**Amasango Demands an Adequate School**

# The Grahamstown Amasango Career School (Amasango) provides education for impoverished children marginalised by extreme socio-economic deprivation. This school has been set up specifically for street children.

# Many of the learners at Amasango have been abandoned by one or both of their parents and either live or spend their days attempting to make a living on the streets. All of them have dropped out of traditional school because they face extrinsic barriers to learning that cannot be adequately addressed in a traditional classroom setting as they require high levels of psychological and social support. In 2003 the Eastern Cape Department of Education (DOE) registered Amasango as a “public school for learners with special education needs”.

# Amasango helps children get off the streets and into the classroom so they can receive an education and develop skills to enable them to become productive members of society. Without the intervention of Amasango, most of these children would have no educational prospects. The intervention has helped many learners re-enter the mainstream educational system after Grade 7.

# Although the principal and the staff attempt to make Amasango a place of refuge, the facilities are dilapidated and overcrowded. The environment is not suitable for an educational facility, particularly one meant to accommodate the special needs of Amasango’s learners. There are insufficient toilets and no library facilities, sick bay, staff room, or additional rooms for counseling and the play ground consist of a very small cement quad. It is a challenge to both teach and learn in these conditions, and Amasango’s children are unfairly being left behind in their pursuit for an education.

# Since 2001, Amasango has operated out of three old railway buildings outside of Grahamstown's city centre. In 2006, the DOE placed Amasango on a priority list of planned school construction projects. According to the DOE’s Budget Statement for 2007/08, construction was scheduled to begin on 1 April 2006 and finish on 31 March 2009.

# However in March 2007, Amasango learned from the Department of Public Works that the school had been removed from the DOE’s priority list. Furthermore, Amasango was not even listed amongst the schools earmarked for new construction or rehabilitation in the DOE’s Budget Statements for 2008/09 or 2009/10.

# In response to being removed from the list and to the continued failure of the DOE and its officials to provide adequate facilities for learners, Amasango’s School Governing Body resolved to pursue legal action with the Legal Resources Centre’s (LRC) assistance. On 22 October 2009, the LRC brought a High Court application against DOE officials, the Minister of Basic Education and officials of the Eastern Cape Department of Social Development (the Respondents).

# On 11 March 2010, a settlement agreement drafted at the Respondents’ request was made an order of the court. Part of the court order required the Respondents to provide initial relief to Amasango, including the provision of six prefabricated classrooms, four toilets, a library, and an office. The court order also required the Respondents to file an answering affidavit by 25 March 2010 setting out their plan to commence construction of a new school for Amasango by May 2011.

# No affidavit was filed on 25 March 2010, and instead the Respondents declared the court order out of compliance with their requirements. Soon after, they submitted an amendment to the order, further causing frustration and delay for Amasango.

# The Respondent’s answering affidavit was eventually submitted to the court on 11 May 2010. The affidavit claimed that the DOE never removed Amasango from their priority list and never conveyed such a decision to Amasango. Relying on claims of budget and human resource deficiencies to account for their failings, DOE asserted that funds have since been allocated to build a new school. However, there was no timeline or plan of action for completing the school.

# The LRC approached the Public Service Accountability Monitor (PSAM) for assistance in interrogating the explanations and assurances contained in the Respondent’s answering affidavit. Jay Kruuse and Zukiswa Kota of PSAM analysed the affidavit and considered a a cross spectrum of government source documents that PSAM routinely collects, requests and obtains[[1]](#footnote-1) to support its own research and advocacy. Jay Kruuse then gave a supporting affidavit in which he countered the Respondent’s claims made in the answering affidavit. The advocate representing Amasango summarized Kruuse’s affidavit as follows in the Heads of Argument:[[2]](#footnote-2)

“The respondents’ stance is also contradicted by the careful analysis of Mr Kruuse, of the Public Service Accountability Monitor, in respect of the annual provincial budget statements. He concludes as follows:

*“The PSAM was unable to locate any explicit explanation why Amasango Grahamstown was ever removed from the list of schools designated to receive new construction according to the 2007/08 BS2. What is clear, however, is that Amasango Grahamstown was indeed removed from this list of schools and only reinstated in the 2010/11 BS2 [after the present application had been launched.”*

And:

“the reliance on inadequate resources is simply insufficient. The affidavit filed by the Public Service Accountability Monitor concludes after careful analysis as follows in this regard:

“Finally, the unparticularised suggestion by the DOE that it is financial constraints that have prevented it from constructing a new school for Amasango Grahamstown is not credible or persuasive.”

