CHAPTER 14

SCHOOL INFRASTRUCTURE AND EQUIPMENT

Demichelle Petherbridge, Sheniece Linderboom and Mila Harding

This chapter is an update of an earlier version by Lisa Dragé
INTRODUCTION

Every learner has the right to attend a school that is safe and clean and that serves their educational needs.

Schools therefore need proper facilities such as adequate school buildings, sufficient classrooms, proper toilets, laboratories, libraries, and sports fields in order to provide a quality education and a safe and healthy learning experience. Sadly, thousands of public schools across the country struggle with inadequate infrastructure, and learners are forced to learn in schools that only have mudbrick or zinc classrooms, cracked floors and ceilings, loose wiring, broken toilets or pit latrines, and no libraries or laboratories. Statistics published by the Department of Basic Education Management System (NEIMS) report of 12 April 2021 show how severe this problem really is. For example, of schools in Limpopo that were still struggling to provide a quality education and infrastructure, and learners are forced to learn in schools that only have mudbrick or zinc classrooms, cracked floors and ceilings, loose wiring, broken toilets or pit latrines, and no libraries or laboratories. Statistics published by the Department of Basic Education Management System (NEIMS) report of 12 April 2021 show how severe this problem really is. For example, of schools in Limpopo that were still struggling to provide a quality education and

**Figure 13.1: Conditions in ordinary schools in South Africa.**

When school environments are threatened by poor, dangerous or dilapidated buildings, learners are forced to learn in conditions that leave them feeling anxious, unsafe and distracted, which affects their ability to concentrate and learn. In 2021, SECTION27 visited schools in Limpopo that were still struggling with various infrastructure problems that included deteriorating mudbrick classrooms, zinc roofs, crumbling floors, poor sanitation and pit latrines. From learners’ and teachers’ accounts, these problems have devastating effects on teaching and learning.

For example, in some schools SECTION27 visited, teachers and learners fear for their safety as crumbling walls and broken zinc roofs are at risk of falling at any time, especially during storms. In the summer months, the temperatures in classrooms with zinc roofs are unbearable, while the noise caused by heavy rain makes it impossible to hear a teacher in class. Some classes are even dismissed during heavy rain or wind because it is impossible to teach with the noise. Some of these schools are too full, and since they do not have sufficient funds to build more classrooms themselves, overcrowding is a constant problem. In addition, a few of the schools SECTION27 visited are continually ravaged by storms that cause further damage to already fragile and broken school structures, while leaks in the roof damage textbooks and furniture, sometimes beyond repair. Many of these schools are also still using pit latrines, and some have the additional problem of not having sufficient toilets to serve all their learners, forcing them to relieve themselves in fields. Poor sanitation facilities also tend to affect female learners more; they need proper and clean and that serves their educational needs.

Studies are continuing to show the clear link between safe and adequate school infrastructure and improved teaching and learning.
The introduction of a pandemic to the already significant challenges experienced by thousands of South African schools has made the situation untenable. In March 2020, President Cyril Ramaphosa announced a national lockdown to prevent the spread of COVID-19, which included the closure of all schools. However, as the number of cases started to drop, the DBE began the process of reopening schools, and released several directives containing measures that need to be in place to address, prevent and combat the spread of COVID-19.

The DBE also released a number of guiding documents such as the Standard Operating Procedures for Management of COVID-19 in schools (‘SOPs’) and the DBE Guidelines for Maintaining Hygiene in Schools. These included guidelines on the ventilation requirements in the classrooms, the need for learners and teachers to wear masks, physical distancing requirements and personal hygiene standards. Similarly, the DBE directions also required school hostels to comply with the necessary health, safety and social distancing measures, adding that schools or their hostels would have to make alternative provision in the event that not all learners could be accommodated due to social distancing requirements. Only if such provision was not possible would the provincial departments of education assist in the provision of additional infrastructure capacity.

However, the expectation that rural schools and school hostels – which were already struggling with overcrowded rooms and classrooms, unlawful, inadequate or insufficient sanitation facilities, and no running water – would implement these guidelines properly was unreasonable and impossible. News reports showed many schools that could not re-open, especially in Limpopo and the Eastern Cape, because they did not have the necessary hygiene and health procedures followed, such as the regular washing of hands and proper social distancing.

