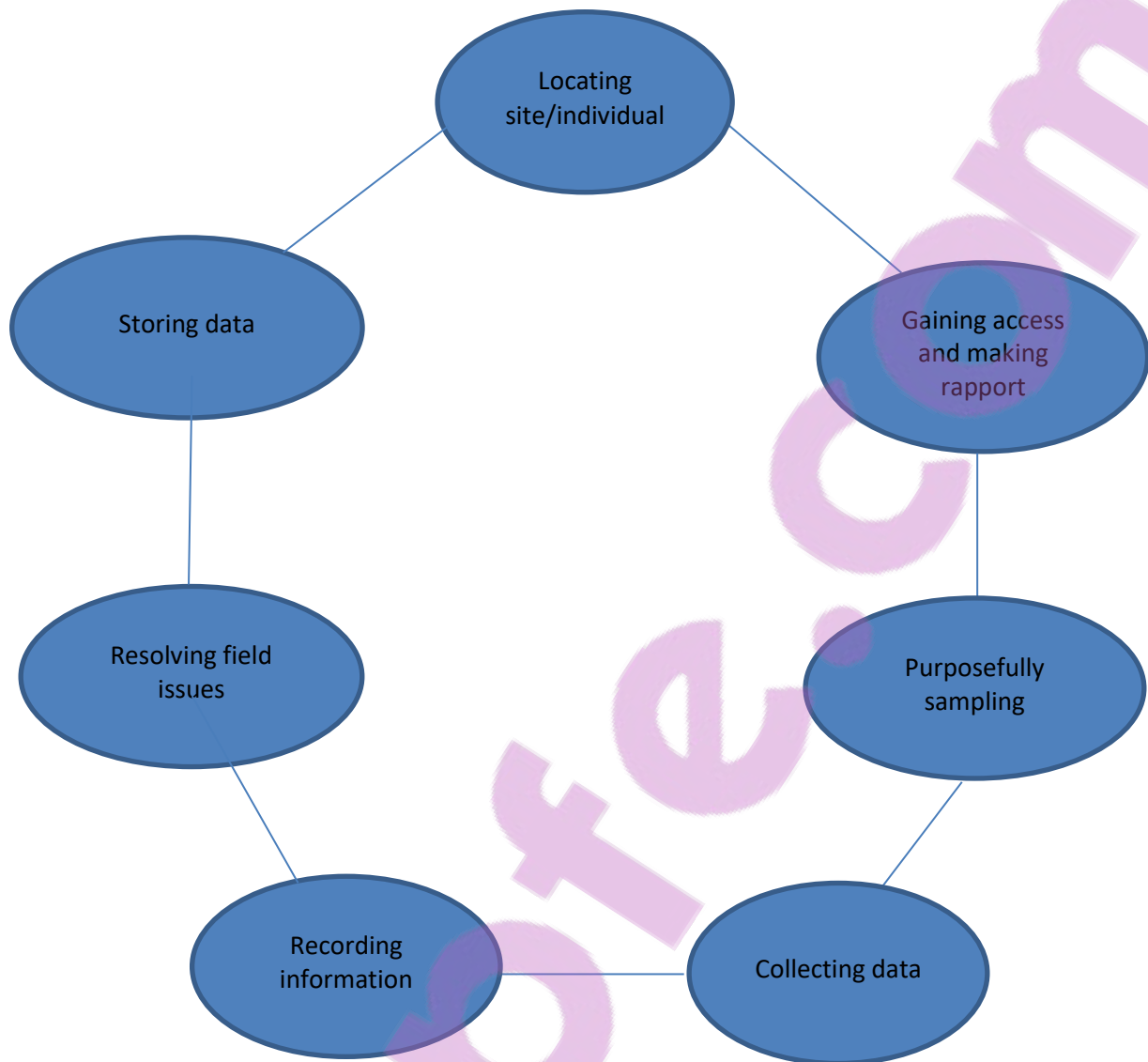


Figure 3.3: Data collection activities (Creswell 2014:146)

Creswell (2014:147) warns researchers not to opt for conducting only interviews and observations as the array of qualitative sources of data is expanding. Mindful of the warning, existing literature (including court cases) and face-to-face interviews were also used as methods of collecting data for this thesis.

3.5.1 Document analysis

Documents as a data gathering technique are described by Maree (2011:82) as “written communication that may shed light on the phenomenon researched”. There is a distinction between a literature review and document analysis. A literature review involves published documents, such as books and journal articles, whereas documents may include government documents and company minutes; these documents are not published but may provide valuable information about the study to the researcher.

Two types of documents have been identified by Maree (2011:83) as primary documents (such as minutes of a meeting, reports and correspondence that are unpublished and that the researcher has collected from participants) and secondary documents (such as books and articles that have been published). Creswell (2014:190) asserts that qualitative documents may include public documents (such as newspapers, minutes of meetings and official reports) or private documents (including personal journals and diaries, letters and emails).

The table below, derived from Creswell (2009:180; 2014:191), outlines options, advantages and limitations of documents as data-gathering technique.

Table 3.1: Qualitative data collections types, options, advantages and limitations (Creswell, 2009:180; 2014:190).

Data collection type	Options within type	Advantages of the type	Limitations of the type
Documents	<ul style="list-style-type: none"> • Public documents – minutes of meetings or newspapers. • Private documents – journals, diaries, or letters, etc. 	<ul style="list-style-type: none"> • Enables a researcher to obtain the language and words of participants. • Can be assessed at a time convenient to researcher – an unobtrusive source of information. • Represents data which participants have given attention. • As written it saves a researcher the time and expense of transcribing 	<ul style="list-style-type: none"> • Not all people are equally articulate and perspective. • May be protected information un-available to public or private access. • Requires the researcher to search out the information in hard-to-find places. • Requires transcribing or optically scanning for computer entry. • The document may not be authentic or accurate.

For the purpose of this study I elected to use public documents, which included, for example, government gazettes, school admission policies, court cases and newspapers. All these documents provided me with a rich source of information, particularly regarding the development and implementation of public school admission policies. The court cases, in particular, were very informative in the sense that they analysed documents such as school policies and meetings of minutes. Furthermore, they enabled me to elicit important and relevant information with regard to stakeholder experiences of enabling children's rights to basic education through public primary school admission policies. In summary, the literature review utilised in conjunction with the documents as data gathering technique had a significant and fundamental role in answering the research questions for this thesis.

3.5.2 Interviews

Interviews, in the opinion of Maree (2011:87), are “two-way conversations in which the interviewer tasks the participants questions to collect data and to learn about participants’ ideas, beliefs, views, opinions and behaviours. Such conversation allows obtaining relevant descriptive data to enable the interviewer to understand the participant’s understanding of knowledge and social reality. Coleman in Briggs, Coleman and Morrison (2012:250 - 251) warns that interviewing as data collection technique is not as easy as it may appear. It requires certain specific skills to ensure the obtaining of the required data and for the interviews to be conducted with integrity. Quoting Gillham (2005:7), Coleman also stated that “the interviewer is the research instrument, and this means developing skills in facilitating the disclosures of the interviewee” (Coleman, 2012:250).

Coleman (2012:251) further noted that researchers whose purpose involves understanding more about how individuals think and perceive, take an interpretive approach. This assertion resonates with the paradigm chosen for this thesis. The choice of interviews as a method of data collection for this thesis was motivated by “an interest in understanding the lived experiences of other people

and the meaning they make of that experience” (Coleman, 2012:251). There has been no attempt to generalise the findings of this study.

Rugg and Petre (2007:135) identify the following core concepts of the interview process:

- It is interactive – two or more people are interacting with each other.
- It takes place in real time – the interaction happens live.
- For the purpose of this study I chose unstructured, open-ended interviews as a data collection strategy.

3.5.2.1 Structured, open-ended face-to-face interviews

- *Structured interviews*

This interview method takes the form of a fixed structure that uses pre-established questions asked in a predetermined order. This method is used to ensure consistency and uniformity (Seabi, 2017:89).

- *Open-ended face-to-face interviews*

This type of interview allows an unlimited set of responses that could elicit informative responses from the participants (Rugg and Petre, 2007:138).

Structured open-ended interviews were conducted face to face with the following participants:

1. Two Gauteng Department of Education (GDE) representatives.
2. School Governing Body (SGB) spokespersons from the four schools located in the Northern District of the Gauteng Province.
3. Representatives of two SGB Federations.
4. Four principals from the four schools.
5. Four parents from the four schools.

It should be noted from the onset that one of the representatives of the Federations of the SGB was not available for face-to-face interview but has offered to provide a written response to the same questions. The written

responses were comprehensive and provided the information I needed. The response was important to me because the participant represent one of the reputable organisations.

I chose these participants because of their close involvement with public primary school admission policies in one way or the other. Regarding parents, I specifically chose parents of Grade 1 learners because of the challenges schools and parents experience during this critical stage of compulsory school-going age, particularly during the admission phase. Purposive sampling was chosen for selecting participating schools in particular for this study. Schools selected were those identified by the district as having been involved in an admission dispute with parents. Except for the representatives of the GDE and Federations of SGBs (whom I approached because of the nature of their positions in the Department and the Federations), all the participants (SGBs, principals and parents) were selected from the same four schools. The principals of the identified schools helped me to identify SGB spokespersons and the parents.

Preference was given to parents involved or having been involved in admission disputes with schools. Admission disputes often start at school level between the parents of the potential learner and the school. If the parties do not agree with each other, the dispute is escalated to the provincial department of basic education. SGBs have been included for their domain function of school governance and the principals for their professional management of the school.

3.5.2.2 Collecting the structured open-ended face-to-face interview data

After identifying sites and individuals to conduct interviews with, I proceeded with conducting interviews with the participants. Interview questions were formulated in such a way that, for example, principals were asked the same questions and so were the parents and the SGBs. Appointments were made prior to accessing the site and confirmed 24 hours later. This was ethically imperative as it demonstrated basic respect for my participants. The interviews

were recorded with the consent of the participants, and I took notes at the same time. In the notes I included, for example, notes on the mannerisms, facial expressions, behaviour and the body language of the participants in order to gauge their understanding of the questions.

I ensured that each interview was to be conducted with the highest level of confidentiality in a secure and private setting, preferably in the participants' offices or any place that was suitable for them. This was to guarantee that the interview environment is conducive and that interviewees will be able to speak frankly and openly during the interview. In addition, I explained ethical considerations with the interviewees prior to the interview. Ethical considerations included the following:

- Informed consent: I asked the participants' permission to record the interviews,
- Voluntary participation: Participants could withdraw from participating in the study should they so wish.
- Safety in participation: Participants would not be placed at risk or harmed in any way.
- Privacy: Ensuring participants' confidentiality and anonymity. Participants were allocated pseudonyms.
- Trust: Participants would not be deceived or betrayed.

Once we had discussed ethical considerations, I explained to the interviewees the purpose of my study and the process and procedures that would be adopted in conducting the interviews. Participants were provided with the letter of consent to read, understand and sign. I explained to participants that their taking part in my study was very important and that their responses were crucial for the completion of the study. I recognised the importance of their participation and contributions unambiguously.

As the interviewer, my role was only asking questions and facilitate the interaction primarily to encourage the interviewees to respond. This was achieved by listening carefully and not interrupting the interview by gestures such as nodding my head as they were talking.

3.5.3 Existing literature

Maree (2011:81) distinguishes between a literature review and document analysis, and their strengths and weaknesses in ascertaining their accuracy. He warns that one must differentiate clearly between a literature review and using documents as part of a data collection strategy. Similarities between a literature review and a document analysis are that they both deal with data sources and are in a written format.

“Literature review provides an overview of scholarship in a certain discipline through analysis of trends and debates. It describes past and current research on a particular topic. It is typified as being critical and integrative, using mainly inductive reasoning,” stated Maree (2011:82). Maree further asserts that a good literature review is representative of sources on the phenomenon being studied and provides justification for the study by reflecting on how the research will extend past research, fill a gap in research or explore the views of an under-represented group.

According to Maree (2011:82), a researcher could also use documents as a data-gathering technique. Maree distinguishes between primary and secondary sources of data. Primary sources are a preferred source of data collection as they are the original sources of information.

Although review papers are not identical to literature reviews, the similarities and contributions of review papers and literature reviews are worth noting. Palmatier, Houston and Hulland (2018:2) the type and relevance of the review papers to the research question will determine their value and contribution to the research.

The aim to do the following:

- resolve definitional uncertainties and outline the scope of a topic;
- provide an integrated, synthesised synopsis of the current state of knowledge;
- identify discrepancies in prior results and potential explanations (e.g. moderators, mediators, measures, approaches);
- evaluate existing methodological approaches and unique insights;
- develop conceptual frameworks to reconcile and build on past research;
- describe research insights, existing gaps, and future research directions.

According to Gay, Mills and Airasian (2009:80), "a review of related literature involves the systematic identification, location and analysis of documents containing information related to the research problem". The purpose of a literature review is:

- to identify and analyse studies that have already been conducted related to the topic;
- to discover research strategies and specific data collection related to the study;
- to be in a position to facilitate the interpretation of the results of the study (Gay *et al.* 2009:80).

The above view on the purpose of literature reviews is shared by Gay *et al.* (2009:81) who see at the main benefit of a literature review the prevention of duplication of existing literature, the understanding of existing literature and placing one's topic within a logical framework.

Through the literature review in Chapter 2 I was in a better position to present and understand the experiences of the stakeholders in their attempt to enable children's rights to basic education through public primary school admission policies. Furthermore, the literature reviewed helped in the formulation and answering of the research and interview questions. For this thesis, the literature reviewed included (un)published articles, abstracts, monographs, reviews, dissertations, books, multiple research reports and electronic media material.

The researcher rigorously engaged with the relevant literature to place this study in a suitable theoretical framework. The reviewed literature steered this thesis among other things into a qualitative approach, utilising open-ended face-to-face interviews as data collection techniques.

3.5.4 Sampling of research site and participants

According to Reaves (1992:94), sampling is “the smaller group of examples chosen from the population that you actually measure”. Four (4) public primary schools in the Northern District of Gauteng Province were selected as the sample because they gave access to schools with different challenges. I chose only schools involved or having been involved in an admission dispute, partly to eliminate inclusion of all the public primary schools but mostly to elicit valuable information that assisted in answering the research questions. Selection included schools that have had their admission disputes adjudicated by courts of law. I sought assistance from the provincial Department of Basic Education in identifying participating schools.

Interviews with the representatives of the GDE and the principals were conducted in their place of work. So were interviews conducted with one of the SGB federations. Interviews with SGB spokespersons were conducted at a place of their own choosing. This arrangement was “suitable and feasible” (McMillan & Schumacher, 2001) for both the researcher and the participants. Parents’ interviews were conducted at a place of their own choosing.

I chose purposive sampling as it allowed me to select and purposefully inform the research problem and phenomenon studies (Creswell, 2013:155). Table 3.2 depicts the category and the number of participants.

Table 3.2: Sampling of participants

PARTICIPANTS	NUMBER OF PARTICIPANTS
Gauteng Department of Education (GDE)	Two (92)
School Governing Bodies (SGBs)	Four (4)
Federations of SGBs	Two (2)
School Principals	Four (4)
Parents	Four (4)
Total number of participants	Four (4)

I also considered issues of expense, time and accessibility regarding this sample. The implication was that appointments for interviews were made well in advance while schools were still open as it could be difficult to reach principals during school holidays. School governing bodies and principals were from the sampled primary schools.

The interview protocol for all the participants is attached as addendum 168 to the thesis.

3.6 ETHICAL CONSIDERATIONS

Busher and James (2012:91) in Briggs *et al.* (2012:106) caution that “research should be conducted so as to ensure the professional integrity of its design, the generation and analysis of data, and the publication of results”. They further warn that researchers have to take into account ethical requirements of how they conduct research, and their responsibilities towards the research participants with regard to their respect and knowledge, democratic values, the quality of educational research and academic freedom. Ultimately, the participants must feel and be safe from any harm, must trust the process to achieve trustworthy research outcomes (Busher *et al.*, 2012:91).

The University of Pretoria has rules and regulations to guide researchers during their studies in which humans are the participants. As a researcher I took into consideration the ethical considerations set out below during the study.

3.6.1 Permission

Permission to conduct interviews at schools with principals and SGBs was sought from the Gauteng Department of Education and the relevant district, which in this case was Gauteng North. In addition, to ensure that proper ethical procedures were followed, permission to conduct interviews with parents and representatives of the Federation of School Governing bodies was sought in the form of a letter of informed consent. All the letters requesting permission to conduct the study are attached in addendum B & C at the end of the thesis.

3.6.2 Confidentiality and privacy

According to Maree (2011:41 - 42), confidentiality of the results and findings of the study and the protection of the participants' identities are an essential ethical aspect of any study. Participants in this study each signed a consent form in which they agreed to take part in the study.

It was explicitly stated in the consent form that "privacy, meaning confidentiality and anonymity of human respondents should be protected at all times". To adhere to this rule, I reiterated that participants would remain anonymous and their identities would not be disclosed in any way whatsoever as this would be regarded a violation of their privacy.

Finally, as a researcher it was my responsibility to take suitable and appropriate steps to ensure that the confidential information of, and provided by the participants was safeguarded. Participants in this study were made aware of this important element.

3.6.3 Voluntary participation and informed consent

Participants were provided with an informed consent form and were requested to sign it prior to the commencement of data collection. The informed consent form dealt with the following issues:

Understanding that the researcher subscribed to the principles of:

- Voluntary participation in research, implying that the participants might withdraw from the research at any time.
- Informed consent, meaning that research participants had at all times to be fully informed about the research process and purposes, and had to give consent to their participation in the research.
- Safety in participation; the human respondents should not be placed at risk or harm of any kind.
- Privacy, meaning that the confidentiality and anonymity of human respondents should be protected at all times.
- Trust, implying that human respondents would not be exposed to any acts of deception or betrayal in the research process or its published outcomes.

In addition, I verbally explained the principle of informed consent to the participants, emphasising the fact that they could at any time withdraw from taking part in the study. Verbal explanation of the principle of informed consent was done before conducting the interview. This was repeated with all participants as they were requested to consent to taking part in the study and sign the form prior to conducting the interview.

3.7 DATA ANALYSIS

This thesis employed a qualitative research approach that followed an interpretivist research paradigm. Interpretivism is based on the assumption that there is not one reality but many, and interpretivist researchers carry out their studies in participants' natural contexts to reach the best possible understanding (Maree, 2011:37). Maree further asserts that "there is no *right* way to analyse data ... data can be analysed in more than one way".

In the opinion of Creswell (2013:180), data analysis in qualitative research that involves preparing data and organising it for analysis, thereafter coding the said data into themes, and lastly reflecting the data in figures, tables, or a discussion. Creswell (2014:196), when comparing three authors namely Madison (2005), Huberman and Miles (1994) and Wolcott (1994b) noted that many author or researcher agree in essence on the central steps of coding the data (reducing the data into meaningful segments and assigning names to the segments), combining the codes into broader categories or themes, and displaying and making comparisons in the form of data, graphs, tables and charts. These are the core elements of qualitative data analysis.

I elected to use the data analysis procedure as identified by Creswell (2014: 97) in this thesis:

- Step 1. Organise and prepare the data for analysis. This involved transcribing interviews verbatim, typing up field notes and arranging the data into different types depending on the sources of information (e.g. SGBs, principals, parents and representatives).
- Step 2. Read all the data and familiarise oneself with the data. This provided me with a general sense of the information and an opportunity to reflect on its overall meaning. I should also stress that I read the data a number of times to familiarise myself with its contents and meaning.
- Step 3. Code and analyse all the data by first identifying
- Step 4. Present the data in the section on data analysis.

