Figure 13.1: Conditions in ordinary schools in South Africa.

INTRODUCTION

Crumbling classrooms, horrendous bathrooms, cracked fences, and non-existent libraries and laboratories remain a reality for thousands of school-going children across South Africa.

At the same time, a privileged few are able to study in comfortable, well-resourced and safe learning environments. The Department of Basic Education’s (DBE) own statistics, released in 2015, highlight these painful disparities. They show that of the 23,589 public ordinary schools in the country, 77% do not have basic infrastructure such as water, electricity, and laboratories. 86% have no laboratory facilities, and 5225 schools have either an unreliable water supply or no electricity. This is far higher than the national average. It is therefore invaluably black South African learners who are most cheated of an acceptable learning environment. Inequities in physical resourcing are the most concrete manifestations of the glaring disparities in our education system, and they reinforce and perpetuate the legacy of apartheid education. Poor learners, most of whom are black, are condemned to attend classes in school environments that disempower rather than empower them to learn and succeed.

The link between school infrastructure conditions and their effect on learning outcomes has been well documented by a number of reputable studies. For instance, a 1979 review conducted by Carol Weinstein concluded that there was a link between improved educational outcomes and – among other infrastructural factors – the age and condition of school facilities, as well as with lighting, ambient temperature, and quality of air. The DBE’s national policy on school infrastructure, titled the ‘National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment’ (NPEP), emphasises the negative effects of a poor schooling environment on learners. These include irregular attendance and higher drop-out rates. Importantly, NPEP also recognises the detrimental effects of inadequate school infrastructure on teachers, citing attrition, high turnover and teacher absenteeism – no doubt due to working in demoralising, unhygienic and often unsafe environments. Although fixing only our schools will by no means fix our broken education system, this is but one of many factors that must be addressed urgently in order to provide an adequate basic education for all South African children.

BACKGROUND

Every day, thousands of South African children attend schools that have appalling infrastructure. Many learn in hazardous and life-threatening conditions.

At the same time, a privileged few are able to study in comfortable, well-resourced and safe learning environments. The Department of Basic Education’s (DBE) own statistics, released in 2015, highlight these painful disparities. They show that of the 23,589 public ordinary schools in the country, 77% do not have basic infrastructure such as water, electricity, and laboratories. 86% have no laboratory facilities, and 5225 schools have either an unreliable water supply or no electricity. This is far higher than the national average. It is therefore invaluably black South African learners who are most cheated of an acceptable learning environment. Inequities in physical resourcing are the most concrete manifestations of the glaring disparities in our education system, and they reinforce and perpetuate the legacy of apartheid education. Poor learners, most of whom are black, are condemned to attend classes in school environments that disempower rather than empower them to learn and succeed.

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It is only since 2011, however, that the drive to address the school infrastructure crisis in South Africa has begun to gather traction. This has been through a combination of the rise of an education-based activist movement, and the more frequent use of the courts by public-interest litigators.

The first significant case concerning school infrastructure was brought in February 2011 by the Legal Resources Centre (LRC), representing seven Eastern Cape mud schools. The matter was settled by an agreement with the State, which secured R8.2 billion to address the mud-school problem as a whole in the Eastern Cape. The case has become known as the ‘mud-school case’.

The skewed racial disparities in the quality of school infrastructure in South Africa also encouraged Equal Education (EE) – a democratic social-justice movement dedicated to achieving equal and quality education for all, whose core membership base consists of learners – to take up the cause for adequate school infrastructure for all. EE’s initial campaign was aimed at ensuring that the Minister of Basic Education publish a national policy on school libraries. This later evolved into a campaign centred on ensuring that the Minister publish the ‘Regulations Relating to the Minimum Uniform Norms and Standards for School Infrastructure’ (as she was empowered to do by the South African Schools Act).

These regulations were seen as significant, as they would set a legal standard for the minimum physical resources all schools should have. The norms and standards would also serve as a tool for holding government accountable. Once introduced, this law would empower affected communities to insist that the unacceptable and dreadful infrastructure conditions at their schools be remedied.

To further its cause, EE members engaged in sustained activism. EE eventually filed two court applications and entered into two separate settlement agreements with the Minister before the norms and standards were finally made law. In January 2014, just two months after the norms and standards were published, a six-year old boy named Michael Komape died when he fell into a pit toilet at his school in Limpopo, because the seat of the toilet was corroded. The campaign for norms and standards was renamed the Michael Komape Campaign, to ensure proper and timeous implementation of the norms and standards in honour of Michael.

While this campaign continues to unfold, the non-governmental legal organisation SECTION27 has
brought a damages claim on behalf of the Komape family. The claim is against the Minister, the Limpopo MEC for Basic Education, the school governing body, and the principal of the school. The horrific, tragic and senseless death of Michael Komape encapsulates the serious dangers posed by poor and hazardous school infrastructure. It evokes outrage and fear – especially when viewed against the DBE’s statistics, which show that 44% (almost half) of our nation’s schools still use pit latrines.