# The LRC were able to then secure a court order by consent, which included an attorney client costs order against the Respondents due to their reprehensible conduct in this matter and that they only settled on the day of the hearing after the LRC had incurred substantial costs. The court order directed as follows

1. It is declared that the failure of the first to third respondents to provide proper, appropriate and adequate school facilities for the Grahamstown Amasango Career School (“the School”), and to develop a plan in this regard, is unconstitutional, unlawful and invalid;
2. The first to third respondents are directed forthwith to:
   1. Within two months develop a reasonable plan, in consultation with the applicant, to provide proper, appropriate and adequate school facilities for the School;
   2. implement the plan so developed.
3. The first to third respondents are directed to file with this Court and the applicant reports on affidavit setting out all steps taken pursuant to the order in paragraph 2 above, at least every three months from the date of this order until the order has been fully complied with.
4. It is directed that the applicant and/or any of the respondents may re-enrol this matter for hearing at any stage, if necessary on duly supplemented papers, to deal with any need for further orders arising out of the orders set out in paragraph 3 and 4 above.
5. The first to third respondents are directed to pay the applicant’s attorney and client costs, jointly and severally.

A journalist who covered the court proceedings summarised matters as follows[[3]](#footnote-3):

THE Grahamstown High Court yesterday gave the provincial and national Education departments just two months to develop and implement a plan to provide proper school facilities for a “special needs” Grahamstown school.

Following a three-year-long battle, it seems the Amasango Career School, currently housed in disused and dilapidated railway buildings, will get its brand-new premises – something the provincial department undertook to provide in 2006.

Amasango caters for socially marginalised, impoverished and abused children in Grahamstown and is registered by the department as a “special school” or a school that provides an education for pupils with “special education needs”.

According to court papers, the provincial Education Department placed the school on a priority list of planned school construction projects in 2006 and a site was identified for the new school.

But in March 2007, when no construction had taken place, it was discovered the school had been removed from the priority list. The school governing body eventually had to resort to court, with the assistance of the Grahamstown-based Legal Resources Centre, to have this decision reviewed and set aside.

The department initially appeared to agree to a court order in terms of which it would build the school new facilities. It then recanted, claiming the agreement was a result of a misunderstanding between it and its own attorneys. The order was rescinded and the department indicated it would fight the case.

It claimed in court papers that “financial constraints” had prevented it from building new premises. But this was disputed in evidence provided by the government watchdog organisation the **Public Service Accountability Monitor**. It said its research showed the department had radically underspent its infrastructure budget between 2007 and 2009.

In a sudden turnabout yesterday, the department again caved in – this time agreeing to a court order in terms of which it, and the national Department of Basic Education, would have to plan for and provide the school with new facilities.

Judge Jannie Eksteen issued an order declaring the national and provincial departments’ failure to provide proper facilities for the school “unconstitutional, unlawful and invalid”.

It now has two months to develop a plan to build the school and begin implementing it. Eksteen also ordered the departments to report directly to the court every three months. He also ordered the departments to pay the school’s legal costs.

The school’s counsel, advocate Steven Budlender, had argued that the school catered for the poorest of the poor and the most marginalised children in society. He said the school had been represented by a public interest law firm and there was no reason why it or its legal representatives should be out of pocket because of the departments’ “reprehensible” conduct. Eksteen seemed to agree and awarded legal costs against the departments on an attorney-client scale.

LRC director Sarah Sephton yesterday described it as a “fantastic victory” for both the pupils and the teachers at Amasango.

“Any improvement on their schooling conditions will make a big difference to their lives.”

The Amasango matter, like other strategic education litigation is aimed at upholding the right of each child to basic education, guaranteed by section 29(1)(a) of the South African Constitution and enforced by the government’s statutory obligations under the South African Schools Act, No. 84 of 1996.

Adequate structures and amenities are essential to the provision of basic education and must be provided on an equal basis to all South Africans, regardless of a child’s socio-economic position.

1. Using the Promotion of Access to Information Act 2 of 2000. [↑](#footnote-ref-1)
2. Available at: <http://www.lrc.org.za/court-papers/1659-2010-03-11-amasango-applicants-heads-of-argument> [↑](#footnote-ref-2)
3. Daily Dispatch, 21 August 2010, ‘*G’town special needs school gets court help’.* Article available at <http://www.psam.org.za/newsitem.php?nid=1373> [↑](#footnote-ref-3)