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**TO: HEADS OF PROVINCIAL EDUCATION DEPARTMENTS
HEADS OF PROVINCIAL GOVERNANCE SECTIONS
DISTRICT DIRECTORS
SCHOOL GOVERNING BODIES
SCHOOL PRINCIPALS
ALL SOUTH AFRICAN SCHOOLS
GOVERNING BODY ASSOCIATIONS**

CIRCULAR No. 1 of 2020

ADMISSION OF LEARNERS TO PUBLIC SCHOOLS

1. INTRODUCTION

- 1.1 The judgment in the matter of the undocumented learners was handed down on 12 December 2019 in the High Court of South Africa, Grahamstown: Eastern Cape. Division (High Court).
- 1.2 The High Court amongst others made the following order:
- a. Clauses 15 and 21; of the Admission Policy for Ordinary Public Schools; were declared to be inconsistent with the Constitution and therefore invalid.
 - b. Eastern Cape Education Department Circular 6 of 2016, dated 17 March 2016, was declared to be invalid and was set aside. (Circular 6 of 2016 deals with the payment of norms and standards funding, school nutrition and post

provisioning to public schools and provides that payment of such funding will be based on learners with valid identity numbers on the SASAMS system).

- c. The first to third Respondent (Minister, Member of the Executive for Education Eastern Cape and Superintendent-General Eastern Cape Education Department) are directed to admit all children not in possession of an official birth certificate into public schools in the Eastern Cape Province and where a learner cannot provide an official birth certificate the principal of the relevant school is directed to **accept alternative proof of identity such as an affidavit or a sworn statement deposed to by the parent, care giver or guardian of the learner wherein the learner is fully identified.**
- d. Sections 39 and 42 of the Immigration Act 13 of 2002 do not prohibit the admission of illegal foreign children into schools and do not prohibit the provision of basic education to illegal foreign children.
- e. The first, second and third Respondents are interdicted and restrained from, in any manner whatsoever, removing or excluding from schools, children, including illegal foreign children, already admitted, purely by reason of the fact that the children have no identity document number, permit or passport, or have not produced any identification documents.

2. ADMISSION OF UNDOCUMENTED LEARNERS TO ALL PUBLIC SCHOOLS

2.1 While the judgement relates to a matter that emanated in the Eastern Cape Province, it sets the tone of the appetite of Courts on the learners' right to basic education throughout the country. The fact that section 29 of the Constitution of the Republic of South Africa, 1996 provides that: "Everyone has a right to basic education" was a salient point raised in the judgment. The High Court amongst others found that the right to education is an immediately realizable right and stands on a higher pedestal. The High Court further emphasised the Constitutional Court's ruling in *Juma Masjid*¹ and stated that "there is no internal limitation requiring the right to be "progressively realised" within "available resources" subject to reasonable legislative measures". As Clauses 15 and 21 of the admission policy are not a law of general application but merely a policy, it is incapable of authorizing the limitation of a right in the Bill of Rights.

¹ [2011] ZACC 13

- 2.2 At paragraph 90 of the judgment it further expatiated that the right to education extends to everyone within the boundaries of South Africa, the nationality and immigration status is immaterial. The High Court further found; at paragraph 98 of the judgment, that it is disingenuous to offer admission to illegal foreigners conditionally.
- 2.3 In view of the judgement, Circular 1 of 2019 is withdrawn with immediate effect while amendments are being effected to the affected clauses in the Admission Policy for Public Schools in order to align it to the order made by the High Court.
- 2.4 All schools are advised to follow the precedent set in the order of the High Court.

Yours sincerely



MRS AM MOTSHEKGA, MP
Minister of Basic Education
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