The sanitation facilities at Kharivha were old, dangerous, and unfulfilling. In particular, Kharivha had four EnviroLoo toilets, built in 1989, which were old and disused. The windows were broken, the vents were exposed, and the toilets had reached their capacity to hold waste. In 2000, two corrugated iron plant pit toilets were built on the school property. A plant pit toilet is one of the most basic forms of sanitation. A deep pit is dug into the earth, the pit is then covered with a slab (often concrete), which has a small hole in it. A basic seating structure is then placed over the hole. Ideally, there should be a lid on the seat. Pit toilets should also be enclosed to give the user privacy. With a pit latrine, human waste falls into the pit and remains there until it is removed or deteriorates, and there is no flushing mechanism.

Since the EnviroLoo toilets were in such a poor condition, learners and educators opted to use the undignified, unlawful plant pit toilets instead. In March 2020, the school closed in accordance with national lockdown laws. In preparation for schools reopening on 1 June 2020, the Minister of Basic Education gave several undertakings, including promises to provide water tanks to all schools without water before schools opened, and replace all pit toilets in schools with mobile toilet facilities.

In May 2020, and in preparation for its reopening after lockdown, the school was told to demolish the pit toilets and communicate with the circuit manager if new toilets needed to be built. After the demolitions, Kharivha’s only sanitation facilities were the disused EnviroLoo toilets. With the limited resources available, the school chose to build new cement brick pit toilets.

Unfortunately the school did not have running water on the property, and had to collect water from the community tap outside the school gate to flush toilets and to wash hands. With no running water, no soap, hygiene toilets, and the additional problem of insufficient handwashing, this school could not comply with the DBE’s SOPs or directions, and would not be allowed to re-open.

SECTION27 wrote to the Limpopo Department of Education (LDoE) on the school’s behalf, and was ready to go to court on an urgent basis to force the LDoE to ensure that Kharivha was able to comply with the hygiene and safety requirements necessary for reopening. Fortunately, the LDoE delivered four mobile toilet facilities, two water tanks and the necessary personal protective equipment for the learners and teachers before the schools reopened.
A number of international instruments and initiatives recognise the importance of safe and adequate school infrastructure. In 2015, for example, South Africa – along with 192 United Nations (UN) member states – adopted the Sustainable Development Goals as a global effort to end poverty, protect the earth and ensure peace by 2030. Goal 4, which focuses on quality education for all, also aims to “[b]uild and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all”.

In 2015, South Africa also ratified the UN International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 13 of the ICESCR recognises the right to education. The Committee on the Rights of the Child elaborates on the aims of education, and stresses that “every child has the right to receive an education of good quality which in turn requires a focus on the quality of the learning environment, of teaching and learning processes and materials, and of learning outputs”.

In addition to these, article 24 of the UN Convention on the Rights of the Child protects the best interests of the child in all actions concerning children. Lastly, Section 24 of the Constitution protects everyone’s right to have their dignity respected and protected. Section 28(2) of the Constitution protects everyone’s right to an environment that is not harmful to their health or well-being.

In 2010, the DBE published a national policy on school infrastructure titled the ‘National Policy for an Equitable Teaching and Learning Environment’. The purpose of this policy was to provide a basis for infrastructure planning and implementation, as no uniform policies or strategies on public school infrastructure had existed until then.

**INTERNATIONAL LAW**

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**POLICY**

**Law and Policy**

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Universal Design

The Norms and Standards Regulations define ‘Universal Design’ as: ‘the design of products, environments, programmes and services to be usable by all people, to address the diversity of learners and teachers with functional limitations.’

Later, in 2012, the DBE also published ‘Guidelines Relating to Planning for Public School Infrastructure’, which emanated from the above-mentioned national policy, and aimed to indicate what educational resources were required for a school to function properly. These guidelines were meant to provide a benchmark by which to measure the adequacy of learning and teaching environments. However, they were merely guidelines, and did not create binding obligations on the state.

In 2012, Equal Education (EE), represented by the Legal Resources Centre, launched a case in the Bisho High Court in the Eastern Cape against (among others) the Minister of Basic Education, and demanded the publication of national minimum uniform norms and standards for public school infrastructure. After a long legal process, and one more court application, the Minister of Basic Education published the ‘Regulations Relating to Uniform Minimum Norms and Standards for Public School Infrastructure’ (the ‘Norms and Standards Regulations’) in November 2013.

