

31 July 2018

To: Honourable President Cyril Ramaphosa

Copied To:

Personal Assistant to the President

Ms. Malebo Sibiya

PER EMAIL: malebo@presidency.gov.za

Copy to: Minister of Basic Education Angie Motshekga

Copied to:

Personal Assistant to the Minister of Basic Education

Mr. Steve Mabua

PER EMAIL: mabua.s@dbe.gov.za

Dear Honourable President Cyril Ramaphosa,

The school infrastructure crisis: The courts have fixed the law – the time is now, to fix South Africa’s schools

We write to you with a sense of hope. South Africa now has a regulatory framework for school infrastructure that truly enables the constitutional vision for equality, dignity and the right to basic education. This moment calls for politicians, administrators, educationalists and activists to join in cooperation towards the full and expeditious implementation of this legal framework.

Poor communities in our country continue to suffer from the legacy of apartheid and colonialism at schools. As you know, Lumka Mkhethwa died this year in the Eastern Cape, aged only 5, after falling through a dilapidated pit latrine at her school. More than four years ago, the same tragedy befell Michael Komape, also aged 5, in Limpopo.

✉ **Postal:** PO Box 40114, Elonwabeni, 7791 🏢 **Head Office:** 2nd Floor, Isivivana Centre, 8 Mzala Street, Khayelitsha.

📧 **E-mail:** info@equaleducation.org.za ~ 🌐 **Website:** www.equaleducation.org.za



📘 **Facebook:** Equal Education fan page ~ 🐦 **Twitter:** twitter.com/equal_education

☎ **Telephone:** 021 361 0127 ~ 📠 **Fax:** 0865169396

Registered S10(1)(cN) and S18A(1)(a) Public Benefit Organisation (PBO) (Exemption Number 930 027 221)

Registered Non-Profit Organisation (NPO) (Registration Number 068-288-NPO)

For years members of Equal Education, who are predominantly high school learners in township and rural schools across five of South Africa's provinces, have been calling for the state to comply with the deadlines set by the Minister of Basic Education, Angie Motshekga, in the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure (the "Norms and Standards").

The first of these deadlines was 29 November 2016, by which date no schools should have been without some form of water, electricity and sanitation, and schools built from mud, wood, asbestos or metal should have been replaced by proper structures.

But this date came and went, with many schools still in dire conditions. Michael Komape died two months after the Norms and Standards were adopted, and Lumka Mkhethwa died more than a year after this first deadline elapsed. This despite the Norms and Standards stating, in no uncertain terms, that "plain pit and bucket latrines are not allowed at schools".

While campaigning for the deadlines to be met, Equal Education also attempted to engage with Minister Motshekga on the need to fix unconstitutional loopholes and the vague language in the Norms and Standards.

Perhaps most concerning was a provision which we termed the "escape clause", which said:

*"The **implementation** of the norms and standards contained in these regulations is, where applicable, **subject to the resources and co-operation of other government agencies and entities** responsible for infrastructure in general and the making available of such infrastructure."* [our emphasis]

This escape clause meant the deadlines set in the Norms and Standards, to fix school infrastructure, became merely loose targets. It left South African learners with no assurance that their schools would ever be fixed.

When attempts to engage the Minister on these critical issues failed, we felt compelled to approach the courts.

On 19 July the Bhisho High Court ruled in our favour, with the Honourable Acting Justice Msizi declaring numerous aspects of the Norms and Standards unconstitutional. The Court rightly struck out the escape clause, saying that it provided an "unpalatable", "lifetime indemnity" against discharging the constitutional duty to provide basic education.



We now have a much stronger legal framework through which learners, parents, teachers and communities can ensure that unsafe and inadequate infrastructure at their schools is fixed.

But it should never have had to take this long, and we should never have needed a court to tell us that the state cannot escape its duty to address the school infrastructure crisis.

Equal Education initially raised concerns with the problematic provisions of the Norms and Standards, in correspondence with Minister Motshekga in February 2014, shortly after the regulations were promulgated. With no satisfactory response, and with the imminent failure to meet the first deadline, we approached the courts as a last resort, only in June 2016. We were shocked at the Department of Basic Education's failure to engage us on the need to fix the Norms and Standards law, and equally dismayed when Minister Motshekga opposed our court application and attempted, despite clear Constitutional Court jurisprudence to the contrary, to convince the Bhisho High Court that the right to basic education is progressively realisable.