On 29 November 2014, a year after the publication of the norms and standards, the Basic Education MECs were required by law to hand over to the Minister their action plans on how they intend to achieve the norms in their provinces. These plans are an important source of information, and should contain (among other information) details of the infrastructure backlogs at the district level, and a costing exercise pegged to infrastructure backlogs at the district level, and a costing exercise pegged to the due date; but all the plans, with the exception of those from Limpopo, were only released more than six months after the Minister had received them. The Minister made the plans public only after EE engaged in continuous activism including letters, pickets around the country, deep-in, and a 2 000 strong march of learners and teachers to the Eastern Cape Department of Education. It would take a further four months before the remaining plan was released, and this only after EE held a picket outside the Limpopo Department of Education and later met with the Limpopo MEC. At the time of publication it had been more than a year since the MEC’s annual norms and standards implementation reports to the Minister fell due in terms of the regulations (on 29 November 2015). The Minister is yet to release these reports, or even indicate whether she has received them at all. This does not bode well for accountability, transparent, effect and timeous implementation of the norms and standards.

Also of concern is that there exist certain loopholes in the norms and standards, including the use of vague language, that make it easier for the DBE to shirk its legal duties with impunity.

44% OF PUBLIC SCHOOLS IN SOUTH AFRICA USE PIT TOILETS

Figure 13.2: Percentage of schools in South Africa using pit toilets.

International

‘All other norms’ e.g. sports and recreation facilities, universal access to electricity, water, sanitation, recreation facilities, universal access to electricity, water, sanitation, including asbestos, metal and wood, and schools with no access to any form of power or water supply or sanitation

There are FOUR deadlines for norms and standards:

- Schools built entirely from materials such as asbestos, metal and wood, and schools with no access to any form of power or water supply or sanitation
- Electricity, water, sanitation, classrooms, perimeter security, electronic connectivity
- 7-year deadline: 29 November 2020
- Libraries and Laboratories
- 10-year deadline: 29 November 2023
- ‘All other norms’ e.g. sports and recreation facilities, universal access
- 17-year deadline: 31 December 2030

Law and Policy

General Comment 13 on the Right to Education, issued by the United Nations Committee on Economic, Social and Cultural Rights (CESCR), states that education must be available, accessible, acceptable and adaptable. Elaborating on the availability aspect, the Committee states that:

- Functional schools are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving decently competitive salaries, teaching materials and so on, while some will also require facilities such as a library, computer facilities and information technology

The Committee therefore acknowledges that the right to receive an education entails the right to receive an education in a physical environment that is conducive to learning.

National

Section 29(1) of the Constitution confers the right to a basic education on all. However, what this right entails precisely is hotly contested. The Constitutional Court, in Governing Body of the Jama Masjid Primary School & Others v Essay NO & Others, drew attention to the problem of apartheid-inherited school infrastructure facilities that continue to plague our education system:

The significance of education, in particular basic education for individual and societal development, in our democratic dispensation in the light of the legacy of apartheid, cannot be overemphasised. The inequity of schooling facilities, particularly in many schools, was exacerbated by the formal institution of apartheid, after 1946, when segregation even in education and schools in South Africa was codified. Today the lasting effects of the educational segregation of apartheid are discernible in the systemic problems of inadequate facilities, and the discrepancy in the level of basic education for the majority of learners.

The historical inequities of the inequities in school facilities is also mentioned in NPEP, a policy introduced by the Minister through the National Education Policy Act. The first of NPEP’s policy statements refers to the publication of national norms and standards for school infrastructure, to address these inequities. As discussed, these norms and standards were introduced in November 2013.
The norms and standards are ground-breaking because they finally provide some legal clarity and give some content to the Section 29 right to a basic education. According to the norms and standards, all schools that do not have any water, electricity and sanitation must be provided with these by 29 November 2016. The problem of schools built entirely from inappropriate materials such as mud, metal, wood and asbestos must also be fully addressable by this date.

The norms also set 7-, 10- and 17-year target dates. By 29 November 2020, all schools must have any water, electricity and sanitation must be provided with these by 29 November 2016. The DBE did not make its earliest deadline of 29 November 2016.

The initial litigation was brought on behalf of a children’s rights-focused non-governmental organisation, the Centre for Child Law (CCL), and certain parents at three Eastern Cape schools. It was aimed at obtaining an order that the required furniture be delivered to all schools 90 days after the completion of the independent audit. The state of school infrastructure in South Africa must eventually comply with.

The norms and standards set out the very basic infrastructure standards that any given public school in South Africa must comply with. The Minister and the DBE have denied that Michael’s death was in any way caused by any unconstitutional, unlawful or negligent behaviour on their part. The Minister further denies that the state of school infrastructure has infringed on the rights of learners, like Michael, who attend dilapidated schools in Limpopo or elsewhere. The norms and standards set out the minimum requirements for a clean and safe toilet at a school.