The publication of the Norms and Standards Regulations was very significant, as these place binding obligations on the state and require it to provide all public schools with the minimum physical resources they need to operate properly and create safe and adequate learning and teaching environments. In order for this to be carried out, they explain exactly what must be provided in respect of a range of school structures and basic services such as classrooms, electricity, water, sanitation, laboratories, libraries, sports fields, perimeter security and universal design, and indicate by when schools should receive these.

Most importantly, the Norms and Standards Regulations created four deadlines that the DBE should be bound to keep:

- **3-year deadline: 29 November 2016** – 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 must be upgraded to ensure they are built with appropriate material and have power, water and sanitation facilities.

- **7-year deadline: 29 November 2020** – The state must ensure there is electricity, water, sanitation, classrooms, perimeter security and electronic connectivity at all public schools.

- **10-year deadline: 29 November 2023** – The state must ensure there is a library and laboratory at every public school.

- **17-year deadline: 31 December 2030** – All the other buildings and facilities mentioned in the Norms and Standards Regulations, including sports and recreation facilities, must comply with principles of universal design to ensure that learners with disabilities are able to access schools equally. This would include, for example, the provision of ramps, railings, and wheelchair-friendly facilities.

However, it is important to note that both the 3- and 7-year deadlines have either been missed or not fully adhered to.

The Norms and Standards Regulations also provide important opportunities to monitor the DBE’s progress with school infrastructure projects. In particular, every year, each provincial MEC must provide detailed plans on how the Norms and Standards Regulations are going to be implemented in their province. These plans must include details of the infrastructure backlogs at the district level, the cost of short-, medium- and long-term targets, how new schools will be planned, how existing schools will be maintained, and proposals on procurement, implementation and monitoring.

As these plans should provide the details of progress made on school infrastructure projects, parents and learners can use these to determine when and how their schools will be fixed, and hold the DBE accountable for the completion of these projects. In addition to developing these plans, each MEC must also provide the Minister of Basic Education with a report every year explaining how their plans have been implemented.

Section 58C(3) of SASA also confirms these reporting obligations, and obliges MECs to report annually to the Minister on the extent to which the Norms and Standards Regulations have been compiled with, and if they have not, the measures taken to reach compliance.

Importantly, the Norms and Standards Regulations also state that all schools must adhere to the requirements and principles of ‘Universal Design’. This must be applied to all buildings, access ways, indoor and outdoor facilities, signage, communications and other services in new schools, as well as to additions and improvements made in existing schools. In addition, the Norms and Standards Regulations emphasise that schools for learners with special education needs must be fully accessible, through the provision of (for example) ramps, handrails and space for movement, while schools must also comply with requirements related to the nature of support programmes offered, and the level of support required.

In 2014, the DBE published the ‘Policy on Screening, Identification, Assessment and Support’, which details how schools should accommodate learners with barriers to learning, which includes but is not limited to learners with physical disabilities. The policy advocates for the “reasonable accommodation” of learners, which involves making the necessary and appropriate modifications and adjustments, which do not impose an undue or disproportionate burden on schools, to ensure that persons with disabilities enjoy or exercise all human rights on an equal basis. This can include structural or physical upgrades, modifications or adjustments to school buildings.

In 2017, the DBE also published the ‘School Infrastructure Safety and Security Guidelines’, which explain the physical measures that must be in place to ensure the safety and security of learners, teachers and other members of the school community when providing new schools with infrastructure and when schools receive upgrades and additions.
In 2018, the DBE published the ‘Guidelines for General Upkeep and Maintenance of Education Facilities’. These guidelines aim to show schools, stakeholders and service providers the procedures and protocols that should be used to look after a school and maintain its facilities, and explain the roles and responsibilities of specific role players.

In the following year, the DBE published the ‘Guidelines for Conducting Condition Assessment of Education Facilities’ to assist with its reporting obligations stated in section 58C (3) of SASA. These guidelines provide a uniform approach to assessing the condition, state and adequacy of all the DBE’s educational facilities to ensure that it has accurate and up-to-date information on the state of public school infrastructure, and can develop adequate infrastructure plans based on this data. The DBE will facilitate the process of initiating and managing the assessment, and will work together with provincial education departments. However, the assessment should be carried out by professional service providers in the built environment, who are registered with any recognised South African professional bodies. Among other things the service provider must be responsible for planning the assessment, engaging with facility management, analysing the data gathered, and producing an assessment report. The outcomes of the assessment will be used to develop ‘Provincial Project Priority Lists’, and both the assessment outcomes and the priority lists provided will be published on the DBE’s website.