No computer program was used in the analysis of data. Analysis was done manually by the researcher.

3.8 VALIDITY AND RELIABILITY

According to Creswell (2014:201), validity is one of the strengths of qualitative research and is based on findings that are accurate from the point of view of the researcher, the participants or the readers of an account. To check the accuracy of my findings, I employed the following strategies as identified by Creswell (2014:201):

- Used a rich, thick description to convey the findings. By providing detailed descriptions of the setting e.g. offering many perspectives about a theme, the results became clear and richer.
- Clarified the bias I, as a researcher brought to the study. This self-reflection created an open and honest narrative. To ensure good qualitative research, I included comments about how the interpretation of the findings was shaped by my background.

Creswell (2014:201) suggests that, to check reliability, researchers should document every step and procedure they follow in their study. Several qualitative reliability procedures suggested by Gibbs (2007) are cited by Creswell (2014:201):

- Checking the transcripts to ensure that they do not contain obvious mistakes made during transcription.
- Ensuring that there is not a drift in the definition of codes, a shift in the meaning of the codes during the process of coding by constantly comparing data with the codes and writing memoranda about the codes and their definitions.

I have minimised bias as much as possible in order to ensure validity. Bias is described by Cohen *et al.* (2007:150) as a “systematic or insistent tendency to make errors in the same direction, that is, to overstate or understate the true value of an attribute.” According to Cohen *et al.* (2007:150) “sources of bias are

the characteristics of the interviewer, the characteristics of the participant, and the substantive content of the questions”, and these include the following:

- The attitudes, opinions and expectations of the interviewer.
- A tendency for the interviewer to see the respondent in his or her own image.
- A tendency for the interviewer to seek answers that support preconceived notions.
- Misperceptions on the part of the interviewer of what the participant is saying.
- Misunderstandings on the part of the participant of what is being asked.

Interview questions were structured in order to ensure reliability. This meant that a particular group of participants (GDE representatives, SGB Federation representatives, SGBs, principals and parents) responded to the same format and sequence questions.

The following are identified by Oppenheim (1992:96 - 7) as causes of bias in interviewing:

- Biased sampling (sometimes created by the researcher not adhering to sampling instructions).
- Poor rapport between interviewer and interviewee.
- Changes to question wording (e.g. in attitudinal and factual questions).
- Poor prompting and biased probing.
- Poor use and management of support materials (e.g. show cards).
- Alterations to the sequence of questions.
- Inconsistent coding of responses.
- Selective or interpreted recording of data/transcripts.
- Poor handling of difficult interviews.

I used peer debriefing method to determine validity and credibility of the interview questions. I solicited assistance from one expert from a reputable institution of higher learning to validate the credibility of interview questions. Creswel & Miller (2010) describe peer debriefing as the review of the data and research process by peers in one's field of research who are familiar with the research or the phenomenon under investigation.

3.9 SUMMARY

This chapter discusses the methods of collecting data. The study involved qualitative research methods in an investigation into stakeholder experiences of enabling children's rights to basic education through public primary school admission policies.

The chapter commences with an introduction. Thereafter I discussed the research paradigm in which I revealed that I followed an interpretivist approach in this study. The research design was also discussed. The methods of data collection and strategies for collecting data – documents and structured, open-ended face-to-face interviews – are described.

In the next chapter, Chapter 4, I focus on analysing and interpreting the data.

CHAPTER 4

DATA ANALYSIS AND INTERPRETATION

4.1 INTRODUCTION

Chapter 3 discussed the conceptual framework employed towards the achievement of the outcomes and objectives of this study. Central to Chapter 3 was the consideration of a number of theories, including the theory on organisation and co-operative governance, and the rights-based approach as appropriate concepts to explore the stakeholder experiences of admission policies as enablers to the right to basic education. To this end, a qualitative research design was applied to acquire an understanding of the experiences of stakeholders regarding public primary school admission policies and practices and the enjoyment of the right to a basic education as guaranteed in Section 29 of the Constitution of 1996. Furthermore, the conceptual framework employed in this study was validated in part by the extensive literature review conducted in Chapter 2. Chapter 4 presents a thematic analysis and interpretation of all responses obtained from participants to determine their experiences of realising children's rights to basic education through public primary school admission policies.

I have integrated into my analyses of the interview data information that emerged from literature review and document analysis and case law. It will be clear from the reporting and discussions when data used did not emerge from the interviews only. In sum, the data analysis in this study is integrative as further explained in paragraph 4.2 below. The following themes have been formulated from the data collected:

Theme 1: The state's obligations regarding the right to a basic education in terms of Section 29 of the Constitution (see paragraph 4.2.1 below).

Theme 2: The impact of the Gauteng Online Admission System on Learners' Basic Right to Education (see paragraph 4.2.2 below).

Theme 3: Admission policy as a key enabler of the right to a basic education (see paragraph 4.2.3 below).

Theme 4: Critical challenges in the Learner Admissions to Public Primary Schools policy and the impact of the policy on the right to a basic education (see paragraph 4.2.4 below).

Theme 5: Recourse to the courts in disputes emanating from implementation of the Learner Admissions to Public Primary Schools policy (see paragraph 4.2.5 below).

Theme 6: Understanding and operationalisation of co-operative governance canons in school admissions (see paragraph 4.2.6 below).

When dealing with data from interviewed participants it is important to note that representatives of the same stakeholder group responded to similar interview questions. Structured interviews were conducted individually with each participant as outlined above; except for one participant who provided written responses due to a busy schedule. Participants were purposefully sampled in the following manner: Two representatives of the GDE; two representatives of the Federations for SGBs; four spokespersons for the SGBs; four principals and four parents. In total, sixteen interviews were conducted with the participants. For the purpose of anonymity and confidentiality, the following codes were allocated to participants for a better interpretation and understanding:

1. Representatives of the GDE: GDE 1, GDE 2.
2. Representatives of two SGB Federations, SGBFEDS 1, SGBFEDS 2.
3. SGB spokespersons: SGB 1, SGB 2, SGB 3 and SGB 4.
4. Principals: Principal 1, Principal 2, Principal 3 and Principal 4.
5. Parents: Parent 1, Parent 2, Parent 3 and Parent 4.

4.2 DATA ANALYSIS AND INTERPRETATION

Data analysis is generally described as the process of making sense of, interpreting, and assigning meaning to a mass of collected data (Marshall and Rossman, 1999:150; Schwandt, 2001:6). The data analysis and interpretation relate to data obtained from interviews with representatives of the GDE; representatives of the Federations for SGBs; spokespersons for the SGBs; principals and parents. Likewise, data analysis and interpretation also took into account information from literature review, document analysis and reported case law. Viewpoints and experiences of these participant cohorts developed from the interview data, document analyses and on each of the identified themes that derived from the focus interviews (Braun & Clarke, 2006:9; Grbich, 2013:49). In addition, I processed the data by identifying meaningful segments, the deriving codes from the segments, then extracting categories from the codes and, finally, defining the themes emerging from the categories.

4.2.1 Theme 1: The state's obligations regarding the right to a basic education in terms of section 29 of the Constitution

In order to establish how participants understood the state's obligations regarding the right to basic education in terms of section 29 of the Constitution of 1996, the participants were asked to state what they thought about the right to basic education, and what the right entails and how these right is to be realised. The South African Constitution of 1996 enshrines the right to a basic education to counter the discriminatory school policies of the Apartheid era. However, the Constitution provides little detail as to what this right actually entails. It is therefore not surprising that participants referred to a number of factors relevant to the realisation of this right. Moreover, existing scholarship and discussions demonstrated the fluidity of the concept of the right to basic education. Thus, prevailing scholarship goes further by providing a functional definition of the right to basic education by explaining what the right entails or should entail. The functional definition of the right to basic education and the concept of basic

education itself has been important in the appraisal of the data collected and the discussions of the outcome.

4.2.1.1 Gauteng Department of Education

GDE 1 noted that the accessibility of public primary schools' quality education provided, the environment in which education was provided and the schools admission policy framework all influenced the realisation of the right to basic education. When I asked GDE 1 what he understood by children's rights to a basic education as stipulated in Section 29 (1) (a) of the Constitution of South Africa the response was:

It's a very important right ... my understanding is that there must be no child that is denied access to education on any other basis whether in the, on the basis that they cannot afford on the basis of they cannot be in a position to be in school due to many other problems it can be poverty it can be transport it can be another or it's our ability to ensure that every child get access and to extend it not only education but quality education because that is very important especially at the children's level because that's the foundation and if it's not well that foundation get eroded as quickly as possible so my ability will be or my understanding will be that right it's a right to education and a right to quality education but above all it's to ensure that our children can be taken care of.

It is perhaps important that GDE 1 as the representative of the Gauteng Department of Education, which is a body responsible for the administration of education at provincial level, gave such an elaborate and detailed response. Clearly, GDE 1 regarded socio-economic challenges as having ramifications for the realisation of learners' right to basic education. Also, GDE 1 expressed a view that it is the responsibility of the authorities to ensure that every child gets access to education without being hampered by challenges such as poverty, transportation to school, and many other challenges.

This view and observation are consistent, in part, with the view that that right to basic education as enshrined in section 29 of the Constitution may be defined or explained in both broad and narrow sense (Churr, 2015:2410; Murungi, 2015:3166; WDE, 1990; UNESCO, 2011; Beckmann and Phatudi, 2013:475; CESCR General Comment 13). On the other hand, Skelton (2013:2) is of the view that the Constitutional Court in *Juma Musjid* case gave meaning to and underscored the extent of the right to basic education as contained in Section 29 (1) (a) of the Constitution of 1996. Also, in my view, pronounced correctly on the obligation of the State when it stated that “[u]nlike 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 state is, in terms of that right, obliged, through reasonable measures, to make further education ‘progressively available and accessible” (*Juma Musjid* case, par. 34). The same sentiments were shared by Woolman (2013:473) who applauded the *Juma Musjid* case as having established access to basic education framework based on constitutional norms of equality and the protection of the best interest of the child. The crux of the Constitutional Court ruling in *Juma Musjid* case was echoed by the Constitutional Court in the *Rivonia* case.

The views expressed by GDE1 are somehow echoed by GDE 2. It became clear that the understanding of the right to access to a basic education is understood by GDE 1 and GDE 2 in the context of what is normally called the 4 As of the right to education. The UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment 13, defines the content and obligation of the right to education in terms of four components:

- *Availability*: Not only must education be free, but it must also be supported by adequate infrastructure and well-trained educators. Availability of school places is a continuing problem in the GDE and has resulted in several court cases.
- *Accessibility*: Access to education must be free from all forms of unfair discrimination, and intentional and positive steps must be taken to ensure

that learners who have been marginalised do have fair access to the education system. In this regard the response of GDE 2 to the question of having to consider the best interest of the child in admissions is important, particularly that there is a need for inclusive schools and to adapt the schooling environment to accommodate learners with disabilities, who previously were discriminated against, although they did not have any cognitive limitations.

- *Acceptability*: The content of education must be fit for purpose, particularly, it must be socially relevant and culturally appropriate; be of good quality dispensed by professionally qualified educators, and the schooling environment must be safe for all stakeholders. For instance, an admission by GDE 2 that there is no policy or official position on Learner-Educator ratios may be viewed as not complying with the requirement of acceptability as it relates to a lack of an appropriate or conducive environment for instruction and learning to take place. Be that as it may, the National Norms and Standards for School Infrastructure *de facto* informs what the preferred ratio should be.
- *Adaptability*: Education must be adapted to suit particular contexts.

Reference to the 4 As above is important in the light of the statement by GDE 2 when answering the question on the nature and purpose of the admission policies that, “*All admission policies must adhere to the minimum standards that are constitutionally driven and are consistent with the law*”. However, GDE 2 admitted that, for the GDE having to monitor and ensure compliance of policies with the legal and constitutional imperatives, “*may be impossible given the number of about 2.2 million learners in the system*”.

Other stakeholders, whose views are discussed below, support the understanding of GDE1 and GDE 2 with regard to the content of the right to basic education and the constitutional obligation of the State to ensure the realisation of this right, albeit from a different perspective and sometimes arguing different basis.

4.2.1.2 School Governing Body Federations

SGBFED 1 strengthened the fact that section 29 of the Constitution contains one of the inalienable rights. According to jurisprudence and researchers this right is available to everyone in South Africa (*Western Cape Forum* case, para 51) and the “State has a duty to provide equally for the education of all children, including those with severe and profound disabilities (Murungi, 2015:3165). The primacy focus of SGBFED 1’s response regarding the obligation of the State section 29 of the Constitution was on how and to what extent has the State dismantled Apartheid legacies in education. SGBFED 2 spoke at length about how the socio-economic condition in South Africa and stated that “...we got to seriously look into ... socio-economic impact on the quality of education.” Similarly, Arendse (2011:120) has cautioned against the impact of the child’s socio-economic background on the right to basic education against South Africa’s international obligation to provide free primary education to impoverished children. Making basic education available as a right to everyone was, for example, addressed by the Western Cape High Court in *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa* 2011 5 SA 87 (WCC) para. 52 (the Western Cape Forum case) “on the rights of children with severe and profound intellectual disabilities to basic education,” which concluded that “the State has a duty to provide equally for the education of all children, including those with severe and profound disabilities” (Murungi, 2015:3165).

Responses of SGBFED 2 was scathing in part regarding the discharge of state’s obligation to ensure the realisation of the right to basic education, and raised a number of concerns. He particularly noted the lack of capacity of schools in certain provinces, with some “[s]chools ... being placed under more and more pressure each year to accept more learners than the school’s capacity allows”. (Author insertion [...]). Also, SGBFED 2 hinted as an example that there are not enough schools in Gauteng, and that “[w]here there are enough schools, these schools do not all provide a good quality education bringing pressure to bear on the good schools because parents want access for their children to good schools.” (Author insertion [...]) Responses of SGBFED 2 resonates with

Murungi (2015:3161) who stated that “Section 29 of the Constitution, which grants everyone the right to education, is one of the most hotly debated sections of the Bill of Rights for a range of reasons, including its significance for the realisation of other rights”. It is important that section 29 uses the word *everyone*, thus making the right available to everyone.

4.2.1.3 School Governing Bodies

According to SGB 1 “*the GDE has failed the people of South Africa by not investing sufficiently in building new schools and in upgrading the ... quality of township schools...*” In essence SGB 1 considered the State as having failed in its implementation measures for the realisation of the rights enshrined in section 29 of the Constitution of 1996. He particularly noted that most of the time too much focus is on the Blacks and the White learner issue and coupled with “*abuse of power*” under the guise of implementing measures towards the realisation of the right to basic education. SGB1 referred particularly to court judgements having to rule on the conduct of the Department in placing learners at schools against the resolution of principals and SGBs. SGB 2 also noted the *Rivonia* case and how the events around this case speak to the obligation of the State and the society to make accessible the right to basic education irrespective of colour or race. Similarly, SGB 3 and SGB 4 expressed discontent at the failure of the State to meaningfully ensure the realisation of the rights guaranteed in section 29 of the Constitution of 1996, albeit from differing perspectives. SGB 3, for example, cited the lack of appropriate and/or adequate resources and schooling infrastructure; failure for the State to deal with difficulties of having to extend the right to basic education to migrant families and non-citizen residents; and the failure to deal with the continuing perpetuation of some school protecting their narrow interest based on race.

SGB 4 argued that there is a need for clear policies and procedures to regulate the implementation of section 29 of the Constitution of 1996, in order to “*ensure that learner admissions is done fairly and the right to basic education is respected*”. Stasz and van Stolk (2007:1) stated that a similar framework has been set up in the United Kingdom with the School Admissions Code enacted to

regulate “admissions in the state school’s system, including Academies, Trust Schools, and Boarding schools” and acts as a framework to “set admission standards that promote fair admissions and equal access.” However, the framework has not been meaningfully complied with (Andersen, Claridge, Dolring and Hall, 2008:25). In my view such and similar intervention need the existence or establishment of highly effective oversight authorities.

4.2.1.4 School principals

Principals addressed the issue of the right to basic education and the State’s obligation to have this right realised with reference to a number of opportunities and challenges. Principal 1, in particular, lamented how the State deals with children on non-citizens including asylum seekers and the perceived lack of quality of education in township schools. He stated that this is not always the case, unfortunately people are not informed that access to quality basic education does not mean having to pay high fees to have your children educated. When I asked him if he would consider taking his children to high paying school, he noted:

No never...so I have got friends in Johannesburg....his two children the one’s in the high school, the one’s in Grade 6 so thats primary school, his education bill for the year is R200 000, R100 000 ,R100 000 it is killing him and he says I’m so disappointed, you know when you pay R100 000, which is R10 000 a month he says its not I must be getting the best of the best of the best in this world and he says its not that, so he’s very disappointed with that he says, and I told him I said are you mad.....

My election to highlight the quote above is to advance an argument that public schools do offer good education, and that instances of poor quality or poor service should not be generalised. Principal 1, Principal 2 and Principal 4 all alluded to mixed performance by the State in discharging its obligation according to section 29 of the Constitution of 1996. They particularly expressed concerns

at the impact of the challenges experienced by schools, as evidenced by the many case law, and how these affected the realisation and enjoyment of children's rights to basic education.

4.2.1.5 Parents

Interestingly, all the parents expressed a view that the Constitution requires an unqualified provision of the right of basic education to their children, and that the State must ensure that such right is enjoyed by all the children. Parents 2, 3 and 4 stated that it was as a result of their fight against Apartheid that South Africa has a Constitution that guarantees everyone rights, including the right to education. Parent 1 stated that "*those in power must make sure that our children are placed in schools and receive better education*". The views of parents on the obligation of the State pursuant to section 29 of the Constitution of 1996 mirror those by Skelton (2013:3) who stated that the right to basic education is "an immediately enforceable right, not subject to progressive realisation". However, Skelton (2013:4) has been quick to warn that immediate realisation of this right is not as easy as it may seem because the legacy of Apartheid has made this a "gargantuan challenge." According to Lampinen (2003:84), Finnish school admission policies and practices provides the best examples of inclusion and equal rights. A study conducted in 2007 reported that in Finland the approach is to "guarantee basic educational security for all, irrespective of their place of residence, language and economic standing" (Ministry of Education, 2007:9).

4.2.2 Theme 2: The impact of the Gauteng online admission system on learners' right to basic education

4.2.2.1 Gauteng Department of Education

Representatives of the Gauteng Department of Education representatives gave rather interesting responses to the question regarding the impact of the Gauteng online admission system on learners' rights to basic education. When asked: "What are your views on the development and implementation of admission policies, specifically in public primary schools?" the GDE 1 was quick to refer to

the timely relevance of the policy that led to the introduction of the online admission system in Gauteng. In particular, the GDE 1 pointed to the everyday changes in the society that must be accommodated by policies such as schools' admission policies. The question was followed with GDE 1 requested to "a brief explanation of the purpose of the online application which you have introduced, what are the challenges and achievements of this system since it has been instituted" to which the GDE 1 responded in part with reference to marketing principles and the requirements for customer service. According to the GDE 1, as a technology enhance process, the Gauteng online system has the added benefit of resolving many of the challenges experienced under the manual system. With regard to the reception and acceptability of the online admission system, the GDE 1 observed that: "*everyone embraced it and everyone accepts that this is the best innovative way of dealing with admissions,*" Also, the GDE 1 said that the system allows parents the opportunity of attending to the school admission applications of the children at the comfort and convenience of their homes. In what resonates with what the GDE 1 expressed after the failed bid to have Hoërskool Overvaal to admit 55 English –speaking learners, the GDE 1 further expressed that the online registration system capacitates the state to manage admission through a much more transformed and fair system.

