

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

27 Stiemens Street

Private Bag X

Tel.: 011 877 3600

Braamfontein
2017

Houghton
2041



Ref: 13/4/2/1/1

Date: 28 September 2021

The MEC for Education Eastern Cape: Mr Fundile David Gade

Department of Basic Education: Eastern Cape

Private Bag X0032

Bisho, Eastern Cape

5605

Per Email: nombuyekezo.nkwenkwezi@ecdoe.gov.za ; mbuz@mwebmail.co.za

Dear MEC, Honourable Gade

**RE: WATER AND SANITATION INFRASTRUCTURE IN SCHOOLS FOR 2021
ACADEMIC YEAR**

1. Our letter dated 14 May 2021 has reference.
2. In the aforementioned letter, the South African Human Rights Commission (Commission) requested a list, with updated information on the status of water and sanitation infrastructure for each of the schools in the Eastern Cape Province.
3. The Commission sought this information, to assess the Province's compliance with the Regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure, gazetted by the Minister of Basic Education on 26 November 2013 (Norms and Standards). Further, the Commission sought this information to better understand the impact of COVID-19 on the right to basic education, *per* section 29(1)(a) of the Constitution of the Republic of South Africa (the Constitution).
4. The information provided to the Commission by your Department is that *121 schools are without water; 199 schools have no form of sanitation and 2 236 schools are using pit latrines* the Eastern Cape Province.
5. As the Commission has emphasised in its ongoing engagements with your Office on this issue, the Norms and Standards require that all schools must have a sufficient

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Commissioners (Part-Time): A C Nissen, J B Sibanyoni; **Chief Executive Officer:** T Thipanyane

water supply in compliance with all relevant laws, inter alia, for drinking and personal hygiene and must provide sufficient, safe and hygienic sanitation facilities and set deadlines for compliance with the required norms and standards. These deadlines have long since passed. It is accordingly of grave concern to the Commission that many schools in the Eastern Cape Province still do not have access to any water and/or any form of sanitation, in contravention not only of the Norms of Standards, but of several basic human rights.

6. In terms of section 184(2) of the Constitution, the Commission has the power to, *inter alia*

6.1. investigate and to report on the observance of human rights; and

6.2. take steps to secure appropriate redress where human rights have been violated.

7. We wish to bring to your attention section 4 of the South African Human Rights Commission Act 40 of 2013 (SAHRC Act) that imposes obligations on all organs of state, its members and employees namely -

“4 Independence and impartiality

...

*(3) No organ of state and no member or employee of an organ of state **nor any other person** shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 5(1) or 16(1) or (6) in the exercise or performance of its, his or her powers, duties and functions....”*

8. Furthermore, the Commission is empowered in terms of section 13(3)(b) of the SAHRC Act to bring proceedings in a competent court (in its own name or on behalf of a person or a group or class of persons) to secure appropriate redress in accordance with its Constitutional mandate.

9. In addition, the Commission is empowered by the provisions of sections 15 and 16 respectively of the SAHRC Act to call any persons to appear before it and produce documentation relevant to an investigation of an alleged human rights violation or to enter premises and search and seize any documents or items relevant to such an investigation.

10. In accordance with its aforementioned Constitutional and statutory powers, the Commission kindly requests the following –

10.1. An action plan with clear and urgent timelines for:

10.1.1. the provision of sufficient water and sanitation facilities to the relevant schools mentioned in paragraph 4 above that meet the minimum requirements set out in the Norms and Standards.

10.1.2. the upgrading of water and sanitation facilities where necessary in all other schools in the Province in order to meet the minimum standards outlined in the Norms and Standards, including the replacement of pit latrines with other acceptable forms of sanitation in accordance with the Norms and Standards (where applicable).

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Commissioners (Part-Time): A C Nissen, J B Sibanyoni; **Chief Executive Officer:** T Thipanyane