In addition to this, Section 8 (1) of the Occupational Health and Safety Act states that “[e]very employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees”.

Section 12 (1) of SASA states that the MEC “must provide public schools for the education of learners out of funds appropriated for this purpose by the provincial legislature”. To give effect to this provision, National Treasury allocates a certain amount of money to provincial departments called the ‘Equitable Share’, which is used for school infrastructure projects and maintenance, among other uses.

National Treasury has also created a specific grant called the Education Infrastructure Grant (EIG), to assist provinces with public school infrastructure projects. This grant supplements the amount provincial departments receive from the Equitable Share and is meant to assist with the maintenance of existing school infrastructure, as well as the building of new infrastructure projects.

The State has also instituted the Provincial Schools Build Programme, which is implemented by provincial departments and focuses on providing basic services, new schools, additions to existing schools, and new and upgraded services and maintenance. This programme receives its funding from both the Equitable Share and the EIG.

In 2011, the DBE also created the Accelerated School Infrastructure Delivery Initiative (ASIDI). ASIDI was created after the ‘mud schools’ litigation initiated by the Centre for Child Law, which is discussed further below. This initiative targets school infrastructure backlogs, with a specific focus on fixing schools without water, sanitation and electricity, as well as those built of inappropriate materials such as mud, asbestos, and metals including zinc. The ASIDI is funded by a grant called the School Infrastructure Backlog Grant.

In addition to these sources, in August 2018 President Ramaphosa launched the Sanitation Appropriate for Education (SAFE) initiative, which aims to accelerate the provision of sanitation facilities and replace pit latrines and other forms of inappropriate sanitation in accordance with the Norms and Standards Regulations.

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The SAFE initiative is a partnership between the state, the United Nations Children’s Fund, the Nelson Mandela Foundation and the National Education Collaboration Trust (NECT). The private sector has also been invited to collaborate on this project and assist with its funding. At the time, the SAFE initiative identified 3,898 schools that required intervention. This number has since been reduced to 2,753 schools, as schools have been rationalised (merged or closed), or found to have adequate sanitation. Schools have been allocated to different implementing agents under various programmes; these agents include the Development Bank of South Africa, NECT, The Mvula Trust, and the Coega Development Corporation. The DBE monitors these projects and reports directly to the Presidency on the progress made to replace pit toilets. The SAFE programme is funded through the School Infrastructure Backlogs Grant, which amounts to R2,283 million over the 2021/2022 financial year. Around half of this budget goes to the SAFE programme.

Lastly, the maintenance of schools forms a critical part of ensuring that school infrastructure remains safe and adequate, and schools have a specific responsibility to maintain the school environment. In this respect, the DBE’s Amended National Norms and Standards for School Funding state that public ordinary schools should receive a certain amount of money from provincial departments to spend on recurrent non-personal and small capital expenses. This includes, but is not limited to, normal repairs and maintenance including building repair work to the physical infrastructure of the school.

**CHALLENGES WITH SCHOOL INFRASTRUCTURE DELIVERY**

Despite the legally binding deadlines contained in the Norms and Standards Regulations, the DBE has failed to meet both its 2016 and 2020 deadlines, as schools across the country continue to operate with structures built from inappropriate materials such as mud, zinc and corrugated iron.

Sadly, the 2021 NEIMS report also provides evidence that 3,343 schools across the country still suffer from unreliable electricity supply, 5,836 schools still have an unreliable water supply, and 5,167 schools still use pit toilets, meaning that thousands of schools are operating under unlawful conditions.

In its presentations before the Portfolio Committee on Basic Education, the DBE has highlighted several issues that hinder the eradication of public school infrastructure problems. These have included inaccurate and unreliable data regarding the state of school infrastructure, difficulties attracting infrastructure specialists such as engineers and surveyors, especially in rural provinces, and community disruptions such as protests and vandalism.

