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The Impact of Litigation by the Legal Resources Centre for Adequate Classroom Infrastructure in South Africa

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Introduction

In 2010 the Legal Resources Centre (LRC), a human rights organization in South Africa, brought a lawsuit against the national and provincial governments on behalf of seven rural schools in the Eastern Cape Province (Eastern Cape) of South Africa for providing grossly inadequate school facilities. After a legal battle with the provincial education department, significant media publicity, and intervention from the national government, a legally binding Memorandum of Agreement (MOA) was signed a year later, which locked the government into concrete obligations to allocate adequate funds to build seven schools, ensure their construction within a reasonable timeframe, and report back to the court on a regular basis.

Apart from its immediate implications for those seven schools, the case (later known as the Seven Schools Case) was important because it significantly contributed to the rollout of a nationwide school infrastructure delivery initiative. Because budget analysis by civil society organizations (CSOs) was a core component of the legal case, the MOA between the parties contained specific budget commitments that resulted in R8.2 billion (US\$ 1 billion) in dedicated resources over a three-year period for the school improvement program.

The purpose of this case study is to understand how the court case originated and unfolded, what the LRC and other CSOs' roles were in the case, how its progress and final outcomes were influenced by external and internal factors, and what impact budget research and analysis played in the case.

The case study relies on desktop research, interviews with key role players and analysts, and a school site visit. Source documents include: national and provincial budget documents, court documents, media reports, and research reports from CSOs in the education sector. It must be noted that apart from one former head official of the Eastern Cape Education Department, no other national or provincial government officials could be interviewed because they did not respond to the repeated interview requests. This may be partly due to upheaval and turnover in the department, as well as to the adversarial nature of the case, which meant officials were reluctant to speak publically about the details of the case.² Given this omission, it was necessary to rely upon the views of other players and to closely examine the developments in the

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² As a result of noncompliance with a court order, CSOs at one point filed Contempt of Court proceedings against the head official of the provincial department.

department (as reported by the media) to infer the motivations of government officials, especially regarding the various government actions taken in the court case.

The Seven Schools Case can be viewed as just one in a series of court cases related to inadequate school infrastructure, stretching from the 2009 Amasango Special School Case to the current case brought by the NGO Equal Education against the national Minister of Basic Education in 2012 regarding national standards for adequate school infrastructure.³ Although the cases influenced each other and involved the same circle of concerned CSOs, the research for this case study found that the Amasango, Seven Schools, and Equal Education cases were *not* part of a single, coherent, and coordinated campaign, but instead evolved through loosely-coordinated, related efforts by various organizations.

This case study first sets the context by describing the broad issues facing education in South Africa and the Eastern Cape specifically, and the crisis of inadequate school infrastructure. Some schools were operated without any facilities at all — merely in the shade of a tree — or in dangerous or inadequate makeshift structures. It is however the so called mud schools — those operating out of mud-walled huts — that have become emblematic of the deficiencies of South Africa’s educational infrastructure, and much of the discussion has used mud hut schools as political shorthand for the wider challenge.

After looking at the CSOs involved in the campaign and at what motivated them to form a loose coalition to address mud schools, this report examines two legal suits in detail: the Amasango Special School case and the Seven Schools case. Finally, the impact of the campaign is interrogated, and lessons from the cases are distilled for CSOs involved in budget work.

How the Mud Schools Issue Emerged, and Why Civil Society Took It On

Education in South Africa faces a number of deep-rooted challenges and remains a problematic sector 18 years after the end of apartheid. Foremost among the challenges is the need to close the massive gap between the quality of former white schools and schools in historically disadvantaged areas, which were deliberately under resourced during apartheid. Great strides have been made in access to education, but quality remains the most serious issue. In short, outcomes are not commensurate with public investment. Literacy and numeracy levels lag behind those of countries at similar income levels — despite expenditure of five percent of South Africa’ gross domestic product (GDP) in the education sector — and educational outcomes remain skewed along lines of geography and race.⁴

There are weaknesses on the input side, such as inadequate teacher training and development, inconsistent quality in school management and leadership, inadequate access to textbooks and other educational materials, and major backlogs in school infrastructure. In addition, learner

³ In March 2012 Equal Education filed papers against the national education minister and others to initiate a court case compelling the national minister to issue minimum standards for school infrastructure in South Africa. Such a policy, which is currently lacking, would prohibit schools from operating without key infrastructure, such as toilets, running water, electricity, furniture, and perimeter security. Thus the policy would enable schools, communities, and CSOs to hold government accountable. See www.equaleducation.org.za for more information.

⁴ “Education Profile-South Africa,” UNESCO Institute for Statistics, available at: http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF_Language=en&BR_Country=7100, accessed 15 May 2012 — Quoted in PSAM 2012/13 Budget Analysis.

outcomes are impacted negatively by social issues, especially poverty in rural areas and the conditions in urban informal settlements. Poor test scores and high dropout rates persist in secondary schools.

According to the South African Constitution, education is a shared responsibility between the national and provincial governments. The national government is responsible for policy development, monitoring and evaluation, support to provinces, and administration of grants to provinces. The provincial education departments are responsible for actual service delivery, including planning, allocation of staff and teachers, school infrastructure, textbooks and support materials, teacher training, etc. The largest single share of provincial budgets goes to education, and the great majority of provincial Education Department budgets are funded by conditional grants from the national department.

The Eastern Cape is one of the poorer, more rural provinces of South Africa, and its provincial government has historically been plagued with inefficiency and maladministration, having inherited corrupt and bureaucratic government structures from the apartheid era. Within a province affected by poverty and poor service delivery, education is one of the most problematic departments, encountering management instability, poor financial management and audit opinions, conflicts with teacher's trade unions, and significant overspending on personnel.⁵ These issues have led to dramatic cost-saving cuts to critical programs, moratoriums on infrastructure and maintenance spending, and intervention from national government.^{6,7} Similar to other provinces, the Eastern Cape spends 45 percent of its total provincial budget on education.⁸ In the 2012-2013 financial year, the Education Department's budget totals R26.2 billion, of which 81 percent is allocated for personnel.⁹

In 2004-2005 the department calculated that there were 572 mud structure schools in the province.¹⁰ In 2009 the Education Department stated that R23 billion would be required to eradicate unsafe and mud structures, compared to a total education infrastructure budget for that year of R981 million.¹¹

Since 1994 there have been multiple political promises to eradicate these backlogs; unrealistic targets were declared by both national and provincial politicians and missed, repeatedly. In 2004 President Thabo Mbeki told the parliament that by March of the following year there would be no pupil "learning under a tree, mud school or any dangerous position." In his 2008-2009 Budget Speech, the Eastern Cape Education Minister said, "All mud schools have been declared unsafe and are required to be replaced in 2008/09."¹² The following year in his policy speech to the provincial legislature, the Provincial Education Minister in the Eastern Cape announced that March 2010 was the new deadline for the elimination of mud schools and inadequate

⁵ "Pupil's interests should be paramount in education dispute," *Daily Dispatch Online*, 15 July 2010.