- 10.1.3. the closing and securing of existent unsafe sanitation structures, including the closing and securing of pit latrines and other sanitation facilities no longer in use (where applicable).
 - 10.1.4. to the extent necessary, the provision of temporary measures to ensure access to sufficient, acceptable water and sanitation pending the finalisation of the State's plan to provide longer term water and sanitation infrastructure in all schools compliant with the Norms and Standards and its Constitutional obligations.
- 10.2. The plan referred to in paragraph 10.1 above should include:
- 10.2.1. details of the relevant implementing departments and agents.
 - 10.2.2. costed work plans with targets in relation to each school that includes details of the nature and extent of the installations/ upgrades required for each school and timelines for completion of the identified targets. The timelines should take into account the urgent and pressing need to provide access to water and adequate sanitation to all schools, and where necessary a need to put in place temporary measures referred to in paragraph 10.1.4 above.
 - 10.2.3. details regarding necessary budgetary allocations / re-allocations to be made available for the installation and upgrades of necessary facilities in accordance with the plan.
 - 10.2.4. details of a maintenance plan for the upkeep of water and sanitation facilities.
- 10.3. The Commission further requests that your Office provide a progress report to the Commission on a monthly basis on progress made with the implementation of the action plan according to the timelines mentioned in the plan coupled with the necessary evidence of progressive implementation of the plan in accordance with the timelines set forward therein.
11. The Commission notes that in terms of Regulation 4(6)(a) of the Norms and Standards the Member of the Executive Council must annually provide the Minister with a detailed plan on the manner in which the norms and standards are to be implemented. Accordingly, a plan setting out the information requested by the Commission in para 10 above should already be in existence and may only need to be updated to reflect any closures of schools or the establishment of new schools / reflect any other necessary adjustments.
12. Given the urgency of this matter, and the potential impact that the lack of access to water and basic sanitation in schools has on an array of Constitutional rights of both learners and staff at the relevant schools, including the right to life, the rights of the child, the right to basic education, right to dignity, right to sufficient water and the right to a clean environment, the Commission requires the provision of the requested plan on or before **29 October 2021**.
13. The Commission appreciates the cooperation and support it has enjoyed from your Office to date. It trusts that in the interests of the discharge of all our Constitutional duties that this matter will enjoy your prompt and full attention and that it will not be

necessary for the Commission to resort to the use of its powers under section 13(3)(b) of the SAHRC Act.

14. The Commission looks forward to receiving your reply.

Yours faithfully,



Advocate André Gaum
Commissioner
South African Human Rights Commission

Cc: Minister Motshekga : mabua.s@dbe.gov.za

DG Mveli : Maake.N@dbe.gov.za

HOD: Dr N Mbude: impi.kuhlengisa@ecdoe.gov.za

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Ref: 13/4/2/1/1

Date: 27 September 2021

The MEC for Education Free State: Mr Tate Makgoe MPL

Department of Basic Education: Free State

Private Bag X20565

Bloemfontein

9301

Per Email: mec.secretary@edu.fs.gov.za; prodigy.mathe@gmail.com
p.mathe@fseducation.gov.za

Dear MEC Mr Makgoe

RE: WATER AND SANITATION INFRASTRUCTURE IN SCHOOLS FOR 2021 ACADEMIC YEAR

1. Our letter dated 14 May 2021 has reference.
2. In the aforementioned letter, the South African Human Rights Commission (Commission) requested a list, with updated information on the status of water and sanitation infrastructure for each of the schools in the Free State Province.
3. The Commission sought this information, to assess the Province's compliance with the Regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure, gazetted by the Minister of Basic Education on 26 November 2013 (Norms and Standards). Further, the Commission sought this information to better understand the impact of COVID-19 on the right to basic education, *per* section 29(1)(a) of the Constitution of the Republic of South Africa (the Constitution).
4. Having processed the information provided to the Commission by your Office, it became apparent that *10 schools are without water; and 5 schools do not have any form of sanitation* in the Free State Province.

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5. As the Commission has emphasised in its ongoing engagements with your Office on this issue, the Norms and Standards require that all schools must have a sufficient water supply in compliance with all relevant laws, inter alia, for drinking and personal hygiene and must provide sufficient, safe and hygienic sanitation facilities and set deadlines for compliance with the required norms and standards. These deadlines have long since passed. It is accordingly of grave concern to the Commission that several schools in the Free State Province still do not have access to any water and/or any form of sanitation, in contravention not only of the Norms of Standards, but of several basic human rights.
6. In terms of section 184(2) of the Constitution, the Commission has the power to, *inter alia*
 - 6.1. investigate and to report on the observance of human rights; and
 - 6.2. take steps to secure appropriate redress where human rights have been violated.
7. We wish to bring to your attention section 4 of the South African Human Rights Commission Act 40 of 2013 (SAHRC Act) that imposes obligations on all organs of state, its members and employees namely -

“4 Independence and impartiality

...

