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Dear Judge Erasmus

RE: EW Pease and Another v The Government of RSA and Others

The Applicants have instructed us to respond to the State Attorney's letter of 30 June 2014 as follows:

1) Introduction:

The Court's invitation to the parties to supplement their documentation filed of record and argument with any relevant new material was, according to our instructions, done, and was understood by all concerned to be done, in the spirit of advancing the best interests of children and not as an exercise in avoiding such new developments as occur, on the type of grounds of inadmissibility and so forth which the respondents now raise and which do not apply when the best interests of children are under consideration in public interest litigation, as is the case in this matter. Considerations applicable to run of the mill civil litigation do not, with submission, apply to this Honourable Court's invitation to the parties to keep it abreast of new developments as they occur. We make this submission both in the knowledge that the court is in loci parentis as Upper Guardian of all minor children affected by the crisis in the delivery of basic education for all, and in the knowledge that the objections raised are without proper legal foundation.

The Constitutional Court has embraced a child-friendly approach to disputes in which the best interests of children are at issue and it is in this spirit that the Applicants have made available additional information, which has come to light since the adjournment of argument in the matter, whether or not such information advances their cause.

It is apparent that the Second Respondent is sitting on the report of a task team

whose existence is revealed in the front-page report of the latest Sunday Times, a report which she ought to make available to the Court. Equally the 13th Respondent has delayed publication of an audit of early childhood development (ECD) facilities, which ought also to be before this Court so as to enable it to deliver a properly current judgment in the matter. It is lamentable that both the 2nd and 13th Respondents have not made the report and audit respectively available in the spirit in which the Court's invitation to the parties was extended to them.

This litigation is not a commercial dispute between private parties. It is public interest litigation concerning what is in the best interests of the children of South Africa. If the litigation is correctly approached in the spirit of section 28(2) of the Constitution, then the objections raised by the respondents to the additional information supplied by the applicants fall away.

We are nevertheless instructed to deal with the specific points that require a reply specifically to those points, which are not covered by the observation set out above.

2) Ad the criticism of "NCL1":

The Tuchten J judgment is being taken on appeal by the Second Respondent, according to press reports, and this Court will accordingly make its own assessment of whether there is an infringement of human rights when schoolbooks are short delivered. The content of "NCL1" may be helpful to the Court. The applicants distinguish the right to education from other socio-economic rights guaranteed to all in the Bill of Rights, on the basis that the latter are progressively realisable in the light of available resources, while the former is not.

3) Ad "NCL2":

The Public Protector has likened the disclosure of her provisional report to the publication of a draft judgment. The provisional reports are made available subject to a confidentiality undertaking and the respondents are in breach of such undertaking by placing the Public Protector's report before this Honourable Court. No waiver of the confidentiality undertaking routine given has been pleaded, nor does any such waiver exist. The respondents are accordingly off-side and out of order in seeking to introduce it, particularly as this is not a matter in which they seek to review the final report.

4) Ad "NCL3":

The text of a relevant and relatively short 13 page document is available to the Court and is supplied as a new development which has occurred since the adjournment of the matter.

5) Ad "NCL4":

The respondents are respectfully reminded that the SAHRC is a respondent in this matter, was represented by advocate WG Burger SC and that, accordingly, its report is admissible and ought to be taken into consideration. The "Rio Grande" judgment is also relevant in regard to the objections raised to "NCL4" by the Respondents.

6) Ad "NCL 6" and "NCL7":

The respondents' response to "NCL 4" and "NCL5" is what it is and this Honourable Court will make of it what it can. The applicants deny that the SAHRC's report is moot. The same applies to "NCL7".

7) Ad "NCL8":

The respondents do not appear to have appreciated that the thrust of the application is against the conduct of the respondents, which conduct amounts to many failures of different kinds to respect, protect, promote and fulfil the right to basic education. It is in the implementation of legislation and policy that the acts and omissions of the Respondents are constitutionally wanting. The notice of motion repeatedly refers to the failures upon which the applicants rely. These failures are properly categorised as "conduct" in the sense in which the term is used in section 2 of the Constitution.

8) Conclusion:

The Applicants accordingly persist in claiming the relief they seek.

Yours sincerely

N.C. Lawrenson

Adv NC Lawrenson
Junior Counsel for the Applicants