⁶ "EC spending freeze hits school expansion project," *Daily Dispatch*, 30 September 2004.

⁷ "EC schools on verge of meltdown," 30 January 2011, www.iol.co.za.

⁸ Zukiswa Kota, "Budget Analysis 2012/13, Eastern Cape Education Department," Public Service Accountability Monitor, May 2012.

⁹ *Ibid.*

¹⁰ Debbie Dalton, "Classroom Crisis: The State of School Infrastructure in the Eastern Cape," Public Service Accountability Monitor, Rhodes University, November 2005.

¹¹ "Fed-up communities build own classrooms," *Sunday Dispatch*, 10 May 2009.

¹² "Province wants R24-billion for schools," *Sunday Times*, 28 February 2010.

structures.¹³ Most disheartening for the teachers and learners affected, as well as the CSOs involved in the issue, is that despite the urgency of the issue and the acknowledgement of its importance as evidenced in politician's promises, the Education Department's infrastructure spending record is poor and significant portions of allocated funds remain unspent.

The issue of mud schools, and other types of unsafe and inadequate school infrastructure, was therefore a well-known problem in the Eastern Cape, and for CSOs, such as the Legal Resource Centre (LRC), which were involved in social justice issues, it constituted a seemingly straightforward service delivery problem requiring a basic remedy of bricks and mortar, and political will.

Founded in 1979, the LRC is a well-known national human rights organization (with nonprofit status), which does public interest litigation. With four offices in South Africa, including one based in Grahamstown, Eastern Cape, the LRC has previously been involved in education-related cases and was familiar with the issue of poor school infrastructure in the Eastern Cape. In fact, the organization had identified the issue as something they wished to act upon but faced difficulty finding a specific school that was willing to take the department to court. Cameron McConnachie, an attorney with LRC, had grown up in the Transkei region of the Eastern Cape and spent a year as a primary school teacher in the rural areas. McConnachie joined the LRC in 2009 and, among his other responsibilities and projects, was afforded full reign to pursue the mud school issue. His origins and connections in the province, his ability to speak Xhosa, the *lingua franca* of the province, and his personal experience and commitment to the issue, made him uniquely qualified and driven to pursue the case.

The partnership with Public Service Accountability Monitor (PSAM) at Rhodes University fell into place easily and naturally. Also located in Grahamstown a few blocks from the office of the LRC, PSAM had previously worked with the LRC when the LRC served as the mandated attorney on other cases for the organization and thus were aware of LRC's methods and values. A CSO engaged in social accountability monitoring since 1999, PSAM had done its own work over the years on education and school infrastructure in the province, including an in-depth analysis of the backlog in school infrastructure in 2005.¹⁴ The media viewed PSAM as a government watchdog, and the CSO regularly appeared in the news, commenting on budget and service delivery issues, including poor spending on the Eastern Cape education infrastructure budget.^{15,16} Even before the Mud Schools Court Case emerged, PSAM had been tracking commitments to eradicate mud schools and the failure to meet them and, as part of their budget and policy analysis work, the PSAM's education researcher had made efforts to obtain infrastructure plans from the Education Department.¹⁷ The court case, therefore, aligned well with PSAM's agenda.

While the LRC carried a history of taking on solid cases and had notable credibility with South African courts, PSAM could contribute technical arguments based on its analysis of the

¹³ "No budget to meet EC mud schools deadline," *The Daily Dispatch*, 28 August 2009.

¹⁴ Debbie Dalton, "Classroom Crisis: the State of School Infrastructure in the Eastern Cape," Public Service Accountability Monitor (PSAM), Rhodes University, November 2005.

¹⁵ "Pupil's interests should be paramount in education dispute," *Daily Dispatch Online*, 15 July 2010.

¹⁶ "Education Department says rural schools must take precedence," *Eastern Province Herald*, 13 March 2007.

¹⁷ "SA's target to eradicate mud schools unrealistic," *SABC News*, 9 March 2008.

provincial budget, actual expenditure, strategic plans and annual performance plans of the Education Department, as well as speak to trends in infrastructure spending over the years. Furthermore, Jay Kruise, who was in charge of the Monitoring and Advocacy Program at PSAM, is also a lawyer and could speak the language of lawyers and “translate” budget data for effective court documents.

When the LRC decided to take up the cause of seven grossly inadequate school facilities, it approached the Centre for Child Law (CCL) at the University of Pretoria to serve as co-applicant with the seven schools because it was strategic to have a national, institutional applicant for the case.¹⁸ CCL’s involvement served to lift the case to a national level with broader policy implications, instead of being a provincial case with perhaps an impact limited to the construction of those seven schools in one region. Again, the LRC had a longstanding (albeit informal) relationship with the CCL, and the two had partnered on a number of endeavors. The CCL had undertaken previous cases related to broader impediments to education, such as admissions policies and social grants; the Seven Schools Case fit well within those goals.

A fourth CSO involved was Equal Education (EE), a community and membership-based education NGO, which played a role in the community mobilization and education aspects of the Seven Schools Case. Once the Seven Schools Case was initiated, EE visited the Eastern Cape to engage with the schools and communities to manage expectations while encouraging involvement. Given their grassroots and activism experience, EE worked to drive home the message that communities must own the case, not the lawyers, in order for the campaign (and not simply the litigation) to be successful over the long haul.¹⁹ Given their adept skills and significant experience in advocacy, EE’s involvement also contributed to raising awareness about the Seven Schools Case in the media.

Because of the PSAM’s budget expertise, EE had previously drawn upon PSAM reports, in addition to the research EE had done on mud schools themselves. At the time, EE was primarily focused on advocating for better and more libraries and improved infrastructure, and the issue of mud schools fell easily within that advocacy agenda. Despite the alignment of interests, EE’s participation in the Seven Schools Case was actually not a component of their ongoing legal strategy; the Norms and Standards Case and related campaign (discussed further below) would have been pursued by EE regardless of the Amasango and Seven Schools Cases.²⁰

Nonetheless, the Amasango is still the best starting point to explore the efforts of these various organizations.

How the Amasango Court Case Unfolded

Founded in 1995 to cater for marginalized, abused, and poor children, the Amasango School first operated from two shipping containers and then moved to abandoned railway buildings in

¹⁸ CCL was not involved in the preceding Amasango Case.

¹⁹ Yoliswa Dwane, Equal Education, interview, 1 April 2012.

²⁰ *Ibid.*

Grahamstown. Amasango was registered as a special school by the Education Department and in 2006 was placed on the departmental priority list for planned school construction projects.²¹

Desperate for a new school building for Amasango, the school governing body (SGB), its principal, and other staff lobbied the Education Department for years in repeated meetings, letters, and phone calls, but with no result.²² With frustration mounting, the SGB set up a task team to address the issue that included police officers, labor union representatives, municipal officials and politicians, members of the school management team, and parents. In 2008 the task team took a bold decision to pursue legal action against the Education Department and brought the decision to the SGB, which gave it unanimous endorsement. As Jane Bradshaw, founder and principal of the school explained, “We had nothing to lose.”