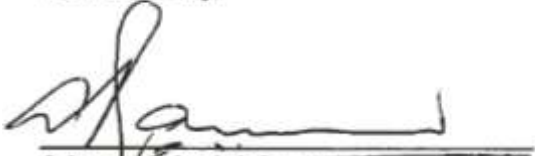
*(3) No organ of state and no member or employee of an organ of state **nor any other person** shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 5(1) or 16(1) or (6) in the exercise or performance of its, his or her powers, duties and functions....”*
8. Furthermore, the Commission is empowered in terms of section 13(3)(b) of the SAHRC Act to bring proceedings in a competent court (in its own name or on behalf of a person or a group or class of persons) to secure appropriate redress in accordance with its Constitutional mandate.
9. In addition, the Commission is empowered by the provisions of sections 15 and 16 respectively of the SAHRC Act to call any persons to appear before it and produce documentation relevant to an investigation of an alleged human rights violation or to enter premises and search and seize any documents or items relevant to such an investigation.
10. In accordance with its aforementioned Constitutional and statutory powers, the Commission kindly requests the following –
 - 10.1. An action plan with clear and urgent timelines for:
 - 10.1.1. the provision of sufficient water and sanitation facilities to the relevant schools mentioned in paragraph 4 above that meet the minimum requirements set out in the Norms and Standards.
 - 10.1.2. the upgrading of water and sanitation facilities where necessary in all other schools in the Province in order to meet the minimum standards outlined in the Norms and Standards, including the replacement of pit latrines with other

acceptable forms of sanitation in accordance with the Norms and Standards (where applicable).

- 10.1.3. the closing and securing of existent unsafe sanitation structures, including the closing and securing of pit latrines and other sanitation facilities no longer in use (where applicable).
 - 10.1.4. to the extent necessary, the provision of temporary measures to ensure access to sufficient, acceptable water and sanitation pending the finalisation of the State's plan to provide longer term water and sanitation infrastructure in all schools compliant with the Norms and Standards and its Constitutional obligations.
- 10.2. The plan referred to in paragraph 10.1 above should include:
- 10.2.1. details of the relevant implementing departments and agents.
 - 10.2.2. Costed work plans with targets in relation to each school that includes details of the nature and extent of the installations/ upgrades required for each school and timelines for completion of the identified targets. The timelines should take into account the urgent and pressing need to provide access to water and adequate sanitation to all schools, and where necessary a need to put in place temporary measures referred to in paragraph 10.1.4 above.
 - 10.2.3. details regarding necessary budgetary allocations / re-allocations to be made available for the installation and upgrades of necessary facilities in accordance with the plan.
 - 10.2.4. details of a maintenance plan for the upkeep of water and sanitation facilities.
- 10.3. The Commission further requests that your Office provide a progress report to the Commission on a monthly basis on progress made with the implementation of the action plan according to the timelines mentioned in the plan coupled with the necessary evidence of progressive implementation of the plan in accordance with the timelines set forward therein.
11. The Commission notes that in terms of Regulation 4(6)(a) of the Norms and Standards the Member of the Executive Council must annually provide the Minister with a detailed plan on the manner in which the norms and standards are to be implemented. Accordingly, a plan setting out the information requested by the Commission in para 10 above should already be in existence and may only need to be updated to reflect any closures of schools or the establishment of new schools / reflect any other necessary adjustments.
12. Given the urgency of this matter, and the potential impact that the lack of access to water and basic sanitation in schools has on an array of Constitutional rights of both learners and staff at the relevant schools, including the right to life, the rights of the child, the right to basic education, right to dignity, right to sufficient water and the right to a clean environment, the Commission requires the provision of the requested plan on or before **29 October 2021**.

13. The Commission appreciates the cooperation and support it has enjoyed from your Office to date. It trusts that in the interests of the discharge of all our Constitutional duties that this matter will enjoy your prompt and full attention and that it will not be necessary for the Commission to resort to the use of its powers under section 13(3)(b) of the SAHRC Act.
14. The Commission looks forward to receiving your reply.

Yours faithfully,



Advocate André Gaum
Commissioner
South African Human Rights Commission

Cc: Minister Motshekga : mabua.s@dbe.gov.za

DG Mveli : Maake.N@dbe.gov.za

HOD: Adv T.H. Malakoane: m.kerile@fseducation.gov.za

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Ref: 13/4/2/1/1/

Date: 27 September 2021

The MEC for Education KwaZulu Natal: Mr Kwazi Mshengu

Department of Basic Education: KwaZulu Natal

Private Bag X9137

Pietersburg

3200

Per Email: Balakhile.sishi@kzndoe.gov.za; Bsishee1@gmail.com

Dear MEC, Honourable Mshengu

**RE: WATER AND SANITATION INFRASTRUCTURE IN SCHOOLS FOR 2021
ACADEMIC YEAR**

1. Our letter dated 14 May 2021 has reference.
2. In the aforementioned letter, the South African Human Rights Commission (Commission) requested a list, with updated information on the status of water and sanitation infrastructure for each of the schools in KwaZulu Natal Province.
3. The Commission sought this information, to assess the Province's compliance with the Regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure, gazetted by the Minister of Basic Education on 26 November 2013 (Norms and Standards). Further, the Commission sought this information to better understand the impact of COVID-19 on the right to basic education, *per* section 29(1)(a) of the Constitution of the Republic of South Africa (the Constitution).
4. Having processed the information provided to the Commission by your Office, it became apparent that *983 schools are using pit latrines* in KwaZulu Natal Province.
5. As the Commission has emphasised in its ongoing engagements with your Office on this issue, the Norms and Standards require that all schools must have a sufficient

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water supply in compliance with all relevant laws, inter alia, for drinking and personal hygiene and must provide sufficient, safe and hygienic sanitation facilities and set deadlines for compliance with the required norms and standards. These deadlines have long since passed. It is accordingly of grave concern to the Commission that several schools in KwaZulu Natal Province still do not have access to any water and/or any form of sanitation, in contravention not only of the Norms of Standards, but of several basic human rights.