The case was launched in August 2015 and concerns six-year-old Michael Komape, who died on 20 January 2014, at Mahlolodumela Primary school, Limpopo, after falling through an unstable and broken makeshift ‘seat’, into the pit of a toilet. The unstable ‘seat’ structure could not hold his weight, and he suffocated to death.

In February 2014, a judgment was delivered on this subject in the Eastern Cape High Court, Mthatha. The judgment had its genesis in earlier litigation, which began in October 2012. In that case, Madzodzo and Others v Minister of Basic Education and Others, the Court stated that ‘insufficient or inappropriate furniture in the classrooms in public schools across the province profoundly undermines the right of access to basic education’. Ultimately, the judge agreed with the 90-day delivery date, largely acceding his reasoning to the state’s failure to make a firm commitment on when it intended to deliver the furniture. The state’s failure to meet the 90-day deadline prompted another round of litigation.

In January 2016, the Eastern Cape High Court, Mthatha granted an extensive order in favour of CCL. The order obliged the Minister and MEC to establish a Furniture Task Team to be led by a minister-appointed national co-ordinator. The task team would be responsible for preparing a consolidated list of furniture needs at all Eastern Cape public schools. This list would then be put through a verification process, and the results were to be communicated to the Court by 31 August 2016. The court order requires that all schools have their furniture needs met by 1 April 2017. The Minister must also file quarterly reports to the Court on budgeting and implementation processes undertaken to ensure compliance with the order.

The CCL and the LRC are to meet with the national co-ordinator at least once every 90 days. At the time of writing, the consolidated list of furniture needs had been published, and the verification process was underway. As mentioned earlier, a significant court case concerning school infrastructure is currently before our courts. This case was launched in August 2015 and concerns six-year-old Michael Komape, who died on 20 January 2014, at Mahlolodumela Primary school, Limpopo, after falling through an unstable and broken makeshift ‘seat’, into the pit of a toilet. The unstable ‘seat’ structure could not hold his weight, and he suffocated to death.

Michael’s family have now sued the Minister and the DBE, claiming among other things that the Minister, the department and the leadership of the school had a duty to protect him and other learners at his school from unhealthy and unsafe school conditions – a duty it failed to fulfil. The Minister and her department deny that the toilet could not hold Michael’s weight and was unsafe. They have also denied that Michael’s death was in any way caused by any unconstitutional, unlawful or negligent behaviour on their part. The Minister further denies that the state of school infrastructure has infringed on the rights of learners, like Michael, who attend dilapidated schools in Limpopo or elsewhere. Lawyers for the Komape family argue that the Minister and the DBE knew or should have known about the terrible and dangerous state of the school’s sanitation infrastructure, and did nothing to address this. This litigation ends in 29 November 2016, and the very basic infrastructure standards that any given public school in South Africa must eventually comply with.

As already discussed in this chapter, the norms set out the minimum requirements for a clean and safe toilet at a school.

This pending matter is significant because it highlights the grave consequences of the failure of the Minister and the DBE to address the infrastructure crisis, despite a long history of civil society engaging extensively with the education department about dismal infrastructure at schools.
Thoko and Ovayo are Grade 8 learners at Sobukwe High in rural Limpopo. Their school has no electricity, and its water tanks sometimes run dry. This means that when they are very thirsty, they must leave the school grounds to fetch water from a distant source. Sometimes when they return from fetching water the school break has already ended and they miss some of their lessons for the day. There are no toilets at the school; which is very embarrassing, because learners and teachers have to make use of the open fields surrounding the school to relieve themselves.

Thoko and Ovayo’s right to a basic education is being violated. Also, all the teachers’ and learners’ right to dignity is being violated, because their school has not been provided with toilets. The norms and standards for school infrastructure say that schools such as Sobukwe High must be provided with toilets and electricity by 29 November 2016. Sobukwe High must also receive reliable water supply by 29 November 2020.

Lisa Draga is an attorney at the Equal Education Law Centre, and a former Law Clerk for Justice Zakeria Yacoob. She holds an LLB Summa Cum Laude from UWC, and an LLM, Alternative Dispute Resolution from the University of Missouri, Columbia.

### Practical Steps You Can Take if Your School Has Bad Infrastructure

#### Know Your Norms
Familiarise yourself with the norms and standards. Know what your school is entitled to receive, and by when.

#### Know Your Province’s Infrastructure Plan
Each provincial MEC of Education must annually provide the Minister of Basic Education with an infrastructure plan stating how they will achieve the norms and standards. The MECs must then report to the Minister every year on the progress their province has made. Each plan has a project list containing the names of schools that the province intends to assist. Check if your school’s name is on the list, and if the infrastructure that the list says your school must receive is correct. The MEC’s provincial infrastructure plans, project lists and progress reports can be obtained on the DBE’s website.

If the information on the project list is incorrect, you can approach the civil society organisations set out on page 388 of this book for help.