When asked: "*... please give me a brief explanation of the purpose of the online application which has just been introduced by the MEC., what are the challenges and or or achievements that the system has experienced since its inception,*" the GDE 2 had the following to say: "*The main purpose behind it is to fold one to improve the transperance of the application process.*" The GDE 2 further stated that the purpose of the online system is to "*to make sure that there is no opportunity for schools to minipulate the sequencing of applications ... all of those kinds of things but more imporantly is for us to ensure that before the start of the academic year all learners are placed in a school.*" Also, the GDE 2 viewed as a value add of the online admission system better resource planning to ensure access to schools by learners or rather applicants.

The crux of the GDE 1's response to the question regarding the impact of the online admission system on the right to basic education in my view boils down to a believe that the online system is an enabler to the learner's rights to basic education. A cursory look at the responses of the GDE 2 is that they were largely supportive of the views expressed by the GDE 1 on the Gauteng online admission system. Like the GDE 1, the GDE 2 linked the introduction of the online system to the need to ensure fairness in the application processes that was previously marred with allegation of manipulation to favour certain students, and to ensure that learners are placed in schools as soon as possible to allow teaching and learning to start timeously. Both the GDE 1 and the GDE 2 acknowledged the teething problems experienced during the first year of piloting the Gauteng online admission process, which unfortunately drew many criticisms to the system by frustrated parents and other application. However, except for the challenges that can be encountered for using any technology enhanced system, such as network availability and computer literacy, it is admitted that there are more positives to the Gauteng online admission system that makes it possible for the immediate realisation of the constitutional provisions on the right to basic education. Masinga (2018) reported that within the first hour of the opening of the system in 2018 about 10 000 learners were admitted.

4.2.2.2 School Governing Body Federations

When asked about the efficiency and efficacy of the Gauteng online admission system, SGBFEDS 1 seemed to support it as a welcome innovation. He said that *"It is a change that was inevitable in this modern computer age, which of course like any other change will have its challenges"*. Also, SGBFED 1 stated that parents must be empowered to use the system. He proposed a dual system of online and manual admission processes until all the online system challenges are addressed or resolved. This proposal is borne out of his concern that some parents may find it difficult or expensive to access online application platform to register their children, thus impacting negatively on the right of the children to be at school. Perhaps, it is submitted, parents who had difficulties with the online application system and are able to provide proof of the difficulties experienced

may regard to the appeal process permissible under the Regulations Relating to the Admissions of Learner's to Public Schools GN 1160 Provincial Gazette 127, 9 May 2012.

The view of SGBFEDS 1 regarding the online admission system as a positive development in Gauteng was supported by SGBFEDS 2. However, SGBFEDS 2 argued that *"schools must still be able to apply their own admission policy"*. SGBFEDS 2 noted that his organisation *"supports the idea that technology can serve as a support aid but it should serve as a means of support that will replace only the paper process and that it will not replace the procedural application of the admission policies of school or legislation."* SGBFEDS 2 lamented that the *"e-process completely excludes...the school's admission policies, contrary to the ruling by the Constitutional Court in the Rivonia case that, in any decision on admissions, the HOD must be guided by the school's policy"*.

Despite criticism, online learner admission continues to have a place in South African public schools. The participants themselves have acknowledged that schools must keep with the development of online admission technologies. In my view online admission system is a positive development having regard to many factors, including amongst others, the growing numbers of school going and the need to streamline and make more efficient and effective the processing of learner admission applications. Admittedly, like any other online systems, there will always be concerns including in particular: Computer Literacy and Internet Access of the parents – Over and above the problem of internet connectivity and speed in South Africa, major impediments to the advantages of online admission are access and computer literacy. For example, rural areas with weak internet connectivity, no internet connectivity and no electricity will be placed at a significant disadvantaged compared to learners in urban and peri-urban districts. South Africa is reportedly having the highest computer illiteracy in Africa African (Digitalisation Maturity Report 2017). This revelation raises a major concern that migration to fully online learner admission system may lead to exclusions, dissatisfaction and despondency among many parents.

4.2.2.3 School Governing Bodies

From the interviews with SGBs the reception of the online system varied; some stakeholders supported it and others called for its scrapping. Both SGB 1, SGB 2 and SGB 4 stated that the Gauteng Department of Education online admission system should be a welcome relief to those applying for admission into the different schools. However, SGB1 admitted that, while this technology comes with advantages, it has flaws that must be corrected. SGB 3 shared the same sentiments as SGB 1 with regard the disadvantages of the online admission system. SGB 3 expressed a concern that parents who are technologically literate can get to higher places on the waiting list while those less literate can be far back on the waiting list. He noted that *“the impact is discrimination and depriving the children of the computer illiterate parents the right to access basic education due to the complexity of the online admission process.”* It is submitted that this is a valid concern from a member of the SGB given the fact that South Africa has the highest computer illiteracy level in the continent (Digitalisation Maturity Report 2017). Based on the views expressed by SGB 3 online admission may indirectly make impossible the realization of access to basic education.

4.2.2.4 School principals

Principal 1 complained that the online admission system has been a frustrating experience. In particular, Principal 1 said it was challenging because parents in the area were never educated about using the online system. And that most come to the school to ask what online is and how it works. Principal 1 stated that this is symptomatic of the historical disadvantages and the continuing position of previously advantaged groups. Principal 1 uses as an example school based on a plot (smallholding); and argued that is like a farm or rural area children from the plots that attend school are children of workers, most of whom are not literate or have no exposure to using computers. She noted that with these socio-economic circumstances prevailing, the online admission application detrimental to their children's rights to basic education. Principal 1's comments echoes those of SGBFED1, for example, who highlighted that not all parents are empowered

to use the online system. Despite the online admission system widely discussed and the public informed about it, I have observed throughout the interview that Principal 1 does not have the necessary information about the online application and admission process. She stated that they had not been “*given the policy on the online thing*”. From the interview it seemed that Principal 1 would rather have the online system scrapped and parents allowed to come to the school to apply in person.

Principal 2 welcomed the introduction of the online system, and stated that the system is “*very good because it takes all the administrative burdens away from the schools, thus allowing them to concentrate on the core business of teaching. The value added by the online system is that it harmonises and balances enrolments in schools across the province in that one may not find more learners in school A while school B does not have learners*”. Principal 2 further said that he enjoys and supports the online system because it is transparent, “*although it could be improved to operate efficiently and effectively*”.

Though they both welcome the introduction of the online admission system Principal 3 and Principal 4, like Principal 1, expressed frustration with the online admission system. Principal 4 stated that “*there have been no proper preparations and consequently had to encounter parents coming to the school to ask for assistance or demanding that their children be admitted*”. Principal 3 noted in particular that “*...parents were never educated about this online thing, then they come to school and then they want to know how does the online work, it has been a frustrating experience*”. She in particular indicated that there is suddenly a surge in a number of learners allocated to her school since the use of online system, making it difficult to manage the enrolment process as compared to when admission was by walk-in system. This is what she had to say:

Now I have over-crowding in grade one, imagine if the grade one's are forty-three and forty-four, and if you look at the classes, they are made like learners should be forty they have basins, they have

where they put their books, the pigeon holes, each and every class have enough space for forty, actually it was supposed to be thirty-five then we squeezed in until it's forty learners in a class, but now unfortunately like next year I'm going to have like forty three, now I'm requesting the grade, the SGB to give me, at least to get us a mobile class.

Principal 3 further highlighted the plight of learners who are not admitted through the online system and the frustration suffered by parents. He said:

Maybe we could have come with the solution but now it's a frustration for everyone, imagine your child has not been placed until now, then what do you say, where is my child going for grade one, you have to buy a uniform, they say, parents you should buy uniform by December before you spend...Exactly, they will tell you but we still place, unfortunately this year, learners will not be placed, haven't been placed in February, grade ones, who are not been placed in February..... it's the frustration of the parent and they keep on coming, mam can't you take my child, only one, and you cannot have any extra, sometimes we don't have extra furniture, I don't remember the Department sending us furniture from five years back...

The above statements Principal 3 raise a concern that goes to the heart of the 4As and the case law that has mandated the government to provide schools with the necessary infrastructure and resources (*Juma Masjid case; Minister of Basic Education v Basic Education for All [2016] 1 All SA 369 (SCA); Centre for Child Law v Government of the Eastern Cape case No 504/10*). MacConnachie and MacConnachie (2012:556) established that under-resourcing or the lack of adequate facilities in the schools was a violation and denial of the learners' right to basic education. It therefore become problematic if any process or programme at school aggravates under-resourcing challenge. Principal 3 responses reinforces the argument that lack of proper planning of the roll-out of online

admission process, affect the learners' right to basic education including the right to learn in a conducive environment.

The responses of principals point to an implied assertion of the online system creating distributive justice in learner admissions. More learners can now apply anytime from anywhere. However, their responses indicated that the benefits of the online admission system are sometimes eroded by the challenges experienced by the users and the frustrations caused by the implementation of the system.

4.2.2.5 Parents

The widely reported 2018 Gauteng Department of Education challenges with the online admission system summarises the view of parents in the province (Lubisi, 2018). In this regard Lubisi (2018) wrote:

The situation these 30 000 pupils (and their parents) find themselves in is a repeat of what happened at the beginning of the 2017 school year. Then, there was chaos as thousands of pupils had not been accepted to schools of their choice, while others were directed to schools far from their homes, causing frustration for parents who had to contend with parting with lots of money for transport.

Some parents alleged to have applied on time with the necessary documentation and yet their children missed the first day of school on 17 January, 2018, without any feedback provided by the Department. Non-placement of some learners by the first day of school in 2018 was confirmed by the Gauteng MEC for Education, Mr Lesufi, with as many as 31 000 learners in total not placed when the Gauteng schools re-opened. Parents were urged to accept offers of placement from schools with available space. *“Many of the schools in Gauteng are full and cannot*

accept any more learners ... Such applicants will be placed where there is space”, said MEC Lesufi at the time (Lesufi, 2018).

Parent 1 and Parent 2 said that they preferred what Parent 4 regard as the “*old way*” of applying to schools. They said that the online admission process is rather cumbersome and frustrating. Parent 3 described the online admission system as a “*disaster*” and a disappointment that has failed South African children. In essence, all the parents interviewed argue that the admission process is or has violated their children’s constitutionally guaranteed right to basic education. In almost along the same lines of criticism on the online system by Lubisi (2018), Parent 2 complained that in implementing the online admission system, district officials refer children to “*non-performing schools*”, resulting in their children becoming “*non-performing adults*”.

Parent 3 and Parent 4, however, consider the difficulties experienced with the online admission system a much welcome development that they argue is experiencing teething problems like any other online program. However, Parent 1 stated that the systemic challenges and lack of responses from the Department is unforgivable. Parent 2 expressed a disappointment with the system, pointing out that some parents had to leave their work almost every day to go to districts to resolve their children’s admission issues without any success. Parent 2 also said that, while parents are advised to call district offices, this often yields no results as telephones are seldom answered or sometimes people at the district offices hang up in the parents’ ears.

The view of the Gauteng learner admission policies and processes as inhibitors to the right to basic education was a recurring theme with some parents. There seems to be some degree of rejection by some parents. In my view and observation from the interviews, the diverging responses by parents may also be attributed to the welfare of the families themselves. Most parents with access to the Internet and telephone services sounded prepared to forgive the challenges they experienced. To surmise, all the parents voiced a concern of the social-economic conditions; the constant failure / crashing of the online system; and

computer illiteracy of some parents militating against the realisation of their children's right to basic education. Berger (2003:614) notes emphatic realisation of the right to basic education in South Africa is far from being realised.

4.2.3 Theme 3: Admission policy as key enabler of the right to a basic education

In light of the connection between learner admission to public primary schools and the right to basic education, participants' views on and experiences with admission policy as key enabler to the right to basic education were solicited. Several of the responses ranged from general to addressing specific admission criterion – viz., language; feeder zones and how the latter enhances or inhibits the right to basic education.

4.2.3.1 Gauteng Department of Education

Schools' admission policies as enablers mean that the realisation of the right to a basic education is largely dependent on the appropriateness and the regulation of the policy itself. GDE 1 lamented the admission policies that are mainly implemented inconsistently by schools and that are exclusionary. As an example, GDE 1 referred to the language policies adopted by the SGBs. He stated that SGBs do not take into account the language difficulties of learners that are not mother tongue speakers of the language of instruction and learning, and to policies that are not evolving with the changes in the society. When asked about his views on the development and implementation of admission policies, specifically in public primary schools, GDE 1 stated that "*majority of our [admission] policies*" have not been consistent with the daily changes in societies.

With regard to language as an exclusionary tool, the views of GDE 1 was echoed by GDE 2. GDE 2 stated that language competence is a factor that may militate against admission as enabler of access to a basic education. In particular, GDE 2 referred to Afrikaans and posed the question whether the right to Afrikaans as

a medium of instruction at a school can nullify or override the constitutionally guaranteed right to a basic education. According to GDE 2, "... *whether the right to Afrikaans can overwrite the right to access ... our argument is very simple ... that the policy can't pre-determine access to the school.*"

The issue of Afrikaans and learner admission was recently at the centre of the dispute between the GDE and Hoërskool Overvaal in *Hoërskool Overvaal* case. In this case, the district director instructed the principal of the school to place 55 Grade 8 learners in the school for the 2018 academic year, bearing in mind that the school is believed to be a single medium Afrikaans school. The SGB argued that the school was full to capacity and that the neighbouring English medium schools had the capacity to admit the 55 English speaking learners. The SGB further argued that the district director's instruction was procedurally flawed and that it also offended the school's language policy. Prinsloo, J. ordered that the instruction issued by the District Director to the principal to place 55 learners at the school for the 2018 academic year be set aside. It would seem that the North Gauteng High Court in ruling in favour of Hoërskool Overvaal implicitly took into account the UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment 13, particularly the issue of availability as the content of the right to basic education and admission as an enabler of this right. In terms of availability, the school must have the capacity for adequate infrastructure and well-trained educators.

The North Gauteng High Court ruling in *Hoërskool Overvaal* case was subsequently appealed unsuccessfully in the Constitutional Court. The Constitutional Court dismissed the appeal by the GDE against the judgment of the North Gauteng High Court, and highlighted the failure of the Gauteng MEC of Education to consider all relevant circumstances and factors including determining if English medium neighbouring *Hoërskool Overvaal* "such as General Smuts and Phoenix high schools, which both fall in the same feeder zone as Hoërskool Overvaal had enough capacity to admit the pupils" (Masinga 2018).

According to GDE 1, 87% of schools implement the admission policy correctly and the remaining 13% do not. Interestingly though, GDE 1 was of the view that there is a need for an urgent review of the admission policy framework in South Africa. He maintained that the Gauteng Department of Education has done well in terms of policy formulation and policy implementation. He stated:

... there is an urgent need for a review, but generally I really feel that we've done well in terms of policy formulation. The only thing is our ability to adjust at appropriate times and our ability to ensure that the policy remains relevant at all times.

The issue of policy alignment and adjustment is important at different levels, including the level of the content and application of a particular school policy vis-à-vis the provincial admission policy framework and directives. It also applies to the level of coherence between the admission policies and other policies with incidental consequences to learner admission, such as the school's language policy. With regard to the feeder zone criterion and how to handle the issue in light of the introduction of online application, GDE 1 proposed that the radius be increased from 5 km to 100 km. Also, GDE 1 stated that the online system is important for several reasons, including: making the admission processes much easier and efficient; and providing innovative ways of dealing with admissions. GDE 1 supported a system that is fair, transparent and equitable, and making the government the chief custodian of the information on the admission of learners. According to GDE 1, in this way the Government is allowed to take charge of the process as part of its constitutional obligation to ensure that everyone realises the right to a basic education.

Like GDE 1, GDE 2 regarded the online system as a generally beneficial system that adds value to the system through proper planning of access and transparency in assigning access. According to GDE 2:

... the main purpose behind it is twofold: one, to improve the transparency of the application process. Two, to make sure that there

is no opportunity for schools to manipulate the sequencing of applications ... but more importantly is for us to ensure that before the start of the academic year all learners are placed in a school.

The benefit of the online admission system cannot be underestimated. However, it is submitted that the fact that in 2018 about 30 000 learners remained unplaced by the date of commencement of the first school term casts doubt on the efficiency and effectiveness of the online system (Lubisi, 2018).

4.2.3.2 School Governing Body Federations

SGBFEDS 2 stated that the admission policy should serve as a guideline with regard to the determination of a school's capacity and admission of learners in using a fair criterion that is implemented in a procedurally fair manner. SGBFEDS 2 said:

It must set out fair criteria for admission to the school, and relevant procedures. Most importantly, it must ensure that the school is able to provide quality education to all the children in the school, given the circumstances of that particular school and community in terms of its capital, financial and human resources, physical capacity and the particular needs of the children.

SGBFEDS 1 essentially agreed with SGBFEDS 2, particularly with regard to the criteria for admission. The issue of criteria for admission, whether stratified or classified according to different variables, including feeder zone, appeared to be one of the contested issues. SGBFEDS 1 argued that a feeder zone system as a criterion, for example, must be extended and not abolished and that the proximity to school threshold must be more than 5 km. In response to the question, "Do you agree with the Constitutional Court that the "Feeder Zone" system "unfairly discriminate[s] by perpetuating apartheid geography?" SGBFEDS 2 as follows:

No, it must not be abolished, I think we feel we must extend it because currently the policy says 5 km radius so it must be more than that, it must be more than 5 km radius ... maybe 30.

On the other hand, SGBFEDS 2 agreed on the decision of the court, depending on where one finds oneself. Supporting his conditional view of the abolition of the feeder zone system, SGBFEDS 2 stated that Gauteng is very different from many other regions in SA. In the outlying areas where access to schools is restricted to the nearest school, the feeder zone is not a problem, he argued. However, in the urban areas where access to any number of schools within a reasonable distance is possible, the feeder zone is a problem:

Yes, depending on where you find yourself. Gauteng is very different from many other regions in SA. In the outlying areas of the country where access to schools is restricted to the nearest school, this is not such a problem. In the urban areas where access to any number of schools within a reasonable distance is possible, it is a problem. That is precisely why it is so important that all schools should be at an acceptably high level of performance so that the nearest school can always be the best school.

Asked what he would propose to prevent and manage problems regarding the implementation of admission policies in public primary schools, SGBFEDS 1 stated that there is a need first to consider a myriad of issues that influence the creation and implementation of the admission policies. These include socio-economic issues.

4.2.3.3 School Governing Bodies

It is important to preface the discussion of the responses by SGBs with the legal battle between Hoërskool Overvaal and the GDE in the *Hoërskool Overvaal* case, even though this matter refers to admission to a high school and not to a primary school. In this case the school management brought an urgent

application before the North Gauteng High Court in Pretoria for an order preventing the Department from placing 55 English-speaking pupils in the Afrikaans-medium school. The SGB argued that the school had reached full capacity and did not have enough space to admit any more pupils. It also argued that the Department's instruction to the school to admit the 55 learners was "procedurally flawed and also unlawful and that it also offends against the school's language policy" (*Hoërskool Overvaal* case, para. 5).

However, the Department argued that the school was not full to capacity and that the school was merely attempting to keep itself a strictly Afrikaans-medium school. It also argued that the school was using Afrikaans as a tool to exclude non-Afrikaans speakers from admission to the school. The High Court ruled in favour of the school. Subsequently the Department appealed the ruling to the Constitutional Court.