Bradshaw and Sarah Sephton, the regional director of the LRC, had a personal relationship that stretched back a number of years. When Amasango decided to take legal action against the Education Department, the LRC was, therefore, their natural ally; indeed, Sephton had been aware of Amasango’s protracted efforts to secure a new school from the Education Department and had expressed interest and support for their cause along the way.

At the end of 2008, fed up with the delays and broken promises from the provincial department, the SGB of Amasango, therefore, approached the LRC for legal assistance.²³ Court documents were subsequently prepared by the LRC, and filed by two members of the SGB of Amasango School on 20 October 2009 at the Eastern Cape High Court in Grahamstown.²⁴

At the same time, the deplorable conditions in Eastern Cape mud schools were receiving significant national media attention. Furthermore, the provincial Education Department’s infrastructure budget for 2009-2010 was proving sorely insufficient, and before the financial year was even halfway through, the media reported that the Education Department put a moratorium on new building projects, stating that no new funds could be provided for school maintenance that year.²⁵ At this point, the Education Department was already publically stating that a resource gap this large required “major political intervention from a national level.”²⁶

In its initial court documents, Amasango argued that the failure to provide adequate facilities for Amasango School was unconstitutional and illegal. Based on Section 29(1) of the Constitution, the government has a constitutional and statutory obligation to provide appropriate and adequate basic education for all children in the Eastern Cape. The inadequate and inappropriate facilities at Amasango School interfere with efforts to provide a basic education to its learners.

²¹ South African legislation defines a special school as a public school for learners with special education needs; under this classification, special schools are eligible for additional resources under various government programs.

²² Each public school in South Africa is required to have a school governing body, which is responsible for the management of the school and its finances. The SGB includes: the school principal and elected representatives (parents, educators, and other staff members).

²³ Founding Affidavit, Amasango Court Case, 20 October 2009, p 15.

²⁴ Applicant: SGB of Grahamstown Amasango Career School. First respondent: MEC for Education in EC; Second respondent: SG of EC DOE; Third respondent: Minister of Basic Education; Fourth respondent: MEC for Social Development in EC; Fifth respondent: Minister of Social Development.

²⁵ “Bisho runs out of money for school maintenance,” *The Herald*, 28 August 2009.

²⁶ “It’s a Crisis,” *Sunday Times*, 6 September 2009.

At about this time, national government was starting to take notice of the situation. In February 2010 the Premier, the political head of the Eastern Cape, announced that she was in talks with National Treasury (NT) about securing additional funding streams to address mud schools.²⁷ Then in early March, the Eastern Cape Finance Minister announced in his Budget Speech that the province had arranged additional resources “outside of this budget” to eradicate mud schools within two years at a cost of R2.5 billion.²⁸

Having previously stated that it would oppose Amasango School’s court motion, the provincial Education Department indicated that they wished to settle the case in March (without having filed any court documents).²⁹ According to the settlement agreement, the Education Department would provide six prefabricated classrooms, build four toilets, and provide a library by 1 October 2010.³⁰ Furthermore, the Education Department vowed to file an affidavit by 25 March 2011 that would set out their plan for the construction of a new school, with building to commence by May 2011. Such a plan would include confirmation that the school was budgeted for and that the provincial education department’s instruction was given and accepted by the Department of Public Works.³¹ The settlement agreement was made an Order of the Court on 11 March 2010 and publicized in the press.³² The case seemed to have reached a favorable conclusion until a surprise move by the Education Department.

On 22 April 2010, the Education Department successfully removed the court order clause that referred to the building of a new school for Amasango.³³ The reason for the stark reversal by the Education Department was unclear. It is possible that top officials in the Education Department had not been fully briefed on the initial court order during its development, and, upon seeing the final agreement on paper, refused to approve the arrangement.

With this step backward, the SGB renewed its complaint. The Education Department eventually filed their answering affidavit the following month (10 May 2010), signed by Ms. Nompumelelo Princess Nabe, the director for Inclusive Education.³⁴ In the document, the Education Department sought to undermine the SGB’s argument by denying that it had removed Amasango School from the priority school infrastructure list which identified the schools most in need of replacement or repairs. The Education Department stated “emphatically that the Applicant’s school has always been on the list and no decision has ever been taken to remove it.”³⁵ As evidence of the Education Department’s commitment to Amasango, the document stated that R2 million has been set aside for a new school and attached evidence that the school was still on the list and that plans to provide prefabricated buildings have already been made.³⁶

²⁷ “Bhisho set to aim another slingshot at mud schools: Cash-strapped administration in talks with Treasury on ‘alternative means of funding’,” *The Herald*, 22 February 2010.

²⁸ Province of the Eastern Cape 2010 Budget Speech, MEC for Finance Mcebisi Jonas, 3 March 2010. “R2.5 billion onslaught on mud schools,” *The Herald*, 4 March 2010.

²⁹ Applicant’s Heads of Argument, Amasango School Case, 11 August 2010.

³⁰ Court Order in Amasango School Case, 11 March 2010.

³¹ In most provinces in South Africa, the provincial Department of Public Works undertakes infrastructure projects on behalf of other provincial departments, such as the Education and Health Departments.

³² “EC agrees to build new G’town school premises,” *The Daily Dispatch*, 12 March 2010.

³³ Applicant’s Heads of Argument, Amasango School Case, 11 August 2010, p. 17.

³⁴ Applicant’s Heads of Argument, Amasango School Case, 11 August 2010.

³⁵ Respondent’s Answering Affidavit by the EC provincial Education Department, 10 May 2010.

³⁶ Respondent’s Answering Affidavit by the EC provincial Education Department, 10 May 2010.