One of the larger challenges facing school infrastructure delivery centres around provinces and their increasing tendency to allocate less money from their Equitable Share allocation towards fixing school infrastructure problems, choosing rather to rely on the money received from the EIG to complete their school infrastructure projects. This occurs despite the fact that the EIG was created to merely supplement provinces’ Equitable Share allocations. This tendency reduces the amount of provincial funding allocated towards infrastructure projects and causes further delays and backlogs. In addition, over the last few years the state has been spending less and less money on its learners. In a joint submission to the Select and Standing Committees on Appropriation on the 2020 Adjustments Appropriations Bill, SECTION27, EE and EELC highlighted the state’s worrying trend of deprioritising basic education by decreasing its spending on basic education.
This means that the money allocated to address needs such as school infrastructure is no longer enough, especially considering that teacher salaries and learner enrolments increase every year. In addition, both the EIG and School Infrastructure Backlogs Grant are continuously receiving less funding. See Chapter 2 on ‘Funding Basic Education’ for more information on how the state spends money on basic education.

The COVID-19 pandemic has created additional challenges in terms of the availability of funds for school infrastructure projects. In June 2020, the state made a deliberate choice to readjust its budget and published a Special Adjustments Budget that reallocated money to assist with COVID-19-related needs, such as the provision of personal protective equipment (PPE) and sanitiser. Severe cuts were made to DBE funding, which included a R2.2 billion reduction from the EIG and R4.4 billion from the School Infrastructure Backlogs Grant to provide water and water tanks to schools without access to potable water. The School Infrastructure Backlogs Grant was also reduced by R60 million. These reallocations resulted in the suspension of many school infrastructure projects, without any further detail on when these would resume. While the 2021 budget shows that money has been restored to the EIG, these cuts are among other things severely delayed infrastructure projects, and the DBE will need to attend to these outstanding projects – together with those planned for the new financial year – in this new budget.

In addition to the problems mentioned above, the DBE has experienced challenges with underperforming implementing agents. In 2018, EE released a report titled ‘Implementing Agents: The Middlemen in Charge of Building Schools’, in which it investigated the use of implementing agents in the Eastern Cape and identified problems hindering public school infrastructure delivery. Among others these included a lack of proper oversight over school infrastructure projects, overworked project managers, a lack of transparency in the procurement of implementing agents, and the state’s failure to properly address misconduct or negligent acts by implementing agents. These are just some of the challenges that have caused poor performance and the slow delivery of work that at times has also been of inferior quality. It is noteworthy, however, that in 2019 the DBE published ‘Guidelines on Minimum Requirements for Implementing Agents’, which among other things sets out the roles and responsibilities of implementing agents, the minimum level of service that must be provided, and the processes and structures that implementing agents must have in place when working with the state.

In addition to the above challenges, some of the annual reports compiled by MECs in respect of the Norms and Standards Regulations have often lacked important detail and failed to specify infrastructure projects, the cost of such projects, and the dates upon which these will commence and be completed. The content of these plans also differs from province to province, and the DBE has not made the most recent plans publicly available on the DBE’s website.

These challenges hinder civil society’s ability to monitor the DBE’s progress and hold it accountable for projects that must be undertaken and completed.

Since 2011, the need to address the school infrastructure crisis in South Africa has gained traction. This has occurred through a combination of the rise of education-based activist movements, and public-interest lawyers and their more frequent use of the courts. Some of these cases are discussed on the following pages.
KOMAPE CASE

On 20 January 2014, just two months after the Norms and Standards Regulations were published, a five-year-old boy named Michael Komape died when he fell into a pit toilet at his school, Mahlodumela Lower Primary School, located in Limpopo. The unsightly and broken bathroom ‘basics’ structure of the toilet was so crooked that it could not hold its weight, and after he fell in, he suffocated and drowned.

In 2015, represented by SECTION27, the Komape family launched a claim for damages in the Polokwane High Court against the state for the death of Michael Komape. The Komape family sought compensation for the emotional shock and trauma that they had suffered due to Michael’s death of Michael and other learners from unhealthy and unsafe school conditions.

Most of the claims for medical and funeral expenses were settled before the trial. The state also conceded liability for the ‘emotional shock and trauma’ caused by the death of Michael Komape. However, the amount the state owed the Komape family for such emotional shock and trauma was not grant a declaratory order stating that the state and the school leadership failed to fulfil their duty to protect Michael and other learners from unhealthy and unsafe school conditions.

Despite the rejection of the claim for gross and constitutional damages, the SCA’s judgment was a victory for the Komape family and their long journey for justice for Michael. The SCA stated that the families of school children had not hold their weight, and after he fell in, he suffocated and drowned.