It is important to note the unfolding of this case because the representative of the Department, GDE 2, made reference to it, indicating his displeasure with the school and the Department's intention to elevate the fight on behalf of English-speaking learners to be admitted to this school up to the Constitutional Court. To be specific, GDE 2 was of the view that Afrikaans as a medium of instruction at a school may nullify or override the constitutionally guaranteed right to a basic education. GDE 2 also argued that the language policy cannot pre-determine access to public primary schools. This argument by GDE 2 did not find support in the recent Constitutional Court ruling in the *Hoërskool Overvaal* case (*Hoërskool Overvaal* case unreported; Masinga 2018; Mitchley, 2018). In this case that was based on the consideration of school capacity rather than language as an admission criterion, the Constitutional Court ruled in favour of *Hoërskool Overvaal* confirming the judgment of the North Gauteng High Court that *Hoërskool Overvaal Case had no capacity to accommodate English-speaking pupils*. In dismissing the appeal by the GDE against the judgment of the North Gauteng High Court the Constitutional Court held that "Lesufi had not given enough consideration on whether neighbouring English medium schools

such as General Smuts and Phoenix high schools, which both fall in the same feeder zone as Hoërskool Overvaal had enough capacity to admit the pupils” (Masinga 2018).

Responding to the question what they think the real function of the admission policy is, SGB1 stated that the real function is “*just to guide in terms of entry of the learner, with conditions attached thereto*”. The admission policy needs to ensure a fair process free of discrimination, stated SGB 3. Similarly, SGB 2 was of the view that admission policies should be designed to put in place learner enrolment processes and requirements that are free, fair and equitable to all learners irrespective of race, gender and creed. SGB 2 expressed the following belief:

In my opinion, admission policies should be fair and just, it should be race free, it should be culturally free, it should be used within the context of ... and a child who stays within the parameters of the school has a right to be admitted in the particular institution, ... and the policy should however address this concept ... irrespective of the medium of instruction ... admission should become easy for that particular child.

SGB 3 summarised his view as follows:

... so really if I were to summarise it, it needs to be fair, it needs to be orderly and it needs to be focused on ensuring that the school serves the local community, whether residence or people living within the local community ...

Almost all the representatives were in favour of the idea that school admission practices may be stratified according to different variables, including feeder zone criteria. However, they believed that a feeder zone criterion should not be an absolute determining factor of who should be admitted to the school. According to SGB 3 and SGB 2, for example, a school functions most effectively when it is

-serving the people that are living in the local community. SGB 2 expressed the view that the *geography* of the community or proximity of the parent's residence to the school must be the only factor to be considered when deciding on the admission of the learner to the school. In SGB 2's words, "*The immediate residents of that particular community where the school is, should be the first people to be the beneficiary of the school's admission practices.*"

At the same time, there seemed to be some agreement and contradictions in their positions regarding the feeder zone approach. For instance, both SGB 3 and SGB 1 supported the proposition of the Constitutional Court that the feeder zone criterion or system perpetuated Apartheid practices and discriminated unfairly. SGB 4 said that the GDE failed the people of South Africa by not investing sufficiently in building new schools and in upgrading the quality of township schools.

SGB 4 was doubtful that the proposed 5 km radius for admission by the Department would be effective, and believed it did not make sense. SGB 2, albeit in a different form, regarded the learner's proximity to the school as central to any admission processes. He further stated that a parent's working relationship with the community within which the school is located should be a deciding factor regarding whether or not the learner is admitted to the school in that community. The issue of feeder zone must be implemented with great circumspect, including considering the capacity of the school within the feeder zone. Following the Constitutional Court ruling in *Hoërskool Overvaal* case, the fact that the school is in the feeder zone does not necessarily mean that it has the capacity to admit learners. The capacity of the school to accommodate the learner must be one of the determining factors to admit the learner (Masinga 2018; Mitchley, 2018). Though the *Hoërskool Overvaal* case related to admission of English-speaking learners to Afrikaans school, the essence of the ruling of the case in my view is that many factors could be considered such as, for example, the learning difficulties of the child; children with special needs. In this way the school will be giving full consideration of the 4As when admitting the learners.

4.2.3.4 School principals

Questions regarding the function of the admission policies in schools and the principal's role regarding the development and adoption of admission policies in schools elicited different responses from principals. Principal 1 explained that the function of the admission policy is to give guidance and clarity on what to do. With regard to the role of principals, Principal 1 noted that his role is to *“try and design in conjunction with the SGB admission policy which is aligned with the admission policy of the Gauteng Department of Education”*. Principal 1 also said that they do their best to consider individual learner situation as in his school a child is more important than policy. From the discussions it would seem that Principal 1 exercised a great deal of discretion in executing his roles related to learner admissions. What is striking about the views of Principal 1 is that he knew much about admission policies and regulations, and that his experience in dealing with issues of learner admission spanned a good number of years. Perhaps this can be attributed to the experience Principal 1 had in school management and leadership.

Principal 2's response echoed the response of Principal 1 particularly regarding the admission policy setting a framework and guideline on learner admission. She stated that:

the admission policy serves to ensure that learners are placed accordingly at the schools; determining the age of the learner to be admitted; indicating which should be the feeder school, and the criteria for admitting learners at school including proximity of the household to the school or parent working close to the school.

Principal 3 was of the view that the function of the school admission policy was to set up an appeals process for parents whose children had not been admitted to the school. However, unlike other principals, Principal 3 said very little about the admission criteria. According to Principal 3, her school used the *“sibling in school”* criterion to prioritise its admission of learners. Principal 1 did not find the sibling criterion problematic and supported its continued use before recourse to

the proximity and radius criteria. The practices of the criterion are that, if a learner does not have a history of sibling in the schools, he or she should be considered a List B applicant. In my view, the sibling criterion can have an inhibiting effect on the admission chances of the learner.

Principal 4 echoed the sentiments of other principals that indeed school's admission policies do have an impact on the realisation of the right to basic education. She seemed to favour the feeder zone system, the siblings at school and the proximity of the home to school as key criteria to decide admission. Her position and argument were based on the safety and security of the child. She said, for example, if the child was enrolled at a school in the area of the parent's workplace and travelling with the parent, such child would have to wait for the parent to leave work and be fetched from school. Her security concern is that the learner had been waiting at school without teacher supervision, compromising the much needed safety and security of learners at schools. Research has identified the "predominance of problem of safety and security in South African schools" (Mathe, 2008:5), which has even necessitated the deployment of security guards at schools to protect the safety of learners, educators, support staff and other workers (see generally Sinthumule and Tswanani, 2017:168-183). Principal 4 in essence is of the view that admission policies may have unintended negative consequences that go to the hard of the right to basic education.

4.2.3.5 Parents

All the parents interviewed agreed that admission policies are key enablers to the enjoyment of the right to basic education. Likewise, the parents argued that school admission policies and practices may become stumbling blocks towards the rights to basic education. Parent 2 noted that the sibling and feeder zone criteria remains problematic, and "*used to deny children spaces at schools most convenient for parents from their workplace*". Parent 1 and 4 both argued that the feeder zone system is not effective. Parent 1 gave an example of the "*school populated by learners who are not from the area, whilst learners from the area are struggling to get placed at local schools.*" The problem of feeder zone

approach to learner admission was challenged in the *FEDSAS* case as having an exclusionary effect on previously disadvantaged person living in poor and marginalised black. The issue of language was raised specifically by parent 3 who stated that Black parents have no choice but to take their children to areas far from home because their children cannot cope with Afrikaans at Afrikaans medium schools.

4.2.4 Theme 4. Critical challenges in the learner admissions to public primary schools policy and the impact of the policy on the right to a basic education

The study problem statement and literature review identified a myriad of issues and challenges related to the management of learner admissions and its impact and effect on the right to basic education. Likewise, participants were also asked about the experienced (and perceived) challenges in the schools' admission policies and practices, and how they impact on the right to basic education with some responses reflecting on what has already been learnt in data from literature review and documentary analysis. Some of the challenges are juxtaposed from the challenges and problems experiences during the Apartheid schooling system

4.2.4.1 Gauteng Department of Education

GDE 1 identified admission bottlenecks created by an influx to what are generally regarded as high performing quality schools as one of the key challenges to learner admission. GDE1 told me that migration from poor performing primary schools is becoming a challenge, with township schools perceived to offer poor quality education. Whilst agreeing with GDE1 on the issue of challenge and impact of migration to what are perceived to be affluent schools, GDE 2 said that learner data shows that the learner achievement gap across schools is reducing substantially and the distribution of quality is also getting better. The *perceived poor quality* of certain schools, particularly previously black schools which have been subjected to segregation education policies, has been reported in some empirical literature. Logan & Burdick-Will (2016: 135), for example, argue that class, race, neighbourhood, and quality are interconnected in the U.S.

educational system. This has been confirmed by the *United States Supreme Court in Brown v. Board of Education* and *Plessy v. Ferguson* (Reardon, 2016:34). Similarly, the legacy of Apartheid can still be felt with the system of highly polarised schools. To this end Murray observed:

...school background can (in these lower quintile schools) be viewed as being largely a proxy for the poor quality of teaching that is taking place there primarily because SADTU is pursuing an agenda based on the protection of worker's rights rather than the empowerment of a teacher with the necessary skills to do their job properly. Including in the model an interaction effect associated with being a Black African student who has been privileged enough to attend a quintile five school, and being able to observe a significant interaction effect but a non-significant main effect would allow one to isolate the effect of being forced to attend a "poor quality" school as a Black African students from that of the other race groups who may also (by circumstances) be forced to attend a 'poorer-quality' school.

GDE1 revealed that the GDE is considering the introduction of a quality assurance regime. GDE1 said that under this system the schools will be graded according to set scales to determine a number of variables including the provision of quality education, professional teacher training, the school's infrastructure, effectiveness and functionality of the SGB and others. The issue of management was also shared by GDE 2 who stated that there is poor management with regard to class capacity as a problem, and transportation to schools, some schools recruiting learners from outside their area for sport talent. It is hoped that the issue of poor management as impacting on and affecting the learners' right to basic education will come under closer scrutiny following the provisions of PAM 2016, which implores principals with the responsibility of professional management of the schools in several areas including admission policies and practices (PAM 2016, par 3.1.1). Mazibuko (2010:74) also finds that principals

have the responsibility to perform different tasks in order to ensure that learners' and school's needs and goals are fulfilled through appropriate leadership.

GDE 1 had suggested the introduction of "*specialised*" schools to ease the admission influx. This suggestion is in addition to the admission by GDE 1 that feeder zone systems worked better in certain circumstances, but that they distorted learner admission processes and perpetuated Apartheid unfair school admission policy as noted by the Constitutional Court. Further research supports the view. In their analysis of *FEDSAS* case and its ramifications, Venter and Kgori, (2017:662-667) highlighted that previously the South African Education system was used as a tool for discrimination, division and oppression of Blacks.

GDE 1 also identified the inability of school management to regulate admission processes properly. GDE 1 also noted a disturbing trend of abusing school admission policies with nepotism and corrupt practices used to gain admission into schools. GDE1 also identified other challenges such as paying little attention to the academic ability of the learner in the admission criteria. For example, admitting a learner because the learner is the best cricket or rugby player, thus fitting into the sporting excellence profile of the school. Both GDE 1 and GDE 2 addressed criteria for the admission of learners, some of which may not necessarily be legally and socially acceptable. For example, admission of learners to schools due to sporting codes, lack of the ability to speak the language chosen by the school, familial relationships to the school, to name a few. GDE 2 addressed at length language, in particular Afrikaans, and concluded that is one of the inhibitors to access to a basic education. Franklin and McLaren (2015:17) warns that unlawful and improper implementation of school admission policies may lead to "the unfortunate and unlawful effect of maintaining segregation based on race, language, culture or socio-economic class if not properly monitored".

GDE 2 further said that generational relationships to the school is also one of the factors or unspoken rules of assigning admission to schools. Whether GDE 2 hit the nail on the head is a story for further research. Clearly the challenges as

identified by the GDE representatives are many and may differ from school to school and district to district. One cannot make a generalisation regarding these challenges, except to say that they collectively are political and socio-economic challenges. It must be noted, however, that these challenges are not peculiar to South Africa as a developing country. There are countries which despite their developed status face similar political, socio-economic challenges to learner admissions and the right to basic education. For instance, the Organisation for Economic Cooperation and Development (OECD) in its 2012 study on school management and access to education reported similar challenges. (OECD 2012). However, unlike in the countries identified by the OECD, the Gauteng education authorities do not like the OECD "give more autonomy and authority to parents and students to choose schools that better meet their educational needs or preferences" (OECD, 2012:44). Though the English School Admissions Code has been enacted to regulate admissions in the state schools system and to promote fair admissions and equal access to schools (Stasz and van Stolk, 2007:1), the government of England has been found not have failed to provide and ensure access to education to many categories of children, particularly those with special needs (Andersen et al. 2008:25).

4.2.4.2 School Governing Body Federations

Both SGBFEDS 1 and SGBFEDS 2 respectively had to answer the questions: what are the critical challenges regarding the development and implementation of admission to schools, specifically public schools? Are there any critical challenges specifically in public primary schools? Are there any critical challenges regarding the development and/or implementation of admission policies?"

SGBFEDS 1 commented that the challenges experienced are not developmental, but rather transformational. Interestingly, this view was echoed by GDE 1, representing the GDE, when he lamented the fact that certain school admission policies and practices do nothing to advance transformation in schools. SGBFEDS 1 stated that to note the past school admission practices that

were based on variables such as skin colour and language, a sentiment shared by researchers (Venter and Kgori, 2017; Beckmann and Phatudi, 2013; Skelton (2013:2). He particularly stated:

And then that colour will translate into their culture. One of the cultures will be the language, but they will first look at your colour, how light you are, how dark you are, then can admit you to any school. So I think we more or less had 3 colours, no 4, it will be, it will be the white one, which maybe it will be the white one, which would translate to many, then they will divide as such, the white, white ones, they will say English one, English one, the Afrikaners one,the Jewish one and all those things, they will divide as such but they are white so they always will define themselves based on language, then they will have their schools, then they will come those who are between the black and the white, maybe they will be called the Indians and all those things, they will have their own schools. Then they will come those who are a little bit, dark and those who are not far from us, they are called coloureds, they will have that schools, then comes us, the rest of us then we would have our schools. Now, now us were able to accommodate them except maybe.....

In my view, SGBFEDS 1's answer on transformation sought to support the incremental introduction of African languages in schools, without necessarily indicating how this will address the issue of learner admissions in public schools or addressing the real function of admission policies in a public school. Interestingly, SGBFEDS 1 stated that the real function of school admission policies is that it "...must ensure access to education preferably in the language of their choice". Similarly, SGBFEDS2 stated that the fact that a large number of learners cannot receive education in the primary school in their mother tongue is a challenge by itself. According to Stoop (2017:4), "[t]his can be attributed to the age-old misconception that national unity can only be built around a single language." (Author insertion [...]). Stoop made an important observation that

perhaps answers the question why South African children are not taught in their mother tongue. He stated that “[t]o put it differently, the cardinal importance of mother-tongue education is recognised in section 29 (2). However, mother-tongue education will be possible only if such education is reasonably practicable” (Stoop, 2017:7). Thus in my view it may not be practicable for a system like South Africa that is still trying to redress many other education imbalances of the past to offer mother-tongue education for all the 11 official languages. Also, it may not be fair that African language speaking learners are not given opportunity to be offered all school subjects in their mother tongue when such opportunities exists for Afrikaans and English speaking learners.

SGBFEDS 2 mentioned many challenges and elaborated quite comprehensively what he considered key challenges. It also became clear from his response to my question whether he agrees with the courts that “enduring disparities in the education system characterised by the legacy of apartheid” justify the involvement of the Department and the HoD in the admission and placement of learners at public schools?

In his elaboration SGBFED2 stated:

Not necessarily. The “enduring disparities” are the result of many other factors, such as the failure by the very same departments in ensuring that all children have access to good schools. Depending on which opinion you consider, the percentage of dysfunctional schools in the country varies between 60 – 80%. Fact is: the majority of all public schools in the country are still dysfunctional despite policies and measures to correct the imbalances of the past. 20% of the schools in the country cannot cater for the needs of 100% of all the learners. There is a belief that ex Model C schools should shoulder much more of the burden, but that is just shifting the responsibility of ensuring that all schools provide an acceptable level of education. In any event, the so-called model C schools

never comprised more than 7% of the total number of schools in the country.

We do not need more rules, laws, policies, etc. We need more people who are prepared to make a difference in every school in the country so that access to acceptable education can be ensured for every child.

If an HOD of department becomes (more) involved in placement of learners in schools that can only benefit a minute number of individual cases/learners leaving the vast majority in the proverbial desert. You can only pour 100 litres of liquid into a 100-litre container. You cannot pour 100 litres into a 20-litre container.

SGBFEDS 2 noted the lack of capacity in certain provinces. He said that schools are being placed under more and more pressure each year to accept more learners than the school's capacity allows, due to the fact that there are not enough schools, particularly in Gauteng. SGBFEDS 2 also stated that where there are enough schools, these schools do not all provide a good quality education, bringing pressure to bear on the good schools because parents want access for their children to good schools.

SGBFEDS 1 said that in Soweto one never has a problem of admission. He implied that migration to urban or so-called Model C schools and not to township schools like Soweto is the challenge. SGBFEDS1 supported his argument regarding school migration with reference to the fact that court cases on admission do not involve township schools. SGBFEDS 2 also raised a concern over the uncertainty regarding the status of Grade R. He mentioned that they have the experience of departmental officials arguing that learners in Grade R do not automatically qualify to progress to Grade 1 even though the Grade R classes form part of that specific school.

From the above discussion and responses of SGBFEDS1 and SGBFEDS 2, one can surmise that generally the challenges relate to the 4 As of admission as contained in the General Comment of the CESCR, in particular that of *accessibility* and *acceptability*. It may also be argued that school admission policy and/or practice may not be acceptable if access is hindered by the absence of African languages. In this regard *accessibility* would mean that access to education must be free from all unfair discrimination, including language discrimination, and that the system must be transformed to ensure that previously disadvantaged and marginalised groups have fair access to the education system. Moreover, acceptability can be understood from the point of view as to whether teaching Afrikaans to learners who are not exposed to the language at home and continuing to teach them in Afrikaans despite their struggling with the language is appropriate and fit for the purpose of access to basic education. GDE 2 has addressed at length the language issue, in particular Afrikaans, as an inhibitor to access to a basic education, particularly because it disadvantages non-Afrikaans speaking learners.

4.2.4.3 School Governing Bodies

One of the greatest challenges identified by SGB 1 is the historical imbalances regarding learner attraction to schools, due to the racial divide existing under the Apartheid schooling system. His argument was that challenges do not emanate from the admission policy as such, but represent a scramble of parents for admission to better resourced schools, particularly the former Model C schools with better infrastructure and skilled educators. Nicholas Spaul (2013:3), one of South Africa's pre-eminent scholars on education system matters, summarises all concerns very crisply:

[...] the picture that emerges time and again is both dire and consistent: however, one chooses to measure learner performance, and at whichever grade one chooses to test, the vast majority of South African pupils are significantly below where they should be in terms of the curriculum, and more generally, have not reached a

host of normal numeracy and literacy milestones. As it stands, the South African education system is grossly inefficient, severely underperforming and egregiously unfair.