6. In terms of section 184(2) of the Constitution, the Commission has the power to, *inter alia*

6.1. investigate and to report on the observance of human rights; and

6.2. take steps to secure appropriate redress where human rights have been violated.

7. We wish to bring to your attention section 4 of the South African Human Rights Commission Act 40 of 2013 (SAHRC Act) that imposes obligations on all organs of state, its members and employees namely -

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*(3) No organ of state and no member or employee of an organ of state **nor any other person** shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 5(1) or 16(1) or (6) in the exercise or performance of its, his or her powers, duties and functions....”*

8. Furthermore, the Commission is empowered in terms of section 13(3)(b) of the SAHRC Act to bring proceedings in a competent court (in its own name or on behalf of a person or a group or class of persons) to secure appropriate redress in accordance with its Constitutional mandate.

9. In addition, the Commission is empowered by the provisions of sections 15 and 16 respectively of the SAHRC Act to call any persons to appear before it and produce documentation relevant to an investigation of an alleged human rights violation or to enter premises and search and seize any documents or items relevant to such an investigation.

10. In accordance with its aforementioned Constitutional and statutory powers, the Commission kindly requests the following –

10.1. A comprehensive list of all schools in the Province setting out the information as per the Commission’s letter dated 14 May 2021.

10.2. An action plan with clear and urgent timelines for:

10.2.1. the provision of sufficient water and sanitation facilities to the relevant schools mentioned in paragraph 4 above that meet the minimum requirements set out in the Norms and Standards.

10.2.2. the upgrading of water and sanitation facilities where necessary in all other schools in the Province in order to meet the minimum standards outlined in the Norms and Standards, including the replacement of pit latrines with other

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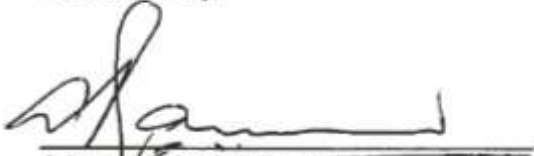
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Commissioners (Part-Time): A C Nissen, J B Sibanyoni; **Chief Executive Officer:** T Thipanyane

- acceptable forms of sanitation in accordance with the Norms and Standards (where applicable).
- 10.2.3. the closing and securing of existent unsafe sanitation structures, including the closing and securing of pit latrines and other sanitation facilities no longer in use (where applicable).
 - 10.2.4. to the extent necessary, the provision of temporary measures to ensure access to sufficient, acceptable water and sanitation pending the finalisation of the State's plan to provide longer term water and sanitation infrastructure in all schools compliant with the Norms and Standards and its Constitutional obligations.
- 10.3. The plan referred to in paragraph 10.2 above should include:
- 10.3.1. details of the relevant implementing departments and agents.
 - 10.3.2. Costed work plans with targets in relation to each school that includes details of the nature and extent of the installations/ upgrades required for each school and timelines for completion of the identified targets. The timelines should take into account the urgent and pressing need to provide access to water and adequate sanitation to all schools, and where necessary a need to put in place temporary measures referred to in paragraph 10.1.4 above.
 - 10.3.3. details regarding necessary budgetary allocations / re-allocations to be made available for the installation and upgrades of necessary facilities in accordance with the plan.
 - 10.3.4. details of a maintenance plan for the upkeep of water and sanitation facilities.
- 10.4. The Commission further requests that your Office provide a progress report to the Commission on a monthly basis on progress made with the implementation of the action plan according to the timelines mentioned in the plan coupled with the necessary evidence of progressive implementation of the plan in accordance with the timelines set forward therein.
11. The Commission notes that in terms of Regulation 4(6)(a) of the Norms and Standards the Member of the Executive Council must annually provide the Minister with a detailed plan on the manner in which the norms and standards are to be implemented. Accordingly, a plan setting out the information requested by the Commission in para 10 above should already be in existence and may only need to be updated to reflect any closures of schools or the establishment of new schools / reflect any other necessary adjustments.
12. Given the urgency of this matter, and the potential impact that the lack of access to water and basic sanitation in schools has on an array of Constitutional rights of both learners and staff at the relevant schools, including the right to life, the rights of the child, the right to basic education, right to dignity, right to sufficient water and the right to a clean environment, the Commission requires the provision of the requested plan on or before **29 October 2021**.