The affidavit claims that Section 29 of the Constitution declares that government must make education “progressively available and accessible to everyone...through reasonable measures.” Having interpreted the right to education as subject to the progressive realization principle, the thrust of the department’s argument, therefore, was that scarce state resources limit the Eastern Cape Education Department’s progress against its infrastructure goals.³⁷ The department is “doing the best it can, within very serious constraints of lack of budget and appropriate human resources.”³⁸

Given that a critical aspect of the Education Department’s argument was that government lacked sufficient resources, the LRC enlisted the support of PSAM to research and analyze the budget of the Education Department in order to interrogate the validity of their argument. In his Supporting Affidavit (11 June 2010), Jay Kruuse, head of PSAM, first addressed the claim that Amasango School was never removed from the infrastructure list. Kruuse referred to the official budget documents for the Eastern Cape (called Budget Statement 1 and Budget Statement 2), which must include the prioritized list for planned school construction projects as an annexed table.³⁹ Citing these public budget documents, he provided evidence that the school was on the list in 2007-2008 and then was subsequently removed in 2008-2009 and 2009-2010 and reinstated in 2010-2011.⁴⁰

The second key component of PSAM’s affidavit addressed the claim by the Education Department that financial constraints were a relevant and valid reason for delays in addressing school infrastructure needs in the Eastern Cape, and for Amasango School in particular. Kruuse (citing the department’s own Annual Report) gives evidence that the department had been underspending its infrastructure budget. As part of the regular provincial budget process, the Education Department’s infrastructure budget may be adjusted downward during any given financial year if the department is underspending. In other words, if sufficient funds are not available (as claimed by the department), this is partly a result of the department’s own poor track record in infrastructure delivery. Kruuse concluded: “In all the circumstances, in my view, the unparticularized suggestion by the DOE [Education Department] that it is financial constraints that have prevented it from constructing a new school for Amasango Grahamstown is not credible or persuasive.”⁴¹

³⁷ In fact, section 29 of the Constitution states that the right to further education (not education as a whole) is subject to progressive realization. *Section 29(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.* The LRC, in its Heads of Argument (11 August 2010), subsequently argues that the right to basic education is not subject to progressive realization. See discussion below.

³⁸ Respondent’s Answering Affidavit by the EC Provincial Education Department, 10 May 2010, p. 12.

³⁹ Citing official government sources, Kruuse shows that that NT Treasury Guidelines require prioritized education infrastructure projects must be listed in a table (labelled Table B.5 or B.6) within Budget Statement 2.

⁴⁰ In his Supporting Affidavit filed 11 June 2010 in the Amasango Case, Kruuse indicates that Amasango School first appears as an infrastructure project beneficiary in EC Budget Statement 2 for 2007-200808 (tabled 2 March 2007) as “new construction.” EC Budget Statement 2 for 2008-2009 (tabled 29 Feb 2008) contains no reference to Amasango. In the 2009-2010 EC Budget Statement 2, Amasango again is omitted from the list. In 2010-2011 EC Budget Statement 2 (tabled 22 October 2009): Despite its absence from the two previous Budget Statements, Amasango Grahamstown reappeared in the 2010-2011 BS2 in the category of “new and replacement assets.” The allocated amounts differ from those originally cited in the 2007-2008 Budget.

⁴¹ Jay Kruuse, Supporting Affidavit in Amasango Court Case. PSAM, 11 June 2010.

The department was also experiencing serious disruption at this time. Earlier in 2009 acting Superintendent-General (SG), Professor Nengwekhulu, (the top official in the Education Department) had brought in the Special Investigating Unit (SIU), a national body tasked with investigating government corruption, to investigate his department. On his way out in early 2010, Professor Nengwekhulu launched a full-scale purge of the Education Department, which he declared was “rotten to the core,” rife with procurement irregularities, conflicts of interest, and “ghost employees.”⁴² A number of senior officials were suspended, including Nabe, who was the signatory of the Respondent’s Answering Affidavit.⁴³

In their legal arguments filed in August 2010, Amasango School cited a myriad of laws and national and other countries’ legal precedents to substantiate the legal argument that the Eastern Cape Education Department had violated Section 29(1)(a) of the Constitution by failing to provide proper educational facilities for Amasango’s learners.⁴⁴ Amasango contended that the progressive realization principle only applied in the case of the right to further education, not to basic education, as per Section 29 of the South African Constitution.⁴⁵ Arguing that there is a clear, proven link between adequate infrastructure and the quality of educational outcomes, it then follows that proper facilities are a component of basic education.

Amasango School also highlighted the contradictory approach exhibited by the Eastern Cape Education Department when it opposed the original court order (11 March 2010), which stated that the Education Department must provide a plan for a new school, and then declared in a subsequent court document that R2 million was allocated for the school (Nabe’s Responding Affidavit in May). If the department did indeed plan to build a new school for Amasango, why did they oppose the original court order? “One is left with an uncomfortable sense that the first to third respondents are willing to say or imply that they will build a new school for Amasango, but they are not willing to make any form of commitment at all in this regard.”^{46, 47}

The final resulting court order for the Amasango Case, signed only a week later (19 August 2010), stated:⁴⁸

- The failure to provide appropriate and adequate school facilities is “unconstitutional, unlawful and invalid.”
- The Eastern Cape Education Department must develop a reasonable plan within two months, in consultation with the School, and implement that plan.
- The Eastern Cape Education Department must file reports with the court every three months, until the order is complied with.

⁴² “Education: Rotten to the core: Soon heads will roll, promises outgoing boss.” *Sunday Dispatch*, 24 April 2010.

⁴³ “MEC’s husband one of eight suspended: Corruption in Bhisho Education office ‘deep-rooted,’” *The Herald*. 9 June 2010.

⁴⁴ These include: Constitution, case law, National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment (*Govt Gazette* 11 June 2010), Indian Supreme Court, New York Court of Appeals, SA Schools Act, EC Schools Education Act 1 of 1999.

⁴⁵ Applicant’s Heads of Argument in Amasango Court Case, 11 August 2010.

⁴⁶ MEC for Education for EC, the Superintendent-General of EC Education Department, and the Minister of Basic Education (national).

⁴⁷ Applicant’s Heads of Argument in Amasango Court Case, 11 August 2010.

⁴⁸ Court Order in Amasango School Case, 19 August 2010.

The local *Daily Dispatch* newspaper described the “caving in” of the Eastern Cape Education Department and the signing of the final court order in August as a “sudden turnabout,” leaving some to speculate that the new leadership that emerged from the 2010 corruption purge had decided to reverse course again and support a settlement.⁴⁹

Again, however, celebrations were premature. To date, temporary structures for Amasango School have been put in place, as per the court order, but a new school has not been built, and, in contravention of the court order, the Eastern Cape Education Department did not produce a plan for maintaining the school facilities within two months.⁵⁰ Given this inaction, the LRC now intends to initiate contempt proceedings against the national minister, the acting SG, and the provincial minister.

How the Seven Schools Court Case Unfolded

Unlike the Amasango Case, which was instigated by the school’s SGB, the Seven Schools Case was initiated by the LRC, which approached prospective schools in 2009 and painstakingly worked with them to build the case. Based on the Eastern Cape Education Department’s own database of schools, the LRC identified 25 schools with extremely weak structures, including some composed of mud buildings. Most were in the rural areas in the Transkei. LRC staff then visited the schools over two weeks to meet with parents, teachers, and community members in order to ascertain their interest in joining the litigation.⁵¹

The process required patient relationship building (with the schools) and resulted in a short list of seven schools that were willing to legally confront the Education Department and run the risk of retaliation from the Provincial Head Office. Teachers and management at the schools were concerned that their involvement in the case would attract repercussions from their provincial bosses. One of the strategic decisions taken to reduce the risk to the school management was to set up an Infrastructure Crisis Committee at each school (composed of parents, students, and community members) that would act as the Applicant in the case. By doing so, the LRC could provide assurance to SGB members, teachers, and principals of the participating schools that they would not be asked to sign any legal documents related to the case and potentially jeopardize their careers. Furthermore, the LRC tried to identify larger schools to preempt the possibility that the Education Department might simply shut down the school as part of an economies-of-scale argument.