Despite the argument by SGB 1, which understandably is influenced by the history of the school, it should not be forgotten that the inequalities stemming from the Apartheid era remain the prominent problem in our education system (Venter and Kgori, 2017: 668). In terms of the 2015 TIMSS study (Reddy *et al*, 2016: 38), South Africa was the second-lowest performing of the 39 participating countries in mathematics and was the lowest performing in science. South African achievement was highly unequal and the national average achievement scores have only improved from a “very low” in 1995, 1999 and 2003 to a “low” in 2011 and 2015. The 2017 report of the Centre for Development and Enterprise (CDE) (2017:5) on teacher professional standards (TPS) for South Africa also support the observation by SGB1 by painting a picture of a system full of imbalances by stating that:

the symptoms of crisis are [...] very low learner outcomes and ill-equipped teachers. As a result, the education system is failing the majority of the country’s learners. [...] the “more resilient legacy from the past has been the low quality of education within the historically disadvantaged parts of the school system” that serve the majority of black and coloured children in the country. (Author’s emphasis).

The above statement also identifies inequality in education as a major problem in South Africa, which is a challenge identified by SGB1. SGB1 noted that his school, for instance, is the only former Model C School that is affordable and accessible to most township learners. Thus, the influx of children to the school created bottlenecks and eventually an admission crisis. It is submitted that what SGB1 argues as the greatest challenge, is part of the content of *admission*, namely the *availability* as one of the 4 As of learner admission – adequate infrastructure and well-trained educators. SGB1 noted further that limited

physical resources cannot accommodate the number of learners seeking admission to the school.

While agreeing that ensuring that schools have an admission policy that is fair and equitable to all applicants is a primary challenge, SGB 3 stated that the process to allocate admission to learners in his school is fair and transparent. Interestingly, SGB 3 expressed views that are diametrically opposed to that of SGB 1. SGB 3 raised a concern that sometimes the GDE would ask schools to deviate from their perfectly working admission process. In this regard SGB 3 noted a situation whereby a parent appealed to the Department to be advantaged over and above parents who are ahead of her or him on the waiting list, creating an unfair advantage for that parent. SGB 3 has criticised this practice as illegitimate use and abuse of power and authority. At closer look the views and responses of SGB 3 mirrors the arguments raised in the *Hoërskool Overvaal* case and *Rivonia* case, and the need to act according to the requirements of procedural fairness and acting in good faith as has been required by the courts. (*Rivonia* case, par. 73). This was reinforced by SGB 3 stating that the Department is abusing its powers, usurping the powers of the SGBs and acting unlawful with regard to the implementation of schools' admission policies. In fact, SGB 3 explicitly stated that the causes of problems experienced regarding the implementation of the admission policies in public schools lie with the Department and its officials not adhering to its own policies, regulations and procedures; the parents not applying on time; the SGBs and their admissions policies, to the extent that the policies are not aligned with the Constitution and court judgments. SGB 3 revealed that these have prompted admission policies of his school to make extensive reference to the decisions of the courts.

Related to the challenge of availability is the challenge of migration of learners and relocation of parents. The challenge of bottlenecks created by influx to what are generally regarded as high performing quality schools or Model C schools was also identified by GDE 2, although he was quick to note that the quality learning data shows that the learner achievement gap across schools is reducing substantially and the distribution of quality is also getting better. For example, the

GDE focuses on recruiting qualified, well trained and experienced teachers into new teaching positions.

Another challenge identified by SGB 1 is the lack of consistency in the application of admission policies, processes and procedures in Gauteng. In this regard SGB 1 cited as an example the continued question of what constitutes seven years for a child to be admitted to a school with reference to children who are approaching seven years at the beginning of the school year. He remarked that in some cases or in some schools, the unexplained standard of “*school readiness*” is used. Such a standard is problematic because it can be subject to abuse through subjective considerations. When asked what he would propose to prevent and manage problems regarding the implementation of admission policies in public primary schools, SGB 1 said that a solution is transparency by the school, particularly when the school declares that it is full to capacity.

Compared to SGB 1 and SGB 3, SGB 2 noted a few critical challenges some of which have been addressed by other participants. SGB 2 argued that “*the use of race and language in admissions is a very serious critical problem*”. In particular, SGB 2 lamented the use of race and language as the reason to exclude African learners from being admitted to predominantly Afrikaans schools. Other challenges identified by SGB 2 include the overpopulation in the community that should be served by the school.

4.2.4.4 School principals

A challenge revealed at the beginning of my interview with Principal 1, was that the SGB in her school provided a great deal of guidance for policy development and implementation. A similar concern was raised by Principal 2, who was of the view that there must be certain requirements addressing knowledge and education when choosing the SGB since the SGB plays an important role in admission policy formulation and implementation. Principal 4 said that the lack of policy or guidance on the criteria to choose members of the SGB has

compounded the challenges because you end up with SGBs that don't understand the regulations, policies and procedures. Thus, leaving an additional responsibility on principals not only to make them aware of these policies and regulation, but to teach them the meaning and purport of them. Similar sentiments were expressed by Principal 2, who lamented the lack of knowledge of some members of the SGBs of the school admission policy, and GDE and SASA regulations and admissions. It seemed that the view of the majority of principals was that SGBs need some formal training in policy development, interpretation and implementation. Equally, training has been proposed by researchers, who are of the view that the decentralisation of education authority and powers to different stakeholders including SGBs requires support of the stakeholders in their new capacity. Tsotsetsi, van Wyk and Lemmer (2008:385) argue that "in view of the complex functions prescribed for school governing bodies (SGBs) in South African schools, sound training should be provided for proper discharge of the multiple duties bestowed upon them to avoid the so-called muddling through approach."

When asked what critical challenges principals face with the development and implementation of admission policies, specifically in public primary schools, Principal 3 noted the 5 km intake requirement. Principal 3 said that this is problematic for schools that are located in plots where there are no many learners in the area. She noted that as an intervention the school then has to get learners from nearby areas or townships. Principal 4 indicated that there is a problem of influx of learners from other areas outside of the location of the school. She revealed that the schools can admit one thousand two hundred and three (1203) learners and only twenty-eight (28) are from the plots and the immediate surrounding areas. According to Principal 1, challenges in his schools relate more to the criteria that must be used to admit learners. He stated that regulations containing the criteria are both cumbersome and unclear. It has often been the source of frustration, anger, upset, and other sorts of contestations.

In terms of the 4 As of admission, *availability* denotes that not only must education be free, but it must also be supported by adequate infrastructure and

well-trained educators. Availability of furniture is a problem for Principal 3's school. She revealed that the last time the Department sent the school furniture had been more than five years before. Therefore, the learner's right to basic education was hampered by the lack of appropriate furniture for a conducive learning environment.

Principal 1 pointed to the challenge of parents who do not understand admission policies and related regulations. She said that there have been instances, for example, of parents whose children have been allocated to another school by the online system. But the parents will go to a different school and insist that the child be admitted by the same school. This creates tensions as in the *Hoërskool Overvaal* case dispute, affecting learning at the school. Parents are more interested in their children admitted to a school, and are less concerned with following processes or meeting established criteria.

The issue of influx to what is perceived to be good schools was cited by Principal 2 as one of the challenges. He noted that parents still have the mentality that there are no good schools in townships when in fact national matriculation results do show good performance in township schools. Principal 2 also indicated that the Department does not allow principals to say that the school is full, even though practically anyone can see that the school is full. This observation relates to the challenges principals face when schools are oversubscribed.

Principal 1 complained about the abuse of the admission process and criteria to advance contestations of colour, culture, and race. In his view, people always have a "*hidden agenda*" regarding admission of learners to schools and thus deviate from the objective of using the school policies as enablers of the children's right to basic education enshrined in Section 29 of the Constitution of 1996. Perhaps his assertion has credence to a certain degree, considering how the issue of *Hoërskool Overvaal* became politicized. In this regard, it is important to note Principal 1's response to the question on the relationship between language and admission of learners, and his reference to the Namibian education system that post-1990 introduced English as language of instruction

and learning. In his opinion, if the Government can have the courage to mandate English to be the only language of instruction and learning, instances like the *Hoërskool Overvaal* case would not be a common occurrence in South Africa.

In my view such decisions should be about what is in the best interest of the child as addressed in section 28 of the Constitution and not on societal or political preferences. To this end, the Constitutional Court in *Ermelo High School* case strengthened the importance of the best interest of the child standard. The Court ruled that “Schools cannot randomly decide what the language of instruction should be without duly considering how it will affect the interests of the learners.” In this case, which has been labelled a double-edge sort (van Der Rheede, 2009) the Constitutional Court re-affirmed the right of the Ermelo High School SGB to formulate its own language policy by stating “[o]rdinarily, the representatives of parents of learners and of the local community are better qualified to determine the medium best suited to impart education and all the formative, utilitarian and cultural goodness that come from it” (Author insertion [...].) The Court ruled, however, that the SGBs must use this right not to serve the narrow education interests of a specific school only, but rather that of the entire community. (Van Der Rheede, 2009). The Court stated in particular:

The governing body...is entrusted with a public resource which must be managed not only in the interests of those who happen to be learners and parents at the time but also in the interests of the broader community in which the school is located and in the light of the values of our Constitution.

4.2.4.5 Parents

Parents interviewed re-iterated a number of challenges that they experienced as a result of the school admission policies; and the resultant denial of children their right to basic education. What are considered as challenges by parents has been evident in the central role parents played in some of the precedent setting cases that came before the courts, and the feeder zone system has been one of them.

Parents took part in the FEDSAS case as friends of the court. The parents' position in this case was that the feeder zone system will exclude historically poor black learners who will primarily live in historically poor and marginalised black areas from admission or enrolment into affluent areas (Govender, *Sunday Times*, 6 May 2016). Parent 2 stated that children from poor families and/or with less educated parents are sometimes disadvantaged by the schools' admission policies and procedures. Arendse (2011:120) posits that the right of access to basic education also entails that no child should be denied admission to public primary schools because of the child's socio-economic background.

All parents interviewed spoke about the discriminatory admission policies and practices as challenges they experienced. To this end, it was apparent in the case of *Matukane and others vs Laerskool Potgietersrus*, 1996 (3) SA 223 (TPD) that approached the court alleging that black children were discriminated against in the school's admission policy, and ultimately obtained a declaratory order prohibiting the use of admission policy criteria that is based on race, ethnic or social origins, culture, colour or language. Parent 1 in particular stated that in "*some schools admission has been determined by whether a parent can pay a bribe to an admitting official, including a bribe to jump waiting list and the child to be placed under Admission List A.*" Parent 2 and Parent 3 said that the feeder zone is not working because their children are still not admitted to schools near home. Also, that they sometimes have to go for English-medium schools because the schools in the proximity of the children's home are Afrikaans-speaking. Thus, language appears still to be an impediment in schools. The online learner application and admission processes, discussed in paragraph 4.2.2.4 above, was again regarded by all parents interviewed as problematic and challenging towards realising access to the right to basic education by learners. Parent 1 stated that internet access is for some parents not affordable and to travel to districts to be assisted with online application still involves expenses on the part of parents.

The interview with parents revealed a pattern of stratification of school's admission criteria as is the case in OECD countries, for example, (OECD,

2012:44). In an approach almost similar to that in the OECD countries where parents and children are given more leeway and freedom to choose schools satisfy their educational needs or preferences (OECD, 2012:44), the Gauteng online admission application requires the parents to list schools in order of their preferences; and the outcome of the application allows the parents to choose which school they finally would like their children to be accommodated at. However, it was clear from the responses that some criterion militates against the learners' right to access basic education. Some parents are still battling to understand and articulate the online application system. For instance, Parent 3 stated that she did not understand that schools were provided in order of preference for parents to choose which school they preferred more than the others.

4.2.5 Theme 5: Recourse to the courts in disputes emanating from implementation of the Learner Admissions to Public Primary Schools Policy

To date a number of admission disputes and /or matters incidental thereto had to be resolved by the courts. Notable of these cases that have attracted much media attention and some wide scholarly reviews include *Federation of Governing Bodies for South African Schools v Member of the Executive Council for Education, Gauteng and Another* [2016] ZACC14 (*FEDSAS case*), *MEC for Education in Gauteng Province and Others v Governing Body of Rivonia Primary School and Others* [2013] ZACC 34 (*Rivonia case*); *Minister of Education v Harris* (CCT13/01) [2001] ZACC 25; 2001 (4) SA 1297 (CC); *Hoërskool Overvaal* case. The participants were thus asked what they thought was the impact of the emerging court cases relating on public school's learner admission policies in practice.

4.2.5.1 Gauteng Department of Education

In responding to a question regarding admission disputes that had to be resolved by the courts, GDE 1 said that “[t]here are many grey areas in the schools’ admission regulations that sometimes necessitate the intervention of the courts.”

GDE 1 expressed a view that although the intervention of the courts served as neutral avenues of relief and as a dispute resolution platform, the differences in question had a destabilising effect on schools. He suggested the introduction of the admission ombudsman to deal specifically with admission disputes and other issues as a pre-condition to approaching the courts for further relief. Avoiding the courts seem to becoming the preferred approach by the GDE. For example, expressing his displeasure at the GDE losing its Constitutional Court appeal in *Hoërskool Overvaal* case MEC Lesufi reportedly stated that “[w]e don’t need the court to help us build a non-racial South Africa. Those who want to build a non-racial society must do so where they are” (Masinga 2018).

The proposal of the Ombud’s office to the exclusion of the courts for school admission is rather confusing, given the view by GDE 2 that the key dispute areas are normally around the right of the school to determine admission policy. One would think that, because admission involves legislation and regulations, policy-stakeholders will find the court to be the most appropriate forum to give binding guidance on the interpretation and implementation of admission policies. This in no way suggests that the ombudsman may not reach binding resolutions to school admissions disputes, once the system is established.

4.2.5.2 School Governing Body Federations

In his contribution to the discussion on a number of court cases having decided questions of learner admissions to schools, SGBFEDS 1 re-iterated the position held by SGBs that it is their jurisdiction to adopt admission policies. However, he was quick to concede that it is the Minister and/or Department that determines the capacity of the school and not the SGBs. His position on who determines whether the school has reached its capacity to admit learners runs contrary to the assertion of the SGB in the *Hoërskool Overvaal* case. In fact, to a certain degree it supports the position of the Department in that case that the school was not full to capacity to admit the 55 English learners.

The representatives of the two federations presented a different view when asked whether they agreed with the courts that enduring disparities in the

education system characterised by the legacy of apartheid justify the involvement of the Department and the HOD in the admission and placement of learners at public schools. SGBFEDS 2, for instance, contended that he did not necessarily agree with this assertion. In his view, “*the enduring disparities were the result of many other factors, such as the failure by the very same departments in ensuring that all children have access to good schools*”. He went on to state that the majority of all public schools in the country are still dysfunctional despite policies and measures to correct the imbalances of the past. Specific to *Hoërskool Overvaal* he commented that the continued involvement of the HOD in the placement of learners in schools only benefited a small number of individual cases or learners, leaving the vast majority in the proverbial desert. To use his phrase, “[y]ou can only pour 100 litres of liquid into a 100 litre container. You cannot pour 100 litres into a 20 litre container”. (Author insertion [...]). SGBFEDS 2 seems to have been vindicated by the Constitutional Court ruling in the *Hoërskool Overvaal* case with regard the issue of capacity of the school to accommodate learners as one of the critical considerations in admission cases.

The judicial intervention and the role of emerging jurisprudence relating to public schools’ learner admission policies and practices were acknowledged by SGBFEDS 2. SGBFEDS 2’s view was that judicial intervention is there to clarify issues and give clear guidelines to both SGBs and departmental officials where uncertainty regarding the interpretation of legislation relating to the admission procedure exists. It is through the courts, as it was evident in the *Rivonia* case, that the roles of the various parties involved in the admission procedure were clearly outlined. It is beyond any debate that SGBs must be guided by jurisprudence when drafting and implementing the policies. Moreover, it has been confirmed by various cases that the Department can only act when it has the legislative authority to do so, according to SGBFEDS 2.

Responding to the question whether he agreed that the *Rivonia* case had set a precedent in how SGBs should implement their admission policies to promote access to education, SGBFEDS 1 said that it had some impact, particularly of taking away powers of the SGBs regarding admission decision making. In his

view, the negative of the precedent set was that powers of the SGBs were chipped away gradually and ultimately, we may end up not having SGBs. The federations of SGBs are among the stakeholders contesting and rejecting amendments intended to be brought by BELA.

4.2.5.3 School Governing Bodies

Put differently, SGB representatives regarded the courts as arbiter of issues affecting the best interest of the child. SGB 2, stated, for example, that “*the courts are needed, especially when admission statutes and related policies and procedures are wrongly interpreted*”. SGB 1 seem to favour an approach that allows the exhaustion of all internal remedies and processes first, stating that parties must not rush to approach the courts.

4.2.5.4 Parents

The nuances of the parents’ responses differed according to how they view as important access to certain schools, particularly those that were traditionally white schools by African learners or non-Afrikaans speaking learners. Parent 1 and parent 4 stated that the courts are their best chances of having their children admitted to schools, if the principals and SGBs decline their application. Parent 4 noted specifically instances where children are declined admission because of the language barrier. Likewise, Parent 2 and Parent 3 saw no harm in approaching the courts to have their children’s rights to basic education enforced. However, Parent 3 stated that it is not fair for parents to spend money approaching the courts in order to enforce the rights that children are given by the Constitution of 1996. In essence, the parents suggested that not all the courts battles are in the best interests of the children, particularly when matters could have been resolved amicably.

The general view of the parents is that the intervention of the courts or rather recourse to the courts is important to ensure justice in primary school learner admissions. To this end, one must highlight some of the key court rulings

following parents of learners who have been refused admission approaching courts for relief. In *Matukane and others vs Laerskool Potgietersrus*, 1996 (3) SA 223 (TPD), for example, the court ruled in favour of a parent who argued that Black children were discriminated against by the school admission policy. Consequently, the school was mandated not to refuse any learner on grounds of colour, race, social origins, ethnicity, culture, or language. Furthermore, parents played a critical role as friends of the court in *FEDSAS* case that addressed the issue of the feeder zone admission system; and how it purportedly excludes historically poor Black learners living in historically poor and marginalised black areas from admission or enrolment into schools in affluent areas.

4.2.6 Theme 6: Understanding and operationalisation of co-operative governance in school admissions

The issue of co-operative governance is an issue that participants had to address, and which features in relevant legislation such as SASA, in PAM, in the key court cases as central to school governance (*FEDSAS case*; *Rivonia case*; *Hoërskool Overvaal case*) and in several scholarly publications as evidenced by literature review (Heystek, 2011; Maluleke, 2015; Du Plessis, 2016) . The discussion with and the responses of different participants are proof that there is a serious issue of power imbalance amongst stakeholders. Moreover, it seems that stakeholders are struggling to grasp the meaning and purport of the concept of co-operative governance.

4.2.6.1 Gauteng Department of Education

Regarding the issue of co-operative governance in admission practice in public primary schools, GDE 1 was of the view that the HOD “*has an aerial view of the entire school while the SGB has a narrow one*”. According to SGBFEDS 1, in this role the HOD, can minimise the admission challenges in schools. For instance, the HOD has the final say in declaring the school to have reached its full admission capacity. SGBFEDS 1’s view on the operationalisation of co-operative governance was supported in part by the Constitutional Court in the *Rivonia Case*. Different stakeholders will have different views about school admission

issues. For example, SGBFEDS 1 proposed that the new policy be introduced increasing the school radius between the school and the interested household from 5 km to a 100 km. It is hoped this change will enable families to have a better chance of getting children into schools around them.