13. The Commission appreciates the cooperation and support it has enjoyed from your Office to date. It trusts that in the interests of the discharge of all our Constitutional duties that this matter will enjoy your prompt and full attention and that it will not be necessary for the Commission to resort to the use of its powers under section 13(3)(b) of the SAHRC Act.
14. The Commission looks forward to receiving your reply.

Yours faithfully,



Advocate André Gaum
Commissioner
South African Human Rights Commission

Cc: Minister Motshekga : mabua.s@dbe.gov.za

DG Mveli : Maake.N@dbe.gov.za

HOD: Dr Nzama : Nompumelelo.langa@kzndoe.gov.za

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Ref: 13/4/2/1/1

Date: 28 September 2021

The MEC for Education Limpopo: Ms Polly Boshielo

Department of Basic Education: Limpopo
Private Bag X9489
Polokwane
0700

Per Email: matlounj@edu.limpopo.gov.za ; mnisivv@edu.limpopo.gov.za
ndebelen@edu.limpopo.gov.za

Dear MEC, Honourable Boshielo

RE: WATER AND SANITATION INFRASTRUCTURE IN SCHOOLS FOR 2021 ACADEMIC YEAR

1. Our letter dated 14 May 2021 has reference.
2. In the aforementioned letter, the South African Human Rights Commission (Commission) requested a list, with updated information on the status of water and sanitation infrastructure for each of the schools in Limpopo.
3. The Commission sought this information, to assess the Province's compliance with the Regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure, gazetted by the Minister of Basic Education on 26 November 2013 (Norms and Standards). Further, the Commission sought this information to better understand the impact of COVID-19 on the right to basic education, *per* section 29(1)(a) of the Constitution of the Republic of South Africa (the Constitution).
4. The Limpopo Department of Education provided the Commission with data on the **source** of water at all schools in the province. This shows that *113 schools are without water* in Limpopo. The Department did not provide the **type of sanitation** at each school. This means that the Commission was unable to confirm the number of schools reliant on Pit Latrines in Limpopo.

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5. As the Commission has emphasised in its ongoing engagements with your Office on this issue, the Norms and Standards require that all schools must have a sufficient water supply in compliance with all relevant laws, inter alia, for drinking and personal hygiene and must provide sufficient, safe and hygienic sanitation facilities and set deadlines for compliance with the required norms and standards. These deadlines have long since passed. It is accordingly of grave concern to the Commission that several schools in Limpopo still do not have access to any water and/or any form of sanitation, in contravention not only of the Norms of Standards, but of several basic human rights.
6. In terms of section 184(2) of the Constitution, the Commission has the power to, *inter alia*
 - 6.1. investigate and to report on the observance of human rights; and
 - 6.2. take steps to secure appropriate redress where human rights have been violated.
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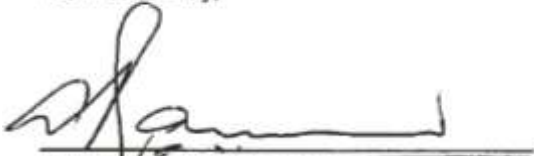
*(3) No organ of state and no member or employee of an organ of state **nor any other person** shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 5(1) or 16(1) or (6) in the exercise or performance of its, his or her powers, duties and functions....”*
8. Furthermore, the Commission is empowered in terms of section 13(3)(b) of the SAHRC Act to bring proceedings in a competent court (in its own name or on behalf of a person or a group or class of persons) to secure appropriate redress in accordance with its Constitutional mandate.
9. In addition, the Commission is empowered by the provisions of sections 15 and 16 respectively of the SAHRC Act to call any persons to appear before it and produce documentation relevant to an investigation of an alleged human rights violation or to enter premises and search and seize any documents or items relevant to such an investigation.
10. In accordance with its aforementioned Constitutional and statutory powers, the Commission kindly requests the following –
 - 10.1. A comprehensive list of all schools in the Province setting out the information as per the Commission’s letter dated 14 May 2021 which includes the type of sanitation at each school.

