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Explanatory Note

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*The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

This case involved an application for direct access to the Constitutional Court. The applicant, Christian Education South Africa (CESA), wanted to challenge the constitutionality of a section of the South African Schools Act (the Act) which prohibits the administration of corporal punishment to learners at schools. The Deputy President of the Constitutional Court, Justice Langa, speaking for a unanimous Court, found that this case did not warrant the Court exercising its discretion to permit direct access to CESA.

CESA is a voluntary association of 209 Christian schools across South Africa. These schools are “independent schools” in terms of the Act; they were previously known as “private schools”. They subscribe to the belief that corporal punishment in school, as in the home, forms part of a system of discipline based on the Christian faith and scriptures. CESA claimed that “corporal correction”, as administered at its schools, is part of the common culture of such schools which is protected by certain provisions of the Constitution. Therefore, it argued that the section of the Act is unconstitutional to the extent that it applies to independent schools, or alternatively, to the extent that it applies to learners at those schools whose parents or guardians have consented to corporal punishment being administered to them.

The Court found that this was not a proper case for granting direct access. It reaffirmed that direct access is an extraordinary procedure which should only be granted in exceptional circumstances. These did not exist in the present case. The matter was not of sufficient urgency. Furthermore, the additional costs and delay that would result if the normal procedures were followed, although relevant, did not justify the granting of direct access.

The Court noted that if direct access were to be granted, it would sit as a court of first and last instance without there being a possibility of an appeal from its decision. Consequently, it would not have the benefit of the views of the High Court which has jurisdiction under the 1996 Constitution to declare provisions of an Act of Parliament to be invalid. Excluding other courts from exercising jurisdiction given to them by the Constitution would not be in the interests of justice and the development of our jurisprudence.

No good reasons could therefore be found to grant the extraordinary procedure of direct access to the Constitutional Court.

14 October 1998.