In a rather controversial stance, GDE 2 stated that the *Rivonia* case ruling resulted in the SGBs being irrelevant. In my view, this is the misunderstanding of the ruling of the court, which must be assigned purposive interpretation. As observed by Dieltens & Enslin (2002:10) the Constitutional Court ruling in the *Rivonia* case sought to balance the powers of the stakeholders by setting out a clear and authoritatively delineating the limits of the role of the SGBs and that of the national and provincial Departments of Basic Education (Maluleke 2015:6). The Constitutional Court in the *Rivonia* case called for a balancing act when determining the roles of the parties. GDE 2 did not provide an explanation about what he meant by the SGBs “*being irrelevant*”? However, the context of the discussion points to GDE 2 referring to the decision-making role of SGBs in the implementation of the admission policies. The view expressed by GDE 2 is indicative of the different ways stakeholders interpret and understand the legislative and policy framework relating to learner admissions within the framework of co-operative governance. Unfortunately, some of the provisions may be misconstrued. For example, GDE 2 stated that “*the constitution guarantees access to a school in the vicinity of where you live*”. The reality is that nothing in the constitutional provision of the right to a basic education supports GDE 2’s proposition. Moreover, the assertion by GDE 2 is incongruent with his view that the GDE does not support parental choice of the school and that “*learners who live closest to the school should access the school first*”. The assertion of priority placement by GDE 2 is contrary to the online application system, which operates on a first-come first-served basis.

GDE 2 refused to acknowledge the critical importance and application of co-operative governance in school governance context, unlike GDE 1. GDE 2 said that “*co-operative governance relates to spheres of government and not to SGBs, as they are not government. Thus, this co-operative governance concept*

does not apply in relation to SGBs”, said GDE 2 with great emotion. According to GDE 2, principals are subordinates of the HOD, and that principals not carrying out admission instructions from the HOD will be considered to have breached their conditions of employment. GDE 2 showed lack of understanding of the meaning and purport of co-operative governance upon which SASA is premised (Heystek, 2011:457). Highlighting the same thing, Du Plessis (2016:10) points as flawed the State’s position that only SGBs need to be accountable to the state when in fact, he argues, it is the SGBs that are obliged to hold the state accountable. There is lack of understanding that the SGB, Principals and the Department are “co-responsible and bear equal but distinct accountability” (Maluleke, 2015:6), which requires an efficient, effective, and sound working relationship among these education stakeholders (Van der Merwe 2013:240). What was very clear from the interview with GDE 2 is that there is a continuing imbalance of power between the Department on the one hand and the principals and SGBs on the other hand. In fact, GDE 2 referred to the amendments of SASA in support of his position on the role of the SGBs vis-à-vis that of the Department (Lesufi, 2017:21). Magome (2013:18) criticised legislative amendments proposed by the GDE following the court’s decision as a knee jerk reaction.

4.2.6.2 School Governing Body Federations

The question that I posed to the federations was about the operationalisation of co-operative governance between the Department and the SGBs, with specific reference to the Constitutional Court ruling in the *Rivonia* case. The answer by SGBFED1 showed that the issue of co-operation between the Department and the SGBs remains complex. SGBFED1 noted as a concern the involvement of the HOD in learner admission issues, which follow the top-down approach implemented during the Apartheid era. He argued that it is important to strengthen the SGBs rather than frequently going to courts to take away powers of the SGBs in favour of the Department. SGBFED1 essentially complained about the erosion or usurpation of powers of the SGBs by the Department. This complain is not unfounded considering the proposed changes to SASA on the

role of the SGBs vis-à-vis that of the Department (Lesufi, 2017:21). Ideally, such an amendment of powers of the SGB must be directed at making the SGB more transparent, more responsive and more accountable to the broad South African community of learners that they are meant to serve (Woolman 2013:339).

On the other hand, SGBFED2 was not opposed to some of the admission disputes being handled by the courts. SGBFED2 said that recourse to courts *'...clarifies issues and gives clear guidelines for both SGBs and departmental officials where uncertainty regarding the interpretation of legislation relating to the admission procedure exists'*. He noted that it is important for the SGB's to be guided by the jurisprudence when drafting and implementing the policies. SGBFEDS 2 also stated that co-operative governance requires that the HOD must act reasonable and procedurally fair when amending a school's decision or deviating from a school's policy. Likewise, SGBFED 2 stated that members of SGBs must comply with the requirements for fair administrative action when making learner admission decisions. The concern of administrative and procedural fairness was highlighted by the Constitutional Court in *Rivonia* case when it warned that "a decision to overturn an admission decision of a principal, or depart from a school's admission policy, must be exercised reasonably and in a procedurally fair manner".

4.2.6.3 School Governing Bodies

The issue of the tug of war about who has the powers in terms of admission of learners to public primary schools addressed by the representatives of SGBs provided a function understanding of their views on co-operative governance. SGB 1, for example, said he agreed with the ruling of the High Court in the *Rivonia* case instead of the ruling of the Constitutional Court. SGB1 stated that *"you cannot talk about the power of SGBs to deal with admission of learners because they never had the real decision-making powers, and that the MEC is a suitable person to exercise decision-making powers in learner admission disputes"*. It was quite interesting that the views of SGB 1 supported giving powers to the Department in contrast to the position taken by the representatives

of the Federation of SGBs interviewed above and as reflected in cases like the *FEDUSA* case. This begs the question: How aligned are the mandate and responsibilities of the SGBs and Federation of SGBs? On the contrary, SGB 3 was critical of the GDE expressing concern that the Department needs to “*guard against the abuse of their powers and processes as mandated by the Constitutional Court in the Rivonia case*”.

The *Hoërskool Overvaal* case demonstrated the realities of the operation of the concept of co-operative governance or misunderstanding thereof. In this case the SGB as the applicant argued that the school was full to capacity; that there were a number of neighbouring English medium schools accessible to the learners that had sufficient capacity to accommodate them in Grade 8 English classes. It would seem that the North Gauteng High Court in ruling in favour of *Hoërskool Overvaal* implicitly took into account the UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment 13, particularly the issue of availability as the content of the right to basic education and admission as an enabler of this right. In terms of availability, the school must have the capacity for adequate infrastructure and well-trained educators.

In this case, other than that the school has no capacity, Judge Prinsloo in *Hoërskool Overvaal* case in the North Gauteng High Court issued a very scathing ruling against the Department based on other issues, including failure to act lawfully, rationally, fairly and reasonably in terms of section 6 of the Promotion of Administrative Justice Act (PAJA) of 2000. The judge also noted as problematic:

The failure by the first and second respondents to have regard to Section 5 (10) (b) of the Admission Regulations and failure to have regard to the capacity of the school to accommodate further learners relative to the capacity of other schools [which constituted] grounds for review in terms of Section 6 (2) (b) of PAJA in that a mandatory and material procedure or condition prescribed by an empowering provision was not complied with. (Author insertion [...])

Notable is the conclusion by the judge that, in all the circumstances, the actions and exercise of power by the GDE were unreasonable, considering Section 6 (2) (h) of PAJA.

The *Hoërskool Overvaal* case ruling, in my view, like many other cases regarding school admission contestations, goes to the heart of the question of the nature and the extent of powers of both the SGBs and the Department in matters of learner admission. Furthermore, the case brings into question the operationalisation of co-operative governance between the Department and the SGBs. This is discussed at length above in paragraph 4.3.2 in Theme 5 with specific reference to the Constitutional Court ruling in the *Rivonia* case. It is sufficient to highlight that the arguments put forward by the parties in the *Hoërskool Overvaal* case, particularly arguments for the Department, reflected the position by GDE 2 that the SGBs are irrelevant regarding the implementation of the public school admission policies. As indicated earlier, there are clearly prevailing different ways stakeholders experience the legislative and policy framework relating to learner admissions. In some cases, the provisions and resultant court rulings might be misconstrued by stakeholders.

From all the representatives of the SGBs interviewed, the most scathing criticism of how the GDE exercises its powers in the light of the need to co-operate with SGBs came from SGB 3. He bemoaned the fact that the GDE does not follow up on what has been decided by the courts regarding the implementation of admission policies and the need for power deference between the SGB and the GDE according to the circumstances of the case. In SGB 3's view, the GDE continues to fail to acknowledge and appreciate the partnership between it and the SGBs. Also, that the GDE does not promote the relationship of trust and mutual respect in seeking solutions to the problem of placing learners when there are insufficient places in schools. Thus, he proposed that the courts must be forceful in ensuring that there is better co-operation between the GDE and the SGBs. However, SGB 3 admitted that the *Rivonia* case ruling did confer on the Department powers with some far-reaching implications that should be exercised judicially and rationally while enabling the Department to discharge its

responsibility of providing access to basic education to all the learners. SGB 3's sentiments were shared by SGB 2 regarding the shared responsibility between the SGBs and the Department. However, SGB 2 was still of the view that the intervention of the Department in learner admission was justifiable and could not be dispensed with.

Part of acting lawfully and rationally according to SGB 3 is for the Department to consult and discuss its placement decisions with the schools before implementation, which is not happening currently. The lack of trust and co-operative relationship, in my view, posits itself as one of the critical challenges in school admission practices. This view is shared by SGBFEDS 1 who states that the GDE must avoid following a top-down approach experienced during the Apartheid era.

4.2.6.4 School principals

The issue of judicial intervention has been discussed elsewhere in this chapter and is not addressed in-depth (See paragraph 4.2.1 above). It suffices to say that the responses revealed that challenges experienced by principals and school governing bodies' co-operative governance are the same with the Department's top-down approach discredited by Principal 2 and 3. Principal 4 argued that some of the problems arose as a result of lack of transformation in many former Afrikaans medium schools.

4.2.6.5 Parents

The remarks made in paragraph 4.2.6.4 are relevant in this regard. Generally, the interviewed parents regarded co-operation and joint decision-making as indispensable to the smooth running of the schools, particularly regarding the issue of learner admission. Parent 3 and 4 voiced a concern that SGBs sometimes do not observe the need to co-operate with all stakeholders and that admission policies are stratified along racial considerations. Parent 4 berated decisions that are made by the SGBs "*after consultations*" with the parents and not "*in consultation*" with the parents.

4.3 CONCLUSION

In Chapter 1, I stated that this study was generally located in education law and policy implementation as both fields of research and practice, and with particular reference to public primary school admission policies, specifically to how their implementation enables the enjoyment to the right to basic education. In addition, it was expressly stated that the research study focused primarily on stakeholders' experience of public primary school admission policies and children's rights to a basic education in the Gauteng Province. This chapter, therefore, thematically presents and analyses responses obtained from participants to determine their experiences of admission policies as enabling children's rights to basic education in public primary school admission policies.

Stakeholders interviewed were representatives of the GDE; representatives of the Federation of SGBs; spokespersons for the SGBs; principals and parents. The responses were varied in argument and depth. What I have noticed during my interviews with principals is that those who had been principals for a long time were quickly able to understand the purpose and essence of the questions; those who had not done further studies initially were sceptical about the interview, fearing that it was a covert investigation into how they were running their schools. All principals interviewed confirmed that they were involved in the development of policies, together with school governing bodies. There is generally a reluctance of parents to speak on issues of learner admissions. Those who spoke seemed to re-iterate issues and arguments that were already public knowledge.

The golden thread in these responses is that the implementation of public primary school's admission policies and practices is critical to the realisation of the right to a basic education. Furthermore, responses alluded to both the positive and negative aspects of the implementation of public primary school admission policies in the Gauteng Province. Major issues that emerged from the data relate individually and cumulatively to: that quality education and quality educators in a particular school seem to attract applications, whilst at the same time resulting in over-subscription at certain schools; administrative competence level in

departments and of SGBs, particularly as it relates to lack of awareness and understanding, and the interpretation and application of the relevant policies and procedures; the right to access to basic education is functionally explained or described by participants. However, the extent and the limitations of this rights is often misunderstood; the available resources and infrastructure at school does not always support the conception of access to basic education in the generally understood from of 4As. political issues or alleged hidden agendas and abuse of powers by departmental officials/principals/SGBs that has aggravated the challenges experienced in ensuring the realisation of the right to basic education. And this has played out particularly with regard the powers of the SGBs and the authority of the Department to influence the placement of learners resulting in the frequent use of the court as avenues for dispute resolution to distil the contours of co-operative governance in school admission processes. Furthermore, there are grey areas in policies and procedures.

In my view, and having considered the data collected and interpreted an important question to be asked is whether we can say that the admission policies and practices in public primary schools serve the best interest of the children of South Africa to enjoy the constitutionally guaranteed right to basic education. This question is answered in part in Chapter 5 when the conclusions and recommendations of the study are presented. All responses presented and discussed above are of immense value and importance for the development of interventions as the outcome of this study and contribution to the existing body of knowledge.

CHAPTER 5

OVERVIEW, FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 INTRODUCTION

This final chapter provides conclusions drawn from the previous chapters. Furthermore, in this chapter specific submissions are made and where possible, recommendations are provided. The chapter also presents an outline of the research undertaken, specifically to report on and demonstrate that the research aims and objectives as listed in Chapter 1, paragraph 1.4, and the research questions addressed in paragraph 1.3 of this study have been investigated, addressed and achieved. The primary research question, “What are stakeholders’ experiences of public primary school admission policies as enablers to children’s rights to a basic education?” prompted a qualitative approach to the study. Thus, the study is explorative and investigative and uses inductive logic (Patton, 2002: 55). It is underpinned by stakeholders’ understanding of the right to basic education and the implementation of admission policies, their experiences, viewpoints, and judgements.

5.2 OVERVIEW OF THE STUDY

5.2.1 CHAPTER 1

Chapter 1 outlined the context and provided the background to the issue of primary school admission policies as enablers to the right to basic education. As part of the introductory background, it was observed that the right to basic education is one of the rights that manifest the inherent dignity of human beings.

There are a number of legal and policy prescriptions in South Africa with implications for public schools regarding their management and implementation of learner admission policies, including but not limited to the South African Schools Act, No. 84 of 1996 (SASA), Admission Policy for Ordinary Public Schools, Notice No. 2432 of 1998, GG 19377 (19 October 1998). (APOPS),

General Notice 4138 of 2001 (PG 129 of 13 July 2001) on Admission of Learners to Public Schools and the National Education Policy Act, No. 27 of 1996 (NEPA). Most importantly, the right to basic education in South Africa is enshrined in Section 29 of the Republic of South Africa Constitution of 1996. This chapter also revealed from the onset that the right to a basic education has been a subject of contestations in ground-breaking court decisions that dealt with the implementation of admission policies including the *FEDSAS* case, the *Rivonia* case, the *Overvaal* case and the *Minister of Education v Harris* case, some of which ended up in the Constitutional Court.

Furthermore, this chapter detailed the following important aspects relevant to the execution of the study: The purpose of and rationale for the study were detailed in paragraphs 1.2 and 1.4 respectively. The rationale for the study provided the reader with the reasons why the study had to be undertaken; both the primary and secondary research questions were stipulated in paragraph 1.4. The secondary research questions were important to help answer the primary research question and all its distinctions in detail; the research aims and objectives were set out in paragraph 1.5 of this chapter. This chapter clarified key terms and concepts relevant to the study. These included admission, admission policy, basic education, co-operative and collaborative school governance, principal, public primary schools and professional management of public schools. Moreover, Chapter 1 explained processes followed in ensuring the validity and reliability of the study, which were further elaborated on in Chapter 3. Also, the limitations and delimitations of the study and possible contributions of the findings of this study were outlined in this chapter. Chapter 3 also dealt with the research approach, paradigm and design.

5.2.2 Chapter 2

Chapter 2 foregrounded a comprehensive literature review on the topic of study. Through a thematic approach, the literature review conducted examined issues of access and the right to education, and the prevailing approach by school authorities to the issue of learner admission and its management. The focus point

of the literature review was primary school admission policies as enablers of the constitutionally guaranteed right to basic education. In undertaking the analysis and interpretation of the data, two key central issues controlled the thematic representation of the analysis, namely admissions and the right to education. A key consideration was that the implementation of public primary schools' admission policies and practices was critical to the realisation of the right to a basic education.

In this chapter I used both historical and comparative contexts when examining existing works and legal frameworks, including both legislation and case law in South Africa and other countries on admission and children's right to a basic education. It emerged that there is a dearth of studies in South Africa addressing in-depth contestation on specific issues of school admission practices and policies and the implementation of policies by the SGBs and GDE.

It is clear that the right to basic education is generally considered fundamental to the dignity of every person in South Africa, and that there is a constitutional obligation on the state to put measures in place to ensure the enjoyment of this right as guaranteed in Section 29 of the Constitution of 1996. Measures put in place to discharge this constitutional obligation on the state have been the enactment of various legislation and policies related to learner admission, in particular SASA. The findings from the literature in general suggested that the inviolability of the right to basic education must be protected and promoted as one of the objectives of the conception of human rights which must be realised (Berger, 2003:235; Arendse, 2011:120; Murungi, 2015:3165).

The literature reviewed has revealed that admission policies should serve as guidelines regarding the determination of a school capacity. Admission policies should set out fair criteria, and relevant procedures for admission to public schools. Provision of quality education to learners admitted to a particular school should be outlined in the admission policies. However, there are always problems and contestation with regard to functions of admission policies due to

lack of cooperative governance between the Department and the SGBs. The literature review shows that there are two opposing views on the powers and functions of the SGBs. One view is that the HOD is encroaching on, and usurping the functions of the SGBs. The other view disagrees and accuses the SGBs of selectively reading SASA as it relates to their powers and functions (Woolman, 2013:339). It is for this reason that the intervention of the courts in the *FEDSAS* and *Rivonia* cases strove to balance the competing interests of the parties. These contestations highlight the intricacies of the management of admission policies which, according to Van der Merwe (2013:240), require an efficient, effective and sound working relationship among all stakeholders, namely SGBs, principals, parents and learners, the community and the Department.

5.2.3 Chapter 3

The focus in Chapter 3 was the exposition of the research paradigm and conceptual framework of the study as well as the relevant methodological considerations. To begin with, a detailed explanation of an interpretivist paradigm accompanied by a graphical representation of factors influencing the choice of paradigm was provided. The reasons for favouring an interpretivist paradigm were indicated as important and pivotal to answering the primary research question under paragraph 1.3 in Chapter 1, namely: *What are stakeholders' experiences of enabling children's rights to basic education through public primary school admission policies?*

Chapter 3 also provided an explication of the chosen conceptual framework, which served the purpose to delimit the field of research and to provide the researcher's idea on how the research problem would be explored. For the purpose of this study, I considered two concepts that underpin the approach in this study about how I understood, planned and executed the research. These are co-operative governance and rights-based concepts. The conceptual framework chosen was supported by key conceptual principles used in this study, namely access to education cooperative governance, and stakeholder

co-operation and collaboration. Furthermore, Chapter 3 provided an explanation of the qualitative and the multiple case study design employed in this study, and the rationale for choosing the identified research design and research approach. In addition, the data collection methods, which consisted primarily of content analysis of existing literature (including court cases) and face to face interviews were discussed. Also important and discussed in this chapter were the sampling method, data analysis techniques and specific steps used to analyse data. The validity and reliability of the findings, their trustworthiness, the possibility of bias, steps to ensure the credibility of the data, the handling and coding of data and the dependability of the data collected were discussed. Chapter 3 gave an account of how ethical considerations were addressed.

5.2.4 Chapter 4

This chapter thematically presented and analysed responses obtained from participants in order to determine their experiences of admission policies as enabling children's rights to basic education in public primary school admission policies. The responses obtained from participants were informed and enriched by information obtained from document analysis. Stakeholders interviewed were representatives of the GDE; School Governing Body Federations, spokespersons for the SGBs; principals; and parents.

The six themes formulated from the interviews:

- **Theme 1:** The state's obligations regarding the right to a basic education in terms of Section 29 of the Constitution.
- **Theme 2:** The impact of the Gauteng Online Admission System on learners' basic right to education.
- **Theme 3:** Admission policy as a key enabler of the right to a basic education.
- **Theme 4:** Critical challenges in the Learner Admissions to Public Primary Schools policy and the impact of the policy on the right to a basic education.
- **Theme 5:** Recourse to the courts in disputes emanating from implementation of the learner admissions to public primary schools' policy.