As noted above, part of the legal strategy was to partner with the CCL at the University of Pretoria, which would act as First Applicant, the main party initiating the case, with LRC taking the lead in preparing the court documents. On 16 August 2010 CCL filed the initial court documents with the Eastern Cape High Court in Bhisho. The other seven applicants were the seven Eastern Cape schools that had been classified as “mud schools” by the government

⁴⁹ Adrienne Carlisle, “Education Department gets Court Ultimatum on School,” *Daily Dispatch*, 20 August 2010.

⁵⁰ Sarah Sephton, Legal Resources Centre, interview, 6 March 2012.

⁵¹ Cameron McConnachie, lawyer at Legal Resources Centre, interview, Grahamstown, Eastern Cape, 6 March 2012.

because of the extremely poor state of their infrastructure, a lack of access to adequate water, and shortages of desks and chairs.⁵²

The Applicant's argument centered on three points. First, numerous government policies and laws were cited in which both the national and provincial governments had made various promises to eradicate mud schools, as well as reaffirm the constitutional right to education and the link between adequate school infrastructure and educational outcomes. Second, the Applicants delineated the repeated efforts made by the schools to communicate their needs to the province and to work with the Education Department to address these issues, including petitions and correspondence.⁵³

Third, the Applicants stressed the lack of transparency by the Eastern Cape Education Department in conveying its plans and decisions to these schools. Where the schools were included in infrastructure plans, the Education Department, provided no specific information on timeframes or outcomes, nor did the department make the schools aware of these "plans." Further, the criteria for identifying new projects were not apparent, despite government policy stating that they ought to be.⁵⁴

In October, the state gave notification that it would oppose the court action.⁵⁵ At the same time, the Eastern Cape Education Department underwent significant leadership changes, while poor school infrastructure in the Eastern Cape continued to receive national attention in the media, including a column by constitutional law expert Pierre de Vos that emphasized the precedent-setting potential of this case from a national perspective.⁵⁶ Mr. Modidima Mannyia joined the department as its top official, the Superintendent-General, on 4 November 2010.⁵⁷ Less than three weeks later, the Eastern Cape Provincial Government, as First Respondent, filed its Answering Affidavit (22 November 2010), signed by Mannyia.

The core of the government's argument was that it is the unique mandate and responsibility of the government to plan on a priority basis across the province as a whole, within limited resources and taking into account a number of factors. The department thus based its main argument on the principle of progressive realization, which the LRC had argued was not applicable to basic education during the Amasango Case.⁵⁸ The department's argument was a deliberate attempt to broaden the context of the case to include the entire province, which held many more needy schools requiring urgent assistance and investment. By framing the argument

⁵² The seven schools were: Infrastructure Crisis Committee of Nomandla Senior Primary School; Tembeni Senior; Madwaleni; Sidanda; Nkonkoni Senior; Maphindela; and Sompia. While the Government of the Eastern Cape Province was the First Respondent, the Second Respondent was the Government of South Africa, and the Third Respondent was the OR Tambo District Municipality, included because of their role in the provision of water to schools.

⁵³ According to the Founding Affidavit in the Seven Schools Case, on 30 April 2010, CLC sent letters to numerous government parties, expressing the concerns of the seven schools. However, apart from a letter received from the national Department of Water Affairs, indicating that the lack of adequate water at the schools was not their responsibility, government did not respond.

⁵⁴ Founding Affidavit in the Seven Schools Case, 16 August 2010.

⁵⁵ "Schools sue state over lack of resources." *Business Day*, 5 October 2010.

⁵⁶ "Schools of shame: lack of resources puts education in crisis," City Press, 19 September 2010. Also: Pierre De Vos. "Mud schools a crucial test case," *Daily Dispatch*, 5 October 2010.

⁵⁷ "Former education head takes up position again," *The Herald*, 4 November 2010.

⁵⁸ Applicant's Heads of Argument in Amasango Court Case, 11 August 2010.

in this manner, the department sought to shift the issue from the absolute question of the need in these seven schools to the relative need of these schools in relation to other schools. The prioritization method used by government to plan infrastructure investment thus featured prominently in the government's court documents, as opposed to the actual physical situation in seven identified schools in comparison to any applicable government standards or promises in relation to school infrastructure.

The Answering Affidavit then provided detail of the department's prioritization method for allocating the annual infrastructure budget for the eradication of all inappropriate school infrastructure. The process described involves bottom-up compilation and consolidation of ranked lists at circuit, district, and provincial level. According to the department, the resultant Provincial Priority List was published in the 2005-2014 Infrastructure Plan and is updated annually by the department.⁵⁹ While a few of the seven schools were prioritized in their district lists in 2007-2008 and 2008-2009, other schools were ranked higher (meaning in greater need). Unexpected emergencies also prompted some new schools to be inserted into the list.⁶⁰

In conclusion, the Education Department stated that it had devised a plan specifically for the eradication of inappropriate schools, including mud structures, whereby R436m would be made available by the National Treasury as a conditional grant for the Eastern Cape. According to the information given, construction would begin five months from then (by 5 April 2011).⁶¹ The Education Department also mentioned a larger sum of R4.48 billion (about \$512 million) to be made available (presumably nationally, although the court document is unclear) for the eradication of mud schools, again as a conditional grant from the National Treasury (as part of a November 2010 decision made at the national level).

As with the Amasango Case, PSAM was an important contributor in the Seven Schools case, specifically by making available the provincial budget documents, assisting the LRC to read and interpret them, and also guiding the LRC through the allocated figures cited in Manny's Answering Affidavit.⁶² Although PSAM did not actually file an affidavit in the Seven Schools Case, it was closely involved with LRC in interrogating the content and merits of the Manny's Answering Affidavit. In PSAM's view, the national government likely had a hand in composing the Answering Affidavit, which contributed to Manny posing a more credible and better argued response compared to the Answering Affidavit in the Amasango Case.⁶³

Following the government's Answering Affidavit, a flurry of communication took place between the parties, culminating in a critical meeting on 20 January 2011. The night before the planned meeting in East London, the LRC was surprised by a letter from the provincial Education Department essentially conceding on all the applicants' requests. The LRC was shocked but suspected that the department's senior counsel had convinced its client that the court would

⁵⁹The LRC was skeptical that this complex prioritization process actually took place each year in a comprehensive manner, and that such a bottom-up process was appropriate, given that the least needy schools in some poor districts were likely in greater need than the worst schools in better-resourced districts.

⁶⁰First Respondent's Answering Affidavit in Seven Schools Case (signed by Manny), 22 November 2010.