The role of different stakeholders is described in the plan, but there was no

In 2017, the High Court delivered a judgment finding that the state’s plan was unreasonable, unconstitutional, and in violation of the constitutional requirements. However, on 18 December 2020, the High Court ordered that this regulation be understood as

In 2018, EE represented by EELC challenged the constitutionality of certain provisions of the Norms and Standards Regulations in the case Equal Education and Another v Minister of Basic Education and Others.

The matter was heard in July 2018 in the Bheki High Court, located in the Eastern Cape. In her judgment, Judge Muzi confirmed that “the National Government bears the overall responsibility of ensuring the state’s compliance with the obligation in [Section 29(1)(a)] and that “it is indispensable that basic education play a significantly high role in the delivery of basic education”. The judge also reaffirmed that the right to basic education is “multi-dimensional” and “includes the provision of proper facilities”. In addition to this, she judged the following decisions regarding the provisions EE challenged:

Sub-regulation 4(3)(a) read together with sub-regulations 4(3)(b)(i) of the Norms and Standards Regulations states that schools with no water supply, water supply or sanitation would be “prioritised” by November 2016. EELC argued that this regulation did not explain the meaning of ‘prioritised’, and that there was no certainty that the problems affecting ‘prioritised’ schools would be completely eradicated. The court found that “the timeframes within which schools must be fixed”.

The High Court agreed with EE and declared the regulation to be unconstitutional. In addition, the court ordered that these regulations be revised to include plans for schools made entirely of mud, asbestos, wood or metal, as well as schools built partly from such materials, as classrooms.

The court also ordered that the Norms and Standards Regulations be changed to state that “classrooms built entirely or substantially from inappropriate materials should be replaced. Similarly, sub-regulation 4(3)(a) read together with sub-regulations 4(3)(b) of the Norms and Standards Regulations states that schools with no water supply, water supply or sanitation would be “prioritised” by November 2016. EELC argued that this regulation did not explain the meaning of ‘prioritised’, and that there was no certainty that the problems affecting ‘prioritised’ schools would be completely eradicated. The court found that the regulation was unconstitutional and that the plans for schools made entirely of mud, asbestos, wood or metal, as well as schools built partly from such materials, as classrooms, should be replaced.

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In February 2014, the Eastern Cape High Court, Mthatha, delivered judgment in the matter Makangwane and Others v Minister of Basic Education and Others, which concerned the provision of school furniture. The judgment had its genesis in the above-mentioned ‘mud-schools case’, which was launched in October 2012.

In the ‘mud-schools case’, the CCL, represented by the Legal Resources Centre, requested the court to declare that the Minister of Basic Education, the Eastern Cape MEC for Education and the head of the department of the Eastern Cape Department of Education had violated the affected learners’ rights to education, equality and dignity due to their failure to provide, among other things, adequate furniture to the learners’ schools. The litigation also sought more systematic relief appropriate furniture at the learners’ schools.

In its judgment, the court stated that “insufficient or inappropriate desks and chairs in classrooms in public schools across the province profoundly undermines the right of access to basic education,” and agreed with the 90-day delivery date, largely regarding its reasoning to the state’s failure to make a firm commitment in the way in which children are taught and that the structures in which learners learn, and their sense of safety and well-being all have a great impact on dignity and self-worth.

In 2018, the state complied with the temporary remedies ordered by the court. In addition, while meaningful engagement with the community did not necessarily take place, the state did fulfill the requirements necessary for a merger between Makangwane Secondary School and a neighbouring school, Rameshakana Secondary School, which was completed in March 2021.

Makangwane case affirms that safe and adequate infrastructure is an essential component of the right to education. The case also illustrates that sufficient furniture is a necessary component of the right to education. The government therefore has a duty to ensure that all schools are equipped with safe infrastructure and sufficient furniture. Funding for furniture at schools comes from the Norms and Standards for School Funding money for non-personal expenditure given to every ordinary public school yearly. This money is intended to cover a number of costs necessary for schools. They include the cost of textbooks, stationary, sporting equipment, water and electricity, as well as infrastructure maintenance and repairs. Often, the allocated money is not nearly enough to cover all the costs necessary for schools to operate.

Furniture as an element of the right to basic education is elaborated on further below, with reference to the Furniture litigation.