- 10.2. An action plan with clear and urgent timelines for:
- 10.2.1. the provision of sufficient water to the relevant schools mentioned in paragraph 4 above that meet the minimum requirements set out in the Norms and Standards.
 - 10.2.2. the upgrading of water and sanitation facilities where necessary in all other schools in the Province in order to meet the minimum standards outlined in the Norms and Standards, including the replacement of pit latrines with other acceptable forms of sanitation in accordance with the Norms and Standards (where applicable).
 - 10.2.3. the closing and securing of existent unsafe sanitation structures, including the closing and securing of pit latrines and other sanitation facilities no longer in use (where applicable).
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 - 10.3.3. details regarding necessary budgetary allocations / re-allocations to be made available for the installation and upgrades of necessary facilities in accordance with the plan.
 - 10.3.4. details of a maintenance plan for the upkeep of water and sanitation facilities.
- 10.4. The Commission further requests that your Office provide a progress report to the Commission on a monthly basis on progress made with the implementation of the action plan according to the timelines mentioned in the plan coupled with the necessary evidence of progressive implementation of the plan in accordance with the timelines set forward therein.
11. The Commission notes that in terms of Regulation 4(6)(a) of the Norms and Standards the Member of the Executive Council must annually provide the Minister

with a detailed plan on the manner in which the norms and standards are to be implemented. Accordingly, a plan setting out the information requested by the Commission in para 10 above should already be in existence and may only need to be updated to reflect any closures of schools or the establishment of new schools / reflect any other necessary adjustments.

12. Given the urgency of this matter, and the potential impact that the lack of access to water and basic sanitation in schools has on an array of Constitutional rights of both learners and staff at the relevant schools, including the right to life, the rights of the child, the right to basic education, right to dignity, right to sufficient water and the right to a clean environment, the Commission requires the provision of the requested plan on or before **29 October 2021**.
13. The Commission appreciates the cooperation and support it has enjoyed from your Office to date. It trusts that in the interests of the discharge of all our Constitutional duties that this matter will enjoy your prompt and full attention and that it will not be necessary for the Commission to resort to the use of its powers under section 13(3)(b) of the SAHRC Act.
14. The Commission looks forward to receiving your reply.

Yours faithfully,



Advocate André Gaum
Commissioner
South African Human Rights Commission

Cc: Minister Motshekga : mabua.s@dbe.gov.za

DG Mveli : Maake.N@dbe.gov.za

HOD: Ms Onica Dereren : mnisivv@edu.limpopo.gov.za

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Ref: 13/4/2/1/1

Date: 27 September 2021

The MEC for Education Mpumalanga: Mr Bonakele Majuba

Department of Basic Education: Mpumalanga

Private Bag X 11341

Nelspruit,

1200

Per Email: c.mbhalati@mpuedu.gov.za; p.moosa@mpuedu.gov.za

Dear MEC, Honourable Majuba

**RE: WATER AND SANITATION INFRASTRUCTURE IN SCHOOLS FOR 2021
ACADEMIC YEAR**

1. Our letter dated 14 May 2021 has reference.
2. In the aforementioned letter, the South African Human Rights Commission (Commission) requested a list, with updated information on the status of water and sanitation infrastructure for each of the schools in Mpumalanga Province.
3. The Commission sought this information, to assess the Province's compliance with the Regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure, gazetted by the Minister of Basic Education on 26 November 2013 (Norms and Standards). Further, the Commission sought this information to better understand the impact of COVID-19 on the right to basic education, *per* section 29(1)(a) of the Constitution of the Republic of South Africa (the Constitution).
4. Having processed the information provided to the Commission by your Office, it became apparent that *59 schools are using pit latrines* in Mpumalanga Province.
5. As the Commission has emphasised in its ongoing engagements with your Office on this issue, the Norms and Standards require that all schools must have a sufficient water supply in compliance with all relevant laws, inter alia, for drinking and personal

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hygiene and must provide sufficient, safe and hygienic sanitation facilities and set deadlines for compliance with the required norms and standards. These deadlines have long since passed. It is accordingly of grave concern to the Commission that several schools in Mpumalanga Province still do not have access to any water and/or any form of sanitation, in contravention not only of the Norms of Standards, but of several basic human rights.

6. In terms of section 184(2) of the Constitution, the Commission has the power to, *inter alia*

6.1. investigate and to report on the observance of human rights; and

6.2. take steps to secure appropriate redress where human rights have been violated.

7. We wish to bring to your attention section 4 of the South African Human Rights Commission Act 40 of 2013 (SAHRC Act) that imposes obligations on all organs of state, its members and employees namely -

“4 Independence and impartiality

...

(3) *No organ of state and no member or employee of an organ of state **nor any other person** shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 5(1) or 16(1) or (6) in the exercise or performance of its, his or her powers, duties and functions....”*

8. Furthermore, the Commission is empowered in terms of section 13(3)(b) of the SAHRC Act to bring proceedings in a competent court (in its own name or on behalf of a person or a group or class of persons) to secure appropriate redress in accordance with its Constitutional mandate.

9. In addition, the Commission is empowered by the provisions of sections 15 and 16 respectively of the SAHRC Act to call any persons to appear before it and produce documentation relevant to an investigation of an alleged human rights violation or to enter premises and search and seize any documents or items relevant to such an investigation.