⁶¹Ibid.

⁶²Cameron McConnachie, interview.

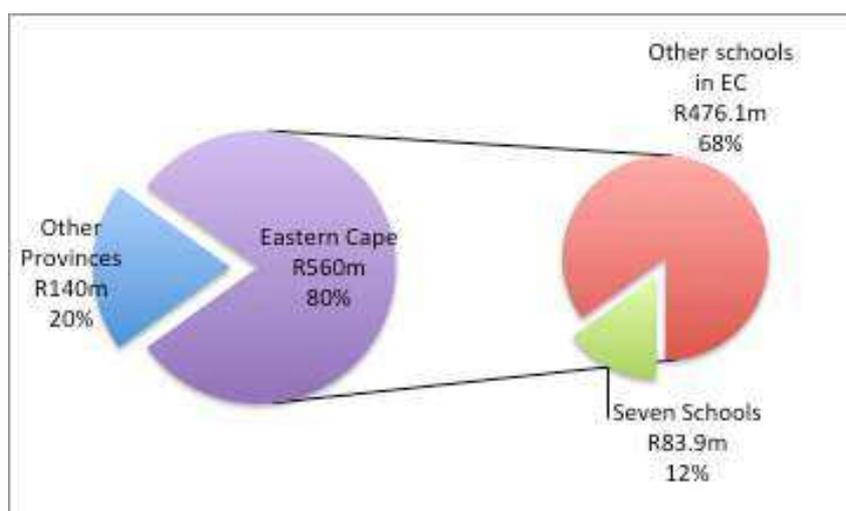
⁶³Jay Kruise, head of Public Service Accountability Monitor (PSAM), interview, 14 September 2012.

likely rule in the Applicant’s favor and thus set a critical precedent that would carry implications far beyond the construction costs associated with those seven schools.⁶⁴

The LRC travelled to East London for the meeting, accompanied by a contingent of parents (two from each school). On the other side of the table, provincial Education Department was represented by a team of 15-20 people, including senior counsel and government officials. The presence of government officials at the event demonstrated to the representatives of the schools that government did indeed take this case seriously.⁶⁵ During the meeting, the government’s legal counsel delineated the funds that would be allocated for each of the seven schools, at times speaking directly in Xhosa to the African women from the schools. The counsel discussed specifics on the type of temporary structures that would be built, as well as associated timeframes for delivery. One of the participants on the Applicant’s side said it was clear that national government was “running the show” and that national department officials had briefed the attorneys carefully.⁶⁶

On 4 February 2011 a Memorandum of Agreement (MOA) was signed by McConnachie of the LRC (on behalf of the applicants) and by the State Attorney in East London, on behalf of the Eastern Cape Province and the Government of South Africa (1st and 2nd respondents). First, the MOA indicated that R8.2 billion (US\$1 bn) had been committed by the government of South Africa to replace inadequate structures nationally, including mud structures across the entire country, for the next three financial years (2011-2012 to 2013-2014). Of that total amount, 78 percent would be specifically allocated to the Eastern Cape Province (R6.36bn or USD795m). The MoA goes even further to specify that R83.9m of the Eastern Cape funds allocated for 2011/12 would be specifically set aside for the seven schools involved in the case (see Figure 1). Allocations for each of the seven schools for 2011-2012 are listed in the MOA (see Appendix).⁶⁷

Figure 1: 2011-2012 funds committed by government of RSA for replacement of inadequate school structures and basic services, as per MOA in Seven Schools Court Case



⁶⁴ Sarah Sephton and Cameron McConnachie, Legal Resources Centre, interview, 6 March 2012.

⁶⁵ Cameron McConnachie, interview.

⁶⁶ Dr. Ann Marie Skelton, Centre for Child Law, phone interview, 4 April 2012.

⁶⁷ Memorandum of Agreement in Seven Schools Case, 4 February 2011.

Furthermore, the MOA outlined the responsibilities of the national Education Department to:

- oversee the appointment of service providers, and implementation;
- ensure contractors appointed by 31 March 2011 (in two months);
- ensure contractors on site by 31 May 2011 (four months); and
- “take all reasonable steps within its power to ensure that the service providers complete the new structures at the seven schools on or before 1 May 2012.”

On their part, the provincial Education Department was instructed to put in place temporary measures to provide mobile classrooms, adequate water, and sufficient desks and chairs for the seven schools within two months.

The agreement was lauded in the press and by CSOs as a landmark achievement, and with this success additional parties exhibited interest, including the Democratic Alliance. To date, temporary structures have been put in place and construction of the permanent buildings has commenced, with some of the schools finished and others not due for completion until December 2012 (not May 2011 as stated in the MOA) due to tendering delays, difficulties with contractors, etc.

Notably, the LRC has stayed actively involved with the case as part of their efforts to hold government to account for implementation of the MOA and tracking progress.⁶⁸ Using donor funding, the LRC appointed a private civil engineering firm to monitor implementation of the agreement through site visits, including an analysis of cost efficiency.

What the Two Cases Achieved

The impact of the Amasango and Seven Schools Cases can be considered from a number of angles. With respect to the intended objectives, neither case has yet resulted in the full and timely implementation of the actions delineated in the final legally binding agreements. Temporary structures have been provided, which have likely improved learner experience and, indirectly, learner outcomes; quantification of these impacts, however, is beyond the scope of this case study. The full long-term impact of physical improvements on learner safety, attendance, and performance would be felt with the construction of new schools, which were to have been completed by the end of 2012.

With respect to interim impacts, the court cases brought about a closer partnership between PSAM, LRC, and CCL; sustained pressure on the provincial Education Department through meetings, correspondence and legal documents; and the generation of evidence on the mud schools issue in the Eastern Cape.

However, the most notable impact would be the intervention by national government in the troubled Eastern Cape. National intervention was clearly a contributing factor to the resolution of both cases, and subsequently gave rise to a national government program, the Accelerated

⁶⁸ Inqgondi Consulting, “Report to the Legal Resources Centre: Progress Report – Permanent Structures – ASIDI,” May 2012.

Schools Infrastructure Delivery Initiative (ASIDI), the impact of which would reach beyond the Eastern Cape and beyond even the education sector. In this respect, the Seven Schools Applicants achieved more than they set out to accomplish.

In the press and among experts in the education field, the Seven Schools Case has been credited for prompting the establishment of the ASIDI for the national Education in 2011.⁶⁹ The ASIDI was funded by two conditional grants from the National Department of Basic Education, which provided two major dedicated funding streams for the eradication of mud schools: the Education Infrastructure Grant (EIG) and the School Infrastructure Backlogs Grant (SIBG).⁷⁰ Both were introduced in the 2011-2012 budget, which was tabled by the national minister in the same month that the Seven Schools MOA was signed. Although the MOA in the Seven Schools Case did not specifically name the SIBG as the funding sources for the R8.2bn committed by the government of South Africa from 2011-2012 to 2013-2014, the numbers of the SIBG line up with the commitments agreed to in the MOA. The timing of the turning points in the evolution of both court cases suggests the national Education Department exerted a hand in prompting the Eastern Cape provincial Education Department's conciliatory agreement and supplying the additional funds required to meet the funding gap.