- **Theme 6:** Understanding and operationalisation of co-operative governance canons in school admissions.

The responses to the thematic questions were varied in argument and depth.

5.3 FINDINGS FROM THE DATA COLLECTED

5.3.1 General

In this study data was collected from analysis of case law report; literature review and interviews. In undertaking the analysis and interpretation of the data, two key central issues controlled the thematic representation of the analysis, namely admissions and the right to education. A key consideration was that the implementation of public primary schools' admission policies and practices is critical to the realisation of the right to a basic education as mentioned in paragraph 5.2.2 above. The participants' responses indicated both the positive and negative aspects of the implementation of public primary school admission policies in the Gauteng Province.

5.3.2 Outline of findings

The various interviewees gave similar and divergent responses to the interview questions. Nevertheless, no significant differences were found among the responses regarding the need of admission policies to act as enablers to access to basic education. What needs to be reconciled is the perspectives from which the respective arguments were made.

The structured interviews conducted with the two representatives of the GDE and of SGBFEDS 1 and SGBFEDS 2 elicited slightly different views on some of the issues. Be that as it may, these responses enhanced this study in the following ways:

- It was evident that the school admission policies needed to be evaluated to ensure access to quality education for each and every school going learner.

- It was evident that it is ultimately the responsibility of the HOD to ensure the placement of learners.
- It was also apparent that some schools' systems are still characterised by unfair and discriminatory practices (some reminiscent of the Apartheid era) that subsequently resulted in disputes with the GDE with regard to the admission of learners.
- It was also apparent that there is a need to redefine the functions and roles of stakeholders, particularly SGBs.

Interviews conducted with the representatives of the two SGB Federations highlighted a marked difference between the roles and day to day responsibilities of SGBs, on the one hand, and the SGB Federations on the other. The latter appeared greatly pre-occupied with issues relating to the powers of the SGBs and how these powers are threatened by amendments proposed in the South African Education Law (SAELA). SGBFEDS 2, for example, expressed a view that the proposed amendment to the appointment of principals is designed to start a process of gradually disempowering the SGBs. Although the importance and the role of SGBs and of the SGBFEDs cannot be over-emphasised, it has to be acknowledged that some of the responses suggested strong political inclination and overtones when discussing the issues of school admission policies.

I was able to discern from the responses a number of reasons for this including being a representative from a white dominated school and political affiliation (or political connections and preferences) of the members of the SGBs and SGBFEDS, and the representatives of the Department on the other hand. One of the Department's representatives in the *Hoërskool Overvaal* case, for example, alleged that the SGB was anti-transformation and was perpetuating the practices of the past that were designed to marginalise children from previously disadvantaged groups. The issue of alleged discriminatory admission practices, particularly in white schools and former Model C schools remain a problem. SGB 3, for example, spoke greatly in support of the Department and the MEC, and

opined that giving powers to the SGBs has been the cause of lack of transformation in certain “*purely Afrikaans*” schools. Some responses rebuked the alleged discriminatory admission practices in former whites only or so-called Model C schools, and that black learners are often excluded under the guise of language policy to retain whiteness in the schools. SGB 1, for example, stated that it is the GDE that “...*has failed the people of South Africa by not investing sufficiently in building new schools and in upgrading the ... quality of township schools...*” And that there has been too much unwarranted focus power and politics instead of finding solution to ensure that all learners have access to basic education.

In my view these contestations attest to how racialised and politicised public primary schools’ admission policies and practices in South Africa have become, and also provide some insight into the past Apartheid school governance from which the current administration is trying to break away.

A study that looks into public primary school admission policies and practices as enablers to the right of basic education as expressed in Section 29 of the Constitution of 1996 necessitates the need to understand the core content of the right, and understand how this immediately enforceable right (Skelton, 2013:4) is or should be realised. According to Merabe (2015:41), the core content of the right means in essence “that essential element without which a right loses its substantive significance as human right” and “is a tool for identifying those elements of the normative content of a human right that contain minimum entitlements”. The understanding of the core content of the right to basic education is in this instance aligned with the demands of the 4 As of admission discussed in Chapter 4, paragraph 4.3.2. Separately and collectively the responses addressed the issue of public primary school admissions policies and practices as enablers to children's right to a basic education. Specifically, some responses addressed the core content of the right to be admitted to basic primary education as envisaged in Section 29 of the Constitution of 1996.

In general, the outcome of the interview analysis of the data from parents interviewed revealed that parents rely on the state to discharge its obligation in terms of section 29 of the Constitution of 1996. To quote Parent 1, *“those in power must make sure that our children are placed in schools and receive better education”*. The interviews also witnessed a frustrations and systemic challenges experienced by parents.

What was evident from the presentation of the responses of all the participants is the that some of these responses, particularly on criteria for admission and other considerations, including the authority to implement public primary schools' admission policies, resonate with some of the views in the literature review presented in Chapter 2. Some responses focused on admission policies and practices as enablers or inhibitors of learners to benefit from the constitutionally guaranteed right to education, in almost a similar manner as comparable studies in other jurisdictions. In some OECD countries, for example, school admission criteria considerations include elements such as academic performance, religious affiliation, relationship with other family members who have attended, and parents' endorsement of the school's instructional or religious philosophy (OECD, 2012:40). Some of the responses in this study confirmed the assertion that school admission criteria in these jurisdictions are in part similar to those that are/have been at play in some South African public schools' admission practices. However, unlike in the countries identified by the OECD, the Gauteng education authorities do not "give more autonomy and authority to parents and students to choose schools that better meet their educational needs or preferences" (OECD, 2012:44).

Participants in this study alluded to admission criteria considerations including, among others, the following:

- The efficacy of the Gauteng online admission system with particular reference to the radius from the desired school rule.
- The proximity of the learner's home to the school.

- The history of siblings or family members having attended the school.
- The age of the child.
- The migration from schools of previously disadvantaged communities to the then Model C and or predominantly white schools.

As has been the case in other African countries like Malawi, participants have indicated that in Gauteng too the disparities between schools have led to the "migration of parents in search of schools that are better ..." (Makori, Chepwarwa, Jepkenei & Jacob, 2015: 91).

The age of a child as admission criterion to Grade R or Grade 1 is a known factor in South Africa. The only question that was raised by one of the participants related to knowing exactly when the rule of seven years as school going age can have exceptions. For example, can a child who is turning seven in April be admitted to a public primary school in January of the same year? The responses revealed that schools in the province have not been consistent in applying age as criterion for admission despite the existence of both the official national and provincial policies on the issue of school going age. Notably, none of the participants, in particular principals, SGBs and the Department addressed or mentioned admission of learners based on academic performance or indicated that schools did not admit learners based on their poor academic performance. Be that as it may, anecdotal stories allege that some schools do not admit learners based on their academic performance or rank their placement opportunity based on their academic performance.

The issue of race and race relations was also addressed by the participants. The narrative expressed particularly by parents and some principals, depending on which side of the racial divide they were on, was that some school admission policies and practices discriminate unfairly against other races. Perhaps it is important in this regard to recall Franklin and McLaren (2015:17) who stated that "school admission policies, if unlawfully determined or implemented, can have the unfortunate and unlawful effect of maintaining segregation based on race,

language, culture or socio-economic class if not properly monitored". Parents interviewed, for example, considered the online admission process as creating some form of socio-economic class (see Paragraph 4.2.2.4 above); others, like GDE 2 considered schools like *Hoërskool Overvaal* that insisted on Afrikaans as a language of instruction and learning as perpetuating segregation based on race and language (See *Hoërskool Overvaal* case)

A consistently recurring theme or point of discourse was how the government or Gauteng Department of Education is working towards ensuring the realisation of the right to basic education through public primary school admission policies, though not always at the preferred speed or with the best outcome expected. SGBFEDS 2, for example, referred to the proposed amendments to SASA through BELA as indicative of the disregard of the principles of co-operative governance in basic education. Interestingly, SGBFEDS 2 seemed to support the Department stripping off the SGBs their powers to decide on learner admissions as was the issue in *Rivonia* case. In my view, the admission criteria set by the different schools and the administration of admission policies and process are interwoven. It is therefore important that the inviolability of such right be protected and promoted as one of the objectives of the conception of human rights. As noted in the literature review (Chapter 2, paragraph 2.4), the right to admission to public education is not guaranteed only in the Constitution of the Republic of South Africa of 1996, but human rights instruments in Africa also address the rights of children to basic education, notably the African Charter on Human Rights and Peoples' Rights (ACHPR), which in Article 17 (1) of the ACHPR states that "every individual shall have the right to education". Also, the African Charter on the Rights and Welfare of the Child (ACRWC) in Article 11 (1) states that "every child shall have the right to education".

The responses supported the choice of the human rights-based approach (HRBA) as one of the concepts used when considering if the right to basic education is been realised, promoted and protected. For instance, Parent 4 and Parent 2 argued that the proximity and the 5 km radius rule does not justify their

children not being admitted to schools that provide them with better and quality education. The same arguments are made by SGB 4, for instance, against the Gauteng online admission system, and that the system benefits mainly affluent families and those who have access to computing services. In essence, it has been argued by participants, particularly principals and parents, that the Gauteng online admission system have in certain circumstances the unintended effect of going against the objective of the HRBA to public primary schools' admission policies and practices. Some participants argued that the online admission system was prematurely implemented, poorly managed, and becoming a factor inhibiting admission policies playing their rightful role in securing access to their right to a basic education. On a positive note, SGBFEDS 1 and SGBFEDS 2, for instance, noted that the online system was clearly a step in the right direction towards the improvement of school admission practices in Gauteng, notwithstanding its bottlenecks and other challenges.

The issue of capacity of the school to admit learners was also relevant to any discussion on admission policies as enablers to the children's right to basic education. In my view, by capacity here reference should not only be about the numbers or quantitative capacity as it was the case in the *Hoërskool Overvaal* case. It is submitted that what can be deduced from the responses of the interviewees is that capacity should be understood from both the perspective of the satisfaction of the 4 As of admission and the core content of the right to education. Admission of a learner to a school without proper infrastructure or properly trained and qualified educators to offer quality education (Xaba, 2011:202), for example, amounts merely to the provision of a hollow and meaningless access to the right to basic education. This view was confirmed by the Constitutional Court in *Hoërskool Overvaal* case when it dismissed the appeal by the GDE against the judgment of the North Gauteng High Court, and confirmed that Hoërskool Overvaal had no capacity to accommodate English-speaking learners. The Constitutional Court chastised the Gauteng MEC of Education for failing to consider all relevant circumstances and factors including determining if English medium neighbouring Hoërskool Overvaal “such as General Smuts and Phoenix high schools, which both fall in the same feeder

zone as Hoërskool Overvaal had enough capacity to admit the pupils” (Masinga 2018).

Equally important to note from the data collected is the requirement of co-operative governance among the stakeholders remains a contentious matter (Dieltens & Enslin, 2002; Heystek, 2011; Maluleke, 2015; Du Plessis, 2016; *Hoërskool Overvaal* case; *FEDSAS* case; *Rivonia* case). At the heart of this sometimes contentious relationship is the issue of the degree and extent of the powers of the relevant role players to determine and implement school admission policies. I deduced from some responses of both the SGBs and the principals that in certain schools there is confusion about the differentiated functions of the SGBs and the principals. GDE 2, for example, stated that the ruling in the *Rivonia* case rendered the role of the SGBs “*irrelevant.*” Also, it would seem that in certain schools there is cross-usurpation of functions between the SGB and the principal. SASA (1996) Section 16(1) and Section 16(2) specifically differentiate the functions of the SGBs and the principals. This tug-of-war between the Department and the SGBs has continued to play itself out in the courts (See *FEDSAS* case), *Rivonia* case; and *Hoërskool Overvaal* case, *Hoërskool Ermelo* case). Academic discourses and interviewees’ responses regarding co-operative governance and the continuation of court battles regarding the implementation of admission policies can also be explained as shrouded in elements of the power-relation theory, instead of consideration of efficient and sound working relationship (Van der Merwe, 2013:240). It can also be explained in part related to the apparent inadequate understanding of the notion of cooperative governance by the stakeholders, such as education departments and school governing bodies. The proposed BELA has also re-ignited the debate that the relationship between the Department and the SGBs is a top-to-bottom one, which according to the School Governing Body Federation’s representatives, goes against the spirit and purport of co-operative governance. To quote Maluleke (2015: 6), both the Department and the SGBs are “co-responsible and bear equal but distinct accountability” to matters of school governance and particularly learner admissions for the purpose of this study.

The Gauteng Online Admission System, to borrow the words of Stasz and van Stolk (2007:1), was intended to act in part to regulate admissions to Gauteng schools and to boarding schools and acts as a framework to “set admission standards that promote fair admissions and equal access.” It was, however, found in some of the responses that the system was fraught with challenges and inefficiencies. An important observation made by SGBFEDS 2 with regard to the online admission system is that the online process in Gauteng completely excludes the school’s admission policies, contrary to the ruling by the Constitutional Court in the *Rivonia* case that in any decision on admissions, the HOD must be guided by the school’s policy. This raises an alarm that is important in the consideration whether there are synergies between processes at both departmental and school level. The online admission system, no matter how innovative or well-intentioned, must not have ramifications of nullifying standing policies and procedures, unless lawful administrative procedures clearly make the online admission processes override the school admission policies.

5.3.3 Specific findings linked to the various aims of the study

(a) Aim 1: To determine stakeholders’ understanding of the function of admission policies in a public school

Generally, a clear understanding of what the function of school admission policies is could be found. This understanding has been aptly captured in the response of one of the participants from the SGB Federation (code of the participant) in Chapter 4, Paragraph 4.2.3.2, stating among others that “*the admission policy should serve as a guideline with regard to the determination of a school’s capacity. It must set out fair criteria for admission to the school and relevant procedures; most importantly, it must ensure that the school is able to provide quality education to all the children in the school, given the circumstances of that particular school and community in terms of its capital, financial and human resources, physical capacity and the particular needs of the children.*” In my view, this understanding is the most plausible one because it resonates with the 4 As of access to basic education. This stated view about the functions of

the school admission policies is shared by other stakeholders for example SGBFEDS 1 and SGBFEDS 2.

(b) Aim 2: To gauge stakeholders' experiences of their roles regarding the development and implementation of admission policies in public schools

Section 20 of SASA stipulates clearly the general role of SGBs, which among others includes determining school policies (Woolman 2013:339). It is clear from Section 20 that, in executing these myriad of functions, the SGBs must observe the basic principles of co-operative governance by consulting with all relevant stakeholders with a view to establishing an acceptable decision-making process. Specifically, Section 5 (5) of SASA empowers the SGBs to formulate school admission policies, in line with APOPS that provides a framework for the formulation of policies. Section 5 (5) and Section 20 of SASA notwithstanding, it was found from the research that the roles of the SGBs remain shrouded in confusion among stakeholders. The result of this has been court cases between the schools and the Department.

There was further confusion regarding the differentiated functions of the principals and the SGBs pursuant to Section 16 (1) and Section 16 (2) of SASA. In relation to the study, the principals in their responsibility of providing oversight in the professional management of the school must, among others, implement and administer admission policies. The SGBs whose function is to formulate school policies must monitor the implementation of these policies by the principals. Thus, there is an interdependent relationship between the parties, which they seem not to understand correctly (Beckmann & Prinsloo, 2009:176).

As ruled by the court in *Rivonia* case, any assumption by stakeholders that their functions are unfettered is incorrect. The reality is that the HOD has a statutory responsibility to intervene, for example, to ensure accountability by the SGBs, for example, by withdrawing functions of the SGBs should they fail to exercise their

responsibilities competently (SASA, Section 22). There must be checks and balances as the stakeholders execute their respective functions. It is therefore not unheard of that a provincial department may intervene when there are allegations of discriminatory admission policies and practices in schools in the particular province. This is permissible provided the intervention is done rationally, lawfully, fairly and reasonably. This position was clearly stated by the Constitutional Court in the *Rivonia* case, where the court criticised the actions of the HOD in the matter. As discussed in Chapter 2, paragraph 7.2.2, the Constitutional Court, in the *Rivonia* case reminded the parties that the “stakeholders’ constitutional and statutory obligation to engage in good faith before turning to the courts” required a better handling of the matter, and “to engage with one another in mutual trust and good faith on all material matters relating to that endeavour” (*Rivonia* case par. 73). The court was concerned that the HOD acted procedurally unfairly (par. 68), and that the SGB “[d]esiring to safeguard its own authority” patently failed to act in the best interest of the learner in question (par. 76). The court emphasised the importance of co-operation between the school and the department in resolving these disputes (*Rivonia* case par. 77) and that functions and powers of stakeholders are not unfettered (Sibanda, 2014: 369). The court in the *Rivonia* case commented that policies are not inflexible and that a department could, for example, place a learner in a school, even if it seemed to be in contradiction of the school policy.

It is submitted that all of the challenges identified above may be aggravated by the lack of capacity and skills in SGBs or education departments to perform the assigned functions. None of the members of the SGBs interviewed, for example, indicated ever obtaining the relevant capacity building training on policy formulation, implementation or management. In fact, Principal 1 argued that there is a need of capacity training and development of members of the SGBs to ensure that they discharge their mandate effectively and efficiently.

(c) Aim 3: To establish stakeholders' understandings of the statutory and case law regarding admission policies of public primary schools

In most cases stakeholders, for example members of the SGBs, were lay persons who were entrusted with the critical function of formulating and monitoring the implementation of the admission policies, a responsibility with which they were unfamiliar and for which they had not been trained (Principal 1). Even legally trained people need to understand and know how to dissect these legal frameworks properly, and undergo training for legislative and policy drafting. Thus, SGBs and other stakeholders are burdened with functions in which they are generally not expert. This anomaly was evident from some responses regarding the importance of case law relating to school admission policies and the Constitution of 1996 in general, and specifically Section 29 of the Constitution. A typical example is the manner stakeholders understood the ruling of the Constitutional Court in the *Rivonia* case, and misapplied their functions as discussed in paragraph 5.5.2 above.

It is clear that fairness in admission requirements and practices and compliance with the provision of the right to basic education provision in the Bill of Rights of the Constitution of the Republic of South Africa and the Bill of Rights are essential. The issue of powers of the HOD to withdraw functions of the SGBs provides a good example of how stakeholders sometimes misunderstand the statutory and case law relating to education. For instance, Section 22 (1) (2) of SASA gives authority to the HOD to withdraw functions of the SGB after reasonable notification to the SGB to be affected by the withdrawal and with the grounds provided for such withdrawal. This is important in the light of the requirements of administrative justice and fairness as mandated by the Constitution of the Republic of South Africa of 1996 and related implementing legislation in particular the Promotion of Administrative Justice Act. Section 22 (3) of SASA, however, gives the HOD powers to withdraw functions of the SGBs in cases of urgency, without prior communication to such governing body.

Some court rulings have revealed that these functions are not always properly understood by stakeholders, and such lack of understanding of the relevant legal framework may aggravate tension between education stakeholders. The power to withdraw functions of the SGBs without prior notification may be abused if the Department in question does not properly monitor the implementation of the admission policy school and can be used as an enabling instrument to arbitrarily dissolve the SGBs. It is for such concerns that Section 22 was explicated as follows in the *Hoërskool Ermelo* case:

Section 22 regulates the withdrawal of a function, but only on reasonable grounds. Its purpose is to leave the governing body intact, but to transfer the exercise of a specific function to the HOD for a remedial purpose. This means that the HOD must exercise the withdrawn function, but only for as long as, and in a manner that is necessary, to achieve the remedial purpose. That explains why s. 22(3) (sic) provides that the HOD may, for sufficient reason, reverse or suspend the withdrawal. In my view, it is a power which may be exercised only to ensure that the peremptory requirements of the Constitution and the applicable legislation are complied with.