**Furniture Litigation**

Almost a year after the conclusion of the settlement agreement, the CCL together with parents from four more schools) returned to court, arguing that the settlement agreement had not been complied with. However, this time, they sought the appointment of an independent body to verify the results of the DBE-conducted audit and to devise a plan specifying when each school listed on the audit report would receive their required furniture.

The court was also requested to order that the required furniture be delivered to all schools 90 days after the completion of the independent audit. The matter was settled in part, as the state resisted being held to a specific delivery date, arguing that all that could be expected was a reasonable plan to provide furniture within the shortest possible time.

In its judgment, the court stated that “insufficient or inappropriate desks and chairs in classrooms in public schools across the province profoundly undermines the right of access to basic education,” and agreed with the 90-day delivery date, largely regarding its reasoning to the state’s failure to make a firm commitment in the way in which children are taught and that the structures in which learners learn, and their sense of safety and well-being all have a great impact on dignity and self-worth.

The deadline of 1 April 2017 was not fully complied with, and the Eastern Cape Department of Education (ECDOE) applied for a variation of the court order which extended its deadline to 30 November 2017. This was made an order of court by agreement.

Since then, the ECDOE has submitted its January 2016, the Eastern Cape High Court, Mthatha, granted an extensive order in favour of the CCL obliterating the Minister and MEC to establish a Furniture Task Team led by a minister-appointed national coordinator.

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 would be communicated to the court by 11 August 2016. In addition, the court ordered that all schools should have their furniture needs met by 1 April 2017. The Minister was also obliged to file quarterly reports to the court, containing information on budgeting and implementation processes undertaken to ensure compliance with the order. The CCL and the LRC were also required to meet with the national coordinator at least once every 90 days.

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In 2018, the state complied with the temporary remedies ordered by the court. In addition, while meaningful engagement with the community did not necessarily take place, the state did fulfill the requirements necessary for a merger between Makangwane Secondary School and a neighbouring school, Rameshakana Secondary School, which was completed in March 2021.

Makangwane case affirms that safe and adequate infrastructure is an essential component of the right to education. The case also illustrates that sufficient furniture is a necessary component of the right to education. The government therefore has a duty to ensure that all schools are equipped with safe infrastructure and sufficient furniture. Funding for furniture at schools comes from the Norms and Standards for School Funding money for non-personal expenditure given to every ordinary public school yearly. This money is intended to cover a number of costs necessary for schools. They include the cost of textbooks, stationary, sporting equipment, water and electricity, as well as infrastructure maintenance and repairs. Often, the allocated money is not nearly enough to cover all the costs necessary for schools to operate.

Furniture as an element of the right to basic education is elaborated on further below, with reference to the Furniture litigation.

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PRACTICAL STEPS YOU CAN TAKE IF YOUR SCHOOL HAS BAD INFRASTRUCTURE

- Familiarise yourself with the Norms and Standards Regulations, noting what your school is entitled to receive, and by when.
- Know your province’s infrastructure plan. Each provincial MEC of education must provide the Minister of Basic Education with an infrastructure plan every year stating how they will achieve the Norms and Standards Regulations. The MECs must then report to the Minister every year on the progress their province has made in implementing these plans.
- Check if your school’s name is on the list and confirm whether the infrastructure projects on the list are correct. The MEC’s ‘Provincial Infrastructure Plans’ and project lists should be available on the DBE’s website. If they are not, you can submit a request for this information in accordance with the Promotion of Access to Information Act.
- If the information on the project list is incorrect, you can approach the relevant district office or the civil society organisations for help, noting what your school is entitled to receive, and by when.

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Mila Harding is a researcher at SECTION27, working in the Education Rights Programme. Sheniece Petherbridge is an admitted attorney of the High Court. Demichelle Petherbridge is an attorney at SECTION27, working in the Education Rights Programme.

CASES


LEGISLATION, POLICY AND GUIDELINES

Department of Basic Education ‘Amended National Norms and Standards for School Funding’, 2012.
Department of Basic Education ‘Guidelines Related to Planning for Public School Infrastructure’, 2012.
Department of Basic Education ‘Regulations Relating to the Uniform Minimum Norms and Standards for Public School Infrastructure’, 2013.
Department of Basic Education ‘Screening, Identification, Assessment and Support Policy’, 2014.
South African Schools Act 84 of 1996.