10. In accordance with its aforementioned Constitutional and statutory powers, the Commission kindly requests the following –

10.1. An action plan with clear and urgent timelines for:

10.1.1. the provision of sufficient water and sanitation facilities to the relevant schools mentioned in paragraph 4 above that meet the minimum requirements set out in the Norms and Standards.


10.1.2. the upgrading of water and sanitation facilities where necessary in all other schools in the Province in order to meet the minimum standards outlined in the Norms and Standards, including the replacement of pit latrines with other acceptable forms of sanitation in accordance with the Norms and Standards (where applicable).

- 10.1.3. the closing and securing of existent unsafe sanitation structures, including the closing and securing of pit latrines and other sanitation facilities no longer in use (where applicable).
- 10.1.4. to the extent necessary, the provision of temporary measures to ensure access to sufficient, acceptable water and sanitation pending the finalisation of the State's plan to provide longer term water and sanitation infrastructure in all schools compliant with the Norms and Standards and its Constitutional obligations.
- 10.2. The plan referred to in paragraph 10.1 above should include:
 - 10.2.1. details of the relevant implementing departments and agents.
 - 10.2.2. Costed work plans with targets in relation to each school that includes details of the nature and extent of the installations/ upgrades required for each school and timelines for completion of the identified targets. The timelines should take into account the urgent and pressing need to provide access to water and adequate sanitation to all schools, and where necessary a need to put in place temporary measures referred to in paragraph 10.1.4 above.
 - 10.2.3. details regarding necessary budgetary allocations / re-allocations to be made available for the installation and upgrades of necessary facilities in accordance with the plan.
 - 10.2.4. details of a maintenance plan for the upkeep of water and sanitation facilities.
- 10.3. The Commission further requests that your Office provide a progress report to the Commission on a monthly basis on progress made with the implementation of the action plan according to the timelines mentioned in the plan coupled with the necessary evidence of progressive implementation of the plan in accordance with the timelines set forward therein.
11. The Commission notes that in terms of Regulation 4(6)(a) of the Norms and Standards the Member of the Executive Council must annually provide the Minister with a detailed plan on the manner in which the norms and standards are to be implemented. Accordingly, a plan setting out the information requested by the Commission in para 10 above should already be in existence and may only need to be updated to reflect any closures of schools or the establishment of new schools / reflect any other necessary adjustments.
12. Given the urgency of this matter, and the potential impact that the lack of access to water and basic sanitation in schools has on an array of Constitutional rights of both learners and staff at the relevant schools, including the right to life, the rights of the child, the right to basic education, right to dignity, right to sufficient water and the right to a clean environment, the Commission requires the provision of the requested plan on or before **29 October 2021**.
13. The Commission appreciates the cooperation and support it has enjoyed from your Office to date. It trusts that in the interests of the discharge of all our Constitutional duties that this matter will enjoy your prompt and full attention and that it will not be

necessary for the Commission to resort to the use of its powers under section 13(3)(b) of the SAHRC Act.

14. The Commission looks forward to receiving your reply.

Yours faithfully,



Advocate André Gaum
Commissioner
South African Human Rights Commission

Cc: Minister Motshekga : mabua.s@dbe.gov.za

DG Mveli : Maake.N@dbe.gov.za

Acting HOD: Mr Mnisi : andriesmnisi34@gmail.com ; ge.sibiya@mpuedu.gov.za

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

27 Stiemens Street

Private Bag X

Tel.: 011 877 3600

Braamfontein
2017

Houghton
2041



Ref: 13/4/2/1/1

Date: 28 September 2021

The MEC for Education North West :Ms Wendy Matsemela

Department of Basic Education: North West Province
Private Bag X2044
Mmabatho
2735

Per Email: isesing@nwpg.gov.za

Dear MEC, Honourable Matsemela

RE: WATER AND SANITATION INFRASTRUCTURE IN SCHOOLS FOR 2021 ACADEMIC YEAR

1. Our letter dated 14 May 2021 has reference.
2. In the aforementioned letter, the South African Human Rights Commission (Commission) requested a list, with updated information on the status of water and sanitation infrastructure for each of the schools in North West Province.
3. The Commission sought this information, to assess the Province's compliance with the Regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure, gazetted by the Minister of Basic Education on 26 November 2013 (Norms and Standards). Further, the Commission sought this information to better understand the impact of COVID-19 on the right to basic education, *per* section 29(1)(a) of the Constitution of the Republic of South Africa (the Constitution).
4. The North West Department of Education provided the information requested but for only 604 of the 1448 schools in the province. This information indicates that *9 schools are without water; 44 schools have no form of sanitation and 19 schools use pit latrines* in the North West Province.
5. As the Commission has emphasised in its ongoing engagements with your Office on this issue, the Norms and Standards require that all schools must have a sufficient water supply in compliance with all relevant laws, inter alia, for drinking and personal hygiene and must provide sufficient, safe and hygienic sanitation facilities and set deadlines for compliance with the required norms and standards. These deadlines

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have long since passed. It is accordingly of grave concern to the Commission that several schools in the North West Province still do not have access to any water and/or any form of sanitation, in contravention not only of the Norms of Standards, but of several basic human rights.