With regard to the need to guard against the abuse of powers, the court in the case of *Diphetoho School Governing Body and Others v Department of Education and Others* (4218/2010) [2012] ZAFSHC 3 (12 January 2012) raised the following concern regarding how the HOD used powers to withdraw functions of the SGB:

The head of the department at no stage articulated that he withdrew the functions of the governing body temporarily or for a remedial purpose or what the remedial purpose would be. On the contrary, a close reading of the answering affidavit of the head of the department

shows that the purpose of the head of the department was to dissolve or disband the governing body, permanently or indefinitely.

(d) Aim 4: To establish stakeholders' experiences of the causes of problems experienced and the impact thereof regarding the implementation of admission policies in public primary schools

- Participants identified various root causes of problems regarding admissions, including the following issues (See Chapter 4, paragraph 4.2): The influx of learners to affluent or to high performing schools has created admission bottlenecks. Several of the learners come from poorly performing primary schools, with township schools perceived to offer poor quality education. This challenge was identified by the GDE itself (See Chapter 4, paragraph 4.2.4.1).
- The issue of whether or not the school has enough capacity to admit learners was identified by SGBs as a challenge (See Chapter 4, paragraph 4.2.4.3).
- The GDE representatives also identified administrative inefficiencies in schools, particularly the inability of schools to manage the admission processes and policies properly. The SGBs have even admitted that some schools do not even adhere to their own admission policies and procedures (See Chapter 4, paragraph 4.2.4.3).
- Illegal and discriminatory admission practices are considered some of the causes. Race and language are seen as some of the most critical challenges.
- The lack of transformation is one of the challenges identified, and has contributed to racial clashes at schools during the admission session. Some schools have Afrikaans as the only language of instruction and learning may exclude non-Afrikaans speakers from admission. The flip side of this argument is that any language could have the effect of excluding learners, e.g. English, Venda and Tsonga.

- The lack of capacity of SGBs regarding policy formulation, development and monitoring was found to be a problem in almost all the schools contacted. Principals are of the view that SGB members need guidance regarding policy development and implementation. Also, those appointed as SGB members should have knowledge of education admission policies and the role of SGBs and be better trained in these regards. Principal 1, for example, lamented the lack of knowledge of some members of the SGBs of the school admission policy, GDE regulations and SASA regulations and admissions (See Chapter 4, paragraph 4.2.4.4).

Participants also mentioned other causes of problems in response to questions put to them, including the following:

- The misalignment of school admission policies with provincial government legislation and/or practices is a cause for concern. This was the problem in the *Hoërskool Ermelo* case, where the school irregularly implemented the school admission policy contrary to provincial enabling legislation and policies.
- Sometimes there is a failure to observe key principles and requirements for stakeholders to co-operate to ensure that admission policies and practices are acceptable, reasonable, rational and legally justifiable. For instance, SGB 3 complained that the GDE does not follow and respect binding court rulings on issues of learner admission and that the GDE fails to acknowledge and appreciate the partnership between it and the SGBs.
- According to SGBFEDS 1, the Gauteng online admission system has rendered the schools' admission policies redundant, contrary to the ruling by the *Constitutional Court in the Rivonia* case that, in any decision on admissions, the HOD must be guided by the school's policy. Thus, the issue of a power struggle is at the core of stakeholder relationships. It is important to repeat here the response of parents indicated in Chapter 4, paragraph 4.2.3.6 that they preferred the "old way" of applying at schools, and

expressed a view that “*the online admission process is rather cumbersome and frustrating*”. Parent 3, for example, described the online admission system as a “*disaster*” and a disappointment that it has “*failed us as a nation*”. In essence, these parents argue that the admission process is or has violated their children’s constitutionally guaranteed right to basic education. The other criticism is that, in implementing the online admission system, district officials refer children to “*non-performing schools*” resulting in their children becoming “*non-performing adults*”.

- The lack of communication and dissemination of relevant information was also identified as one of the root causes of problems and discontent. One principal, for example, stated that they had not been “*given the policy on the online thing*” and that schools would rather have the online system discontinued and revert to the old school walk-in application and admission system. They also believed that the system is not fair, equitable and transparent enough.
- Socio-economic issues play an important role in admission issues. Parents 2, for example, has bemoaned placement of their children in “*dysfunctional*” and “*non-performing*” schools and away from their home, thus forcing them to incur financial expenses. It would seem that the gist of the concern or challenge is that there is sometimes no proper planning regarding learner admission. Sometimes there are contradictions in the regulatory environment.

5.4 CONCLUSION ABOUT THE WORKING ASSUMPTIONS

Working assumptions were made in Chapter 1, paragraph 1.7. The following conclusion was arrived at with regard to the first three assumptions:

- Various stakeholders in the basic education environment, namely principals, government officials, and SGBs have inadequate understanding and competency to deal with the plethora of enabling legislation, policies

and procedures governing primary school admission policies and practices. This inadequate competency and/or lack of understanding of the necessary legal and regulatory framework on learner admission impacts negatively on the constitutionally protected right of learners to basic education when they deal with learner admission and placement issues.

- The relationship among these stakeholders is sometimes strained and often characterised by allegations of usurpation of one another's powers and functions, and absence of co-operation and consultation. Although collaborative and co-operative governance by stakeholders is mandated by the constitution of 1996 and SASA, it was revealed that the respective stakeholders do not always observe the basic tenets of co-operative governance in exercising their responsibilities and decision-making powers. The stakeholders are not well versed in the nature and purport of their delegated authority. This was also apparent from the interview responses provided by the participants.

The above conclusions are collectively supported by the various court rulings made with respect to learner admission and the exercise of powers and functions as bestowed on principals, SGBs and the HOD. Notable examples are the *FEDSAS* case; *Rivonia* case and *Hoërskool Overvaal* case. The *Hoërskool Overvaal* case per Prinsloo J, for example, launched a scathing criticism of the Department and cast doubt on the ability and the *bona fides* of the stakeholders to discharge their duties and responsibilities regarding.

With regard to the assumption of the candidness of the participants' responses, the participants answered frankly, and in some instances, openly addressed past experiences derived from the education landscape based on marginalisation and discriminatory practices. It transpired that the subject of learner admission policies in Gauteng Province resonated well with their experiences, and was in their view relevant and topical.

5.5 RECOMMENDATIONS

5.5.1 For the improvement of practice

5.5.1.1 Ensure a clear and unambiguous understanding by stakeholders of the function of admission policies in a public school

Recommendation 1 relates to capacity building and development, which is explained and discussed in detail in paragraph 5.5.2 below. In part the lack of adequate knowledge and expertise of SBGs on admission policies and their own roles as challenges in implementing the same admission policies. In my view this calls for appropriate capacity building initiatives.

5.5.1.2 Introduce measures and systems aimed at ensuring that core responsibilities of stakeholders regarding development and implementation of school admission policies are clearly defined and delimited

Clarity on, and delimitation of the responsibilities of stakeholders is important for their understanding of their roles regarding the development and implementation of admission policies in public primary schools. This can be achieved through a number of measures and interventions.

Section 20 of SASA stipulates the general role of SGBs, which among others, includes determining school policies. SASA, Section 16, has also the responsibilities of the parties. However, the demarcation would remain ineffective and inconsequential without proper oversight in the form of institutional and further legislative intervention. It is submitted that part of the solution would be to consider implementing a governance model that takes into account all the developments in the area of the right to basic education and school admission policies as distilled by the courts. Such a model can be a synthesis of both the current co-operative governance model and the Collaborative Governing Board and Advisory Council model in the United Kingdom, which has been proposed in the study by Baruth (2013:324-330). The benefit of the proposed model in the South African context is that of a holistic discharge of responsibilities, namely oversight of implementation of school policies from a governance point of view

(governance oversight) and oversight of key performance areas of the stakeholders from the management point (management oversight). The entity instituted in this model has both the fiduciary responsibility and legal authority in the management and governance of the schools.

The introduction of public schools' admissions advisory councils to support stakeholders in understanding and performing their respective roles regarding the development and implementation of admission policies is recommended for South Africa. The recommendation is that the School Admissions Advisory Council (SAAC) must be populated with people with requisite skills and knowledge of education law and management, which should liaise directly with the Department and the SGBs when the legality and constitutionality of the formulation and implementation of the school admission policies arise.

Moreover, SAAC will perform the important advisory or schools' admissions climate mapping functions to the Department to ensure the smooth running of the online admission system. SAAC may also be responsible to provide appropriate advice regarding organisational and institutional development and help create an enabling environment for all stakeholders to discharge their obligations. This stated recommendation will necessitate an amended legal framework either by way of implementation procedures or further amendment of SASA or through a relevant provision in SAELA.

It goes without saying that the advisory council should be tailor-made for South Africa to eliminate the weakness of the two-tiered governing approach identified by Baruth (2013:163), who is of the view that the model "stands out as it accelerates community cohesion as well as enhancing the quality of governance at the school level" (Baruth, 2013:164). The model reinforces partnership, collaboration and mutual trust.

5.5.1.3 Provide expert advice to stakeholders on statutory framework and case law regarding admission policies of public primary schools

The provision of policy directives to schools, including circulars responding to developments in education policy, and management is important. However, its

success depends on the knowledge and skills of stakeholders to implement such directives, and the relevant statutory framework and case law. Exploring the responses of stakeholders during the data collection phase clearly shows a lack of expertise in interpreting, understanding and implementing both statutory and case law regarding admission policies and practices. There is also a lack understanding of both statutory and case law about the right to basic education, and the legal concept of access to education which is undergirded by the 4 As.

It is therefore recommended that a body be tasked with providing advice and ensuring support to the stakeholders with regard the understanding of education law and management. It should extrapolate relevant and consequential information from statutory and case law regarding admission policies in public primary schools. If the School Admission Advisory Council (SAAC) proposed in Section 5.5.1.2 above were to be established, it would be able to operate more effectively if its membership included people with the necessary skills and knowledge of education law and management. Other relevant institutions like the Centre for Education Law and Education Policy (CELP) at the University of Pretoria may be contacted to offer such a service to the SAAC through opinion pieces and other documents.

5.5.1.4: Introduce a capacity building programme to enable stakeholders to identify and put in place appropriate interventions and corrective measures to address the root causes of problems experienced in the implementation of admission policies in public primary schools as a continuum

It is clear from the views of the stakeholders above that there is an urgent need for education stakeholders' capacity building or capacity development training programmes in Gauteng (GESAP: Gauteng Education Stakeholders Access to Education Capacity Building and Development Programme). In particular, the programme must endeavour to ensure that principals, SGBs and HODs obtain, improve, and possess the necessary knowledge and skills to discharge their respective obligations. Furthermore, it must enable stakeholders to respond to changing education law and policy environments. I believe that stakeholders should be able to discharge their functions competently and with greater capacity

to combat causes of problems experienced in the implementation of admission policies in schools.

Ideally, GESAP must be a multi-pronged approach if capacity building is to be considered an important component of school governance framework. The approaches that may be considered may include *ad hoc* block training to enhance education stakeholders' capacity, implemented under the oversight of the advisory board recommended in paragraph 5.5.1.2 above. Another option may be to approach higher education institutions or other educational training service providers to offer short learning capacity building programmes to principals and SGBs in particular. However, the latter proposal may require amendment of SASA to reconsider the duration of the term of office of members of the SGBs. Currently in terms of Section 31 (2) of SASA the term of office of a member of the SGBs other than a learner is a maximum of three years. I suggest that the term be extended to at least four years. In terms of Section 25 (2) of SASA an HOD is empowered to extend the terms of office of members of the SGBs by a total of months that may not exceed one year. The proposal for the extension of the term is necessary to avoid training members of the SGBs and to lose the capacity and the skills within three years. The fourth year may be used for skills transfer to the incoming SGBs member(s) by the out-going members to ensure smooth transition. For every power and privilege there must be a concomitant responsibility. Therefore, it is submitted that GESAP must also address corrective discipline of role players who abuse their powers or who are derelict in the exercise of their powers.

5.5.2 Recommendations for further research

The following issues are among those that seem to require further research and investigation:

- 5.5.2.1 An investigation into the complementarity of the Gauteng Online Admission System and the traditional continued work efforts at schools. Such an investigation is necessary, given the serious challenges

experienced every beginning of school term with admission of learners, and the frustrations admissions are causing, leading to conflict in schools and the disruption of the beginning of the first school term. The investigation should also consider any other suitable and alternative online system of admissions.

5.5.2.2 In the United Kingdom, a document of the Department of Education titled “Excellent Education Everywhere, presented to Parliament by the Secretary of State for Education by Command of Her Majesty in March 2016” proposes to bring changes in the public education system, including the simplification of the admission system to make it more accessible and more understandable to parents. This is proposed to be done through “creating a single route for escalating any complaints about the maladministration of appeals” in admission processes. Unlike the United Kingdom, South Africa has no route other than recourse to the courts to escalate the maladministration of admission policies at school. Such comparative lessons may necessitate the feasibility of having school admissions appeal systems to address complaints and dissatisfactions with the outcome of the online system, and school level admission decisions. This in my view may mitigate courts cases regarding admissions.

5.5.2.3 An investigation into how to build the capacity and develop highly effective SGBs to enable them to execute their functions effectively and efficiently. Part of the investigation would be to include the effect or impact of the three-year term of SGB members on their ability to competently execute their functions.

5.5.2.4 Related to the submission in paragraph 5.5.2.2 above, an investigation into school leadership in general is required. Studies have shown that school leadership has been an education policy priority world-wide (Pont, Nusche and Moorman, 2008:19), and such an investigation is necessary given the wider devolution of powers to principals and SGBs in South

Africa and the proposed amendments to SASA that may re-define school leadership and governance.

5.5.2.5 An investigation into the establishment of a public schools' advisory council. Such an investigation is critical, given the revelations and propositions that SGBs have failed to perform their duties responsibly and competently due to their lack of expertise for the job. The reason behind such research is that properly supported SGBs may be effective and thus make a difference in the admission policy formulation and implementation in public primary schools.

5.5.2.6 An investigation into the roles of HODs in admission issues, and how such are performed, and the parties' observation of co-operative governance requirements. The ground-breaking cases on learner admissions and the centrality of the Department in such cases call for such an investigation. The criticism of both the Department and the SGBs in cases such as the *Hoërskool Overvaal* case and the *Rivonia* case make such research necessary.

5.5.2.7 An investigation into the crucial factors that contribute to, or influence challenges in the public primary school admission system, with particular focus on political affiliation of stakeholders, race relations and transformation. Such research is necessary if problems with admissions are to be addressed. Also, the research on transformation is important, given the fact that institutions of higher learning in South Africa are tackling issues of transformation such as language of instruction while basic education has not made significant progress on transformation issues.

5.6 LIMITATIONS OF THE STUDY

Only four public primary schools were chosen in the Tshwane North District of the GDE, but the number of participants generated adequate data. However,

the findings of this study were not generalised due to the size of the sample. According to Maree (2011:115), the purpose of conducting a qualitative research is not to generalise finding. Instead, qualitative approach seeks to provide understanding of a phenomenon from the participants' experience and perspective.

Stakeholders involved in this study were the GDE representatives, School Governing Body Federations, SGBs, principals and parents. In this regard a limitation included the fact that there was generally a reluctance of parents to speak on issues of learner admission. This may perhaps be as a result of a fear of victimisation of their children by the school management or because of the lack of in-depth knowledge of issuing regarding learner admission policies, procedures, and practices. Some of the parents who spoke seemed to re-iterate issues and arguments that are already public knowledge.

What I have noticed during my interviews with principals is that those who have been principals for a long time were quickly able to understand the purpose and essence of the questions. Those who have not done further studies initially were sceptical about the interview, fearing that it was a covert investigation into how they were running their schools. This was despite the fact that the purpose of the interview was thoroughly explained to the participants and assurances of anonymity and confidentiality were given to participants.

A further limitation in this study was the availability of some of the stakeholders, which in some cases proved to be problematic. In some instances, I had to cancel and re-schedule interviews with participants who became unavailable at the 11th hour before the interview. In addition, some of the participants came across as positioning their responses from a political perspective, and therefore I had to be wary of the objectivity of their responses to this highly charged subject of access to education and learner admission.

As noted in Chapter 1, paragraph 1.8, this study was limited to an exploration of stakeholder experiences of public primary school admission policies and children's rights to a basic education in the Gauteng Province.

5.7 CONTRIBUTION OF THE STUDY

The significance of this study lies in making specific contributions in the form of some observations and considered recommendations of policy and strategic interventions, which should be valuable to:

- school admission policy makers and administrators in all public schools in all the provinces in South Africa;
- education policy makers, with particular reference to finding common ground and understanding between public schools and the GDE as prescribed by the principles of co-operative governance;
- assist education departments in designing long term strategies of how to make admission processes schools effective and efficient in the best interests of children; and
- highlight the extent to which admission policies promote or obstruct a culture of human rights and respect for children's rights.

5.8 CONCLUSION

With regard to comparative studies, the literature review shows that admission policies and practices of a number of selected countries do not differ greatly from those prevailing in South Africa. Socio-economic circumstances and political histories are still considered factors.

The important question asked in this study is whether the admission policies and practices in public primary schools serve the best interest of the children of South Africa to enjoy the constitutionally guaranteed right to basic education. While admission policies and legislative frameworks have been in existence for some

time now in South Africa, the growing case law on school admission practices attests to a system fraught with problems and challenges.

The succinctly stated functions of the stakeholders in SASA have not escaped the difficulties of implementation. The implementation of public schools' admission policies, together with the exercise of assigned functions and roles by SGBs and the HOD continue to lead to a constitutional dilemma, which is marginally short of a constitutional crisis with regard to the measures used to enable the enjoyment of the right to basic education as enshrined in Section 29 of the Constitution of 1996. As clearly indicated in a few court cases, including the seminal Constitutional Court ruling in the *Rivonia* case, parties on both sides have at times acted both positively and negatively or rather unlawfully with regard to the implementation of public primary schools' admission policies. On one hand SGBs have not always acted in the best interest of the child when making decisions whether to admit the learner or not, wrongly or intentionally assuming that their powers and functions are unfettered. On the other hand, the HOD has been found to have exceeded his powers and functions assigned under SASA, in the process violating the requirements and principles of co-operative governance required in public schools.

The school admission crisis in Gauteng has seen the Department and schools pitted against each other in some unpleasant battles. Experiences of stakeholders also point to a system in crisis and towards a boiling point of awakening the ugly side of transformation and race relations in public schools regarding the admission of learners (Franklin and McLaren, 2015:17).

The situation has not been helped in anyway by the lack of knowledge, skill and expertise of SGBs and principals in the formulation, implementation and monitoring of public schools' admission policies. This has necessitated an urgent need for capacity building and development programmes for these stakeholders. Additionally, the institution of a body like an advisory council should be a positive step in ensuring capacity building as a continuum.

This study has highlighted room for further research geared towards ensuring that the implementation of public school admission policies acts as an enabler of the constitutionally guaranteed access to basic education.

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APPENDICES

Appendix A:

Ethics clearance certificate

Appendix B:

Letter of permission from the Gauteng Department of Education

Appendix C:

Letter of permission from the Gauteng North District

Appendix D:

Thesis title

Appendix E:

Letter of informed consent

Appendix F:

Interview protocol for all the sampled participants

Appendix G:

Certificate of proof of editing.