It is apparent that the national Education Department's intervention was designed not only to supply needed funds to address unsafe mud schools in the Eastern Cape (and elsewhere) but also to put in place strict central control measures to monitor the spending (in the case of the EIG) and directly spend the funds (in the case of the SIBG).

Internal and External Factors of Influence

One internal factor that enabled the Amasango Case was the simple willingness of the school leadership to take legal action against the provincial Education Department. In a province with especially powerful trade unions, a historically strong role of the governing ANC, and allegations of nepotism, it was highly unusual for a school to challenge the government. Amasango School's decision to throw down the gauntlet and embark on the legal route may have been partly due to the exhaustive efforts made by Bradshaw, the school's principal, and other school representatives to plead with the provincial Education Department for new facilities. After visits from government officials and repeated broken promises, the SGB was sufficiently aggrieved with the slow process to be convinced that the court was the only possible recourse.

The second key internal factor that contributed towards the successes achieved was the effective use of PSAM's research and analysis to close off the gap in government's arguments, especially in the Amasango Case. When the department argued that funds were insufficient, the Applicants responded with both a constitutional argument and a practical budgetary one. On the constitutional question, the LRC argued that proper school facilities fell under the right to basic education, which was not subject to a justified limitation of progressive realization. What

⁶⁹ "Schools Expose: Dept pledges more schools for EC," *City Press*, 28 March 2012. Downloaded 29 March 2012 from <http://www.lrc.org.za/lrc-in-the-news/1859-2012-03-28-city-press> The LRC "brokered the mud schools settlement agreement which gave birth to ASIDI."

⁷⁰ The infrastructure grant to provinces, administered by National Treasury, was phased out in the 2011-2012 budget, and, instead, the portion of that grant which formerly had been intended for education became the "new" Education Infrastructure Grant (EIG), on the vote of the national Department of Basic Education.

significantly strengthened the case for Amasango School was that the arguments did not end with the constitutional issues. By utilizing PSAM's expertise, Amasango was also able to argue — from a budgetary analysis perspective — that insufficiency of funds was partly due to the department's infrastructure budget being cut because of its poor track record in infrastructure delivery. In other words, the department had itself to blame for insufficient funds. PSAM's contribution was important because it demonstrated that the financial constraints arguments posited by the department were not credible, and in a manner that was accessible and relevant to the judge.

More broadly, the utilization of budget analysis and research arguments in the Amasango Case helped to ensure that the final court order contained budget commitments in addition to declarations that the state had acted unconstitutionally. In the view of Jay Kruuse of PSAM, the Amasango court order would have happened without PSAM's contribution, but the outcome would not have been as favorable, not as strident, or as specific on the commitments by government. According to journalist Adrienne Carlisle, who covers critical court cases in the Eastern Cape, PSAM contributed an extremely powerful point to the case. By showing evidence of the long-term trend of departmental underspending on infrastructure despite the backlogs, PSAM provided the justification needed for the court to overcome its hesitancy to dictate spending priorities.

Interestingly, budget research and analysis did not play as central a role in the Seven Schools Case. However, despite the fact that the Applicants' Founding Affidavit did not include budgetary arguments, the government offered sizable and clear budget commitments in the Seven Schools MOA. Kruuse speculates if the Applicants' had not drawn upon government budget documents and utilized budget analysis in their arguments, the government would have been more confident and willing to go to court in both cases.

One of the important external factors was the role of the media. As noted above, newspaper coverage of the Eastern Cape provincial Education Department triggered attention from the national department. Another IBP case study that focuses on PSAM's health work comes to the same conclusion about the role of the media in attracting national attention. In the mud schools case, the media also played a role in prompting movement on the case at critical junctures when the LRC was receiving no response from the provincial Education Department. For example, Sephton recalled that when the LRC launched contempt proceedings in October 2011 reporter Adrienne Carlisle contacted the provincial Education Department for a response. Shortly after, the head of the department contacted the LRC directly to talk, and the LRC subsequently agreed to hold off the contempt proceedings if he ensured the agreement was implemented.

As noted earlier, the national Education Department stepped in to play a critical role in both the Amasango and Seven Schools Cases. Although the national Education Department was listed as a respondent in the Amasango Case, it never filed any court documents in the seven schools case, nor did it directly contact the LRC.⁷¹ However, after the Responding Affidavit was filed in the Seven Schools Case, the national minister's lawyer contacted Sephton regarding a

⁷¹ The third respondent in the Amasango Case was the National Minister of Basic Education. In the Seven Schools Case, the national government was not listed specifically as a respondent. Instead, the second respondent was the Government of South Africa.

settlement.⁷² National involvement at this point was likely a significant contributing factor to the turnaround from the provincial Education Department, which was evident in the concessions made at the 20 January 2010 meeting. Their behind-the-scenes intervention was likely prompted by their acknowledgement of the violation of basic rights and concern about a precedent being set by a court ruling that might carry implications beyond the province. And the final agreement in the Seven Schools Case certainly depended upon the resources that the national Education Department brought to the table. Specifically, the province was made responsible for the delivery of the temporary structures while the national government took on the responsibility of providing the permanent buildings. In the view of the LRC, national intervention was critical in loosening the deadlock.

A third external factor in the Seven Schools Case was the looming possibility of central government intervention in the Eastern Cape, whereby the national government would take over control of provincial departments as per Section 100 of the Constitution. From late 2010 the possibility gained attention and momentum, and in March 2011 — shortly after the Seven Schools MOA was signed — the national cabinet took control of Eastern Cape Education Department as part of a Section 100 intervention due to nondelivery, overspending, and maladministration. The likelihood of such a development may well have contributed to the decision by the national Education Department to take on the responsibility of providing the permanent structures, knowing that the anticipated Section 100 intervention would increase the national government's capacity to intervene and ensure delivery on the agreement.

Conclusion

On face value, it appears that the three recent court cases on inadequate school infrastructure (the Amasango School Case, the Seven Schools Case, and the current litigation by EE) have been well coordinated and cleverly and deliberately sequenced. The Amasango Case started small with one school that had been especially vulnerable due to its special schools status. Having obtained a court order forcing the provincial Education Department to supply temporary classrooms and a new school for Amasango, the natural next step was a court case that would build on this precedent. The follow-up to Amasango would extend the litigation to a group of public ordinary schools in the same province that did not have the distinction of serving severely marginalized and homeless learners but did operate with grossly inadequate infrastructure. The third action, the Equal Education Case arguing for national standards for adequate school infrastructure, then goes one step further by escalating the case to a national level and tackling the underlying policy issue.