6. In terms of section 184(2) of the Constitution, the Commission has the power to, *inter alia*

6.1. investigate and to report on the observance of human rights; and

6.2. take steps to secure appropriate redress where human rights have been violated.

7. We wish to bring to your attention section 4 of the South African Human Rights Commission Act 40 of 2013 (SAHRC Act) that imposes obligations on all organs of state, its members and employees namely -

“4 Independence and impartiality

...

*(3) No organ of state and no member or employee of an organ of state **nor any other person** shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 5(1) or 16(1) or (6) in the exercise or performance of its, his or her powers, duties and functions....”*

8. Furthermore, the Commission is empowered in terms of section 13(3)(b) of the SAHRC Act to bring proceedings in a competent court (in its own name or on behalf of a person or a group or class of persons) to secure appropriate redress in accordance with its Constitutional mandate.

9. In addition, the Commission is empowered by the provisions of sections 15 and 16 respectively of the SAHRC Act to call any persons to appear before it and produce documentation relevant to an investigation of an alleged human rights violation or to enter premises and search and seize any documents or items relevant to such an investigation.

10. In accordance with its aforementioned Constitutional and statutory powers, the Commission kindly requests the following –

10.1. A comprehensive list of **all** schools in the Province setting out the information as per the Commission’s letter dated 14 May 2021.

10.2. An action plan with clear and urgent timelines for:

10.2.1. the provision of sufficient water and sanitation facilities to all schools in the province to meet the minimum requirements set out in the Norms and Standards.


10.2.2. the upgrading of water and sanitation facilities where necessary in all other schools in the Province in order to meet the minimum standards outlined in the Norms and Standards, including the replacement of pit latrines with other acceptable forms of sanitation in accordance with the Norms and Standards (where applicable).

- 10.2.3. the closing and securing of existent unsafe sanitation structures, including the closing and securing of pit latrines and other sanitation facilities no longer in use (where applicable).
- 10.2.4. to the extent necessary, the provision of temporary measures to ensure access to sufficient, acceptable water and sanitation pending the finalisation of the State's plan to provide longer term water and sanitation infrastructure in all schools compliant with the Norms and Standards and its Constitutional obligations.
- 10.3. The plan referred to in paragraph 10.1 above should include:
 - 10.3.1. details of the relevant implementing departments and agents.
 - 10.3.2. Costed work plans with targets in relation to each school that includes details of the nature and extent of the installations/ upgrades required for each school and timelines for completion of the identified targets. The timelines should take into account the urgent and pressing need to provide access to water and adequate sanitation to all schools, and where necessary a need to put in place temporary measures referred to in paragraph 10.1.4 above.
 - 10.3.3. details regarding necessary budgetary allocations / re-allocations to be made available for the installation and upgrades of necessary facilities in accordance with the plan.
 - 10.3.4. details of a maintenance plan for the upkeep of water and sanitation facilities.
- 10.4. The Commission further requests that your Office provide a progress report to the Commission on a monthly basis on progress made with the implementation of the action plan according to the timelines mentioned in the plan coupled with the necessary evidence of progressive implementation of the plan in accordance with the timelines set forward therein.
11. The Commission notes that in terms of Regulation 4(6)(a) of the Norms and Standards the Member of the Executive Council must annually provide the Minister with a detailed plan on the manner in which the norms and standards are to be implemented. Accordingly, a plan setting out the information requested by the Commission in para 10 above should already be in existence and may only need to be updated to reflect any closures of schools or the establishment of new schools / reflect any other necessary adjustments.
12. Given the urgency of this matter, and the potential impact that the lack of access to water and basic sanitation in schools has on an array of Constitutional rights of both learners and staff at the relevant schools, including the right to life, the rights of the child, the right to basic education, right to dignity, right to sufficient water and the right to a clean environment, the Commission requires the provision of the requested plan on or before **29 October 2021**.
13. The Commission appreciates the cooperation and support it has enjoyed from your Office to date. It trusts that in the interests of the discharge of all our Constitutional duties that this matter will enjoy your prompt and full attention and that it will not be

necessary for the Commission to resort to the use of its powers under section 13(3)(b) of the SAHRC Act.

14. The Commission looks forward to receiving your reply.

Yours faithfully,



Advocate André Gaum
Commissioner
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HOD: Ms Semaswe: ssemaswe@nwpg.gov.za