While this unnecessary and adversarial process dragged out, learners continued to attend unsafe schools and schools in which they could not hope to advance the transformative agenda that education should facilitate within our society. Perhaps the most ironic tragedy was that Lumka Mkhethwa's death occurred while this case was being heard in the same province's high court. As the Acting Justice Msizi put it:

“The crude and naked facts staring [at] us are that each day the parents of these children send them to school as they are compelled to, they expose these children to danger which could lead to certain death. This is [a] fate that also stares the educators and other caregivers in the schools in the face.”

Honourable President, we are encouraged by your demand that the Department of Basic Education, in the wake of Lumka Mkhethwa's death, provide you with a detailed audit on school sanitation around the country and an urgent plan to fix schools. But these audits and plans should have existed years ago. In fact, the Norms and Standards have always required provincial education MECs to provide their plans and reports on fixing schools to the Minister annually.

These plans, until now, have only been made public after members of Equal Education spent months campaigning, protesting, picketing, and using access to information requests to demand they be released. Sadly, when they were released, they demonstrated the state's own lack of



knowledge of the status quo of South Africa's schools. These plans should be tools for transparency and accountability and, in failing to ensure that they are comprehensive, up to date, and public, the Minister has failed South Africa's children.

Thankfully the Bhisho High Court agreed with Equal Education, that the failure to make these documents publicly available undermines accountability, and ordered the Minister to amend the Norms and Standards to provide for their publication each year.

It is indeed to our dismay that Minister Motshekga utilised public resources to oppose a constitutionally sound reading of the school infrastructure law, while allowing her MECs to fail in properly assessing the status of schools in their respective provinces, and addressing the backlogs. All the while our children are dying.

The Bhisho High Court's declaration that the right to basic education is immediately realisable is an affirmation of the law we have long known. We did not want to go to court to fix the Norms and Standards, and we do not want to have to go back. The years of spending time and money on litigating should be past. South Africa's children can no longer afford it.

More than four months have passed since Lumka Mkhethwa's death, and the public has no information regarding the status of the audit you asked for from the Minister, nor the plan to fix sanitation. In the wake of the Bhisho High Court's excellent ruling, we need now an urgent explanation not only of how the state will address dangerous and unsafe sanitation in schools, but how it will address the November 2016 deadline in the Norms and Standards.

The Court's decision means that, without excuse, by 29 November 2016 every school must have been built only from appropriate structures and must have had some form of water, electricity and sanitation (not including plain pit latrines). South Africans need to know how your government will urgently address those schools falling within that deadline but still suffering without the most basic infrastructure. The public needs access to the updated Norms and Standards implementation plans, and the costed plans to address school sanitation which you have requested from Minister Motshekga.

We have also noted that the Department of Basic Education, in the wake of the judgment, has told media that the Norms and Standards regulations are being reviewed. This concerns us. The timelines that are in place have already demanded that learners wait years for basic infrastructure, and cannot be delayed further. The Bhisho High Court's judgment has left us



with a strong framework, and it would be untimely for the DBE to now revise that. For this reason, and in the hope that any plans for potential revisions to the Norms and Standards are shared and workshopped with civil society, we have copied Minister Motshekga into this correspondence.

Honourable President, in your State of the Nation Address on 16 February 2018, you told us:

“We should put behind us the era of diminishing trust in public institutions and weakened confidence in leaders... We should put all the negativity that had dogged our country behind us because a new dawn is upon us... Our people are hopeful about the future.”

In this spirit of a new dawn, Honourable President, we are hopeful that you and your Cabinet will welcome rather than resist the considered judgment of Acting Justice Msizi, and will focus on addressing the missed deadline in the Norms and Standards, the imminent danger posed by crumbling and dilapidated sanitation at schools, and the deadlines still to come – of which the next one is 29 November 2020.

We trust this finds you well and would value a response at your earliest convenience. We would of course welcome an opportunity to engage with you further, and in person, on these and other critical issues affecting our members and learners across the country. Similarly, it would be timely for us to have the opportunity to meet in person with Minister Motshekga, in the interest of openness and transparency, to discuss the process of complying with the judgment and the strong infrastructure regulations it has yielded.

Yours sincerely



Noncedo Madubedube
General Secretary



Tracey Malawana
Deputy General Secretary