The practical reality, however, is that the three cases were not part of a coherent, deliberate campaign run by an established coalition of CSOs. Instead, these three instances of strategic litigation, while addressing the same core issue, essentially evolved organically. Despite the fact that there was some overlap between the Amasango and Seven Schools Cases,⁷³ the LRC admits that the timing was not part of a deliberate strategy. The Seven Schools Case certainly built on and learnt from the Amasango litigation, but the LRC had been busy with the groundwork of the

⁷² Sarah Sephton, interview.

⁷³ As indicated above, the Seven Schools Case was launched three days before the Amasango Court Order was issued in August 2010.

Seven Schools case for a number of months, while the Amasango Case had come about as a result of the SGB approaching LRC.

Similarly, at the time of the Seven Schools litigation, EE was already setting its sights on a systemic approach to the issue of poor school infrastructure. In the view of EE, by limiting the issue to seven schools, the case left itself vulnerable to the possibility that the government would argue that the prioritization of these selected schools ahead of other numerous schools with equal or greater need amounted to queue-jumping. The settlement succeeded, from government's perspective, in taking the immediate pressure off with regard to these seven schools, but it did not directly address the remaining of the 395 schools with inadequate structure in the Eastern Cape, or the broader national problem.

EE's current case against the national education minister, therefore, is deliberately structured in two components. The first part cites the case of two specific schools that require emergency structures, while the second part of the case asks the court to require the minister to set minimum norms and standards for school infrastructure which would apply countrywide.⁷⁴

In short, the link between the Amasango and Seven Schools Cases, as well as the EE norms and standards litigation, happened almost spontaneously as a result of committed CSOs remaining tuned into internal and external factors in their environment and acting on opportunities as they appear. As Sephton recently described it, the cases developed almost as a "snowball effect," with one case leading to another and another, as the CSOs learn from each case and adapt their legal strategies.⁷⁵

A concerted campaign that included grassroots mobilization and community ownership, a plan for obtaining high-level political support, and a deliberate strategy to harness the media might have achieved results on the ground more quickly than strategic litigation alone. This case study also provides evidence that successful strategic litigation is further dependant on sustained efforts by CSOs. For example, in the Amasango Case, despite specific timelines in the court order and the budget commitments it contained, the LRC needed to continue its efforts for three subsequent years through Contempt Proceedings and independent monitoring of construction site in order to finally see new schools built.

Finally, this case study raises questions about the utility of strategic litigation in the face of such upheaval in government. The flip-flopping stance of the Education Department in the Amasango Case, for example, was likely caused by the turnover of key government officials who were decision makers on the case. Such instability also likely contributed to the delay in the implementation of the court order as internal dynamics within the department and politics in the province likely contributed to the department's unwillingness to engage and commit.

However, despite the upheaval in the department and the delays in implementation of the court order, strategic litigation is still a valuable tool in the arsenal available to CSOs in their campaigns

⁷⁴The first part of EE's court case deals specifically with two schools in the Eastern Cape that have unsafe, unhealthy, and inadequate structures. The second part of the case argues that the minister's failure to make regulations that prescribe minimum uniform norms and standards for school infrastructure constitutes a breach of the constitutional right to a basic education, equality, and dignity. For more information, see www.equaleducation.org.za.

⁷⁵See "Battle for books rages in the courts," *Mail and Guardian Online*, 31 May 2012.

for social justice and improved service delivery. First, action through the courts compels government to formulate an on-the-record response to CSU's demands, even if the defense offered is weak. Other tools — such as protest marches, press releases, and social media campaigns — often do not achieve this.

The key lesson is that strategic litigation of this nature can be effective in creating sufficient impetus for government to be forced to engage with CSOs. In budget advocacy and social accountability work, often the greatest challenge is the lack of communication and access to information. Court proceedings, the threat of a legal precedent, and media attention all serve to build a critical mass of pressure on government officials to take serious note of CSOs' concerns and engage, even if only informally, in order to avert further legal action.

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Appendix A: Timeline

Key: Amasango School Case
Seven schools Case
General developments

1995 - Amasango School founded in Eastern Cape

2006 - Amasango School placed on departmental priority list for construction of new facilities

2008 - Amasango SGB decides to take legal action against government and approaches LRC for legal assistance

2009 - National body brought in to investigate corruption in Eastern Cape Education Department

October 2009 - LRC submits court documents on behalf of Amasango School

December 2009 - Eastern Cape Education Department submits responding court documents, indicating they will oppose the application by Amasango School

Court date set for March 2010

January-March 2010 - Announcements by province and national government re: additional funding for school infrastructure

Early March 2010 - Provincial Education Department indicates it wishes to settle case

11 March 2010 - Negotiated Settlement Agreement is made an order of the court

25 March 2010 - Provincial Education Department indicates they wish to rescind the court order

April-June 2010 - Purge of corrupt management in department led by SG Professor Nengwekhulu

22 April 2010 – New court order obtained by provincial Education Department to amend the previous Court Order of 11 March 2010, removing commitment to build new school for Amasango School

10 May 2010 - Provincial Education Department files answering court documents, setting out their arguments

11 June 2010 - PSAM files supporting documents providing budget analysis

July 2010 - Professor Nengwekhulu replaced by Ron Swartz as interim SG

11 August 2010 – Amasango School files their main arguments with the court

16 August 2010 - CCL files initial court documents in seven schools case

19 August 2010 - Final court order signed

October 2010 - Provincial Education Department indicates it will oppose the court action

4 November 2010 - SG Manny appointed

22 November 2010 - Eastern Cape Education Department files answering court documents

20 January 2011 - Face-to-face meeting between parties in seven schools case and out-of-court agreement reached

4 February 2011 - MOA signed in seven schools case

October 2011 - LRC files Contempt of Court proceedings against SG Manny in Amasango School case

December 2012 – Seven schools finally due for completion

**Appendix B: Funds committed by government of RSA in Seven Schools MOA, 4
February 2011**

	2011/12	2012/13	2013/14	Total 2011/12 – 2013/14
Nationally: Committed by government of RSA to replace inadequate structures (including mud schools) and provide basic services in those schools	R700m (US\$87.5m)	R2.3 bn (US\$287.5m)	R5.1bn (US\$637.5m)	R8.2 bn (US\$1.025bn)
Of which: Committed by government of RSA for Eastern Cape only	R560m (US\$70m)	R1,836bn (US\$229.5m)	R4bn (US\$500m)	R6.36bn (US\$795m)
Of which: For replacement of inadequate structures	R420m (US\$52.5m)	R1.38bn (US\$172.5m)	R3bn (US\$375m)	R4.8bn (US\$600m)
For provision of basic services	R140m (US\$17.5m)	R465m (US\$58.1m)	R1bn (US\$125m)	R1.605bn (US\$200.6m)
Of which: For replacement of adequate structures and provision of basic services in those 7 schools in Eastern Cape	R83.9m (US\$10.5m)			