
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO. 50 OF 2009/10

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE EASTERN CAPE PROVINCIAL DEPARTMENT OF EDUCATION TO PROVIDE ADDITIONAL CLASSROOMS AND TOILET STRUCTURES FOR NTEKELELO JUNIOR SECONDARY SCHOOL.
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Executive Summary

(i) The Public Protector investigated allegations of failure by the Eastern Cape Provincial Department of Education (ECDoE) to provide additional classrooms and toilet structures for use by learners at Ntekelelo Junior Secondary School, Ekunene Village, Mqanduli Administrative Area, Mthatha Region, Eastern Cape Province.

(ii) The following findings were made that:

(a) The environment in which classes are conducted is not conducive to learning;

(b) The non availability of the staff room and the office of the principal are not conducive to teaching and the administration of the school; and

(c) The toilet structure of the school is inadequate, taking into account 581 learners and 14 teachers in the school.

(iii) The view of the ECDoE was that the School was not in list of district priorities of that particular financial year and thus the matter is being referred back to the District Office for further investigation and prioritisation.

(iii) The Public Protector was not satisfied with the responses of the ECDoE and was of the view that remedial action should be taken by the ECDoE to:

(a) consider building additional classrooms as that will address the challenges of overcrowding and maintenance of a proper learning environment;

(b) as an urgent interim measure, to consider the construction of temporary classrooms, office of the principal as well as staff room;
(c) consider making arrangements for additional tanks to supply water at
the said school; and

(c) consider as a matter of extreme urgency, the provision of temporary
toilet structures in order to avoid a possible outbreak of diseases.

(iv) However, it came to the Public Protector's attention that there were
significant developments on National and Provincial level within the
Department of Basic Education (DoE) through the drafting of a National
Policy for an Equitable Provision on an Enabling School Physical Teaching
and Learning Environment (National Policy), and the publication of National
Minimum Norms and Standards for School Infrastructure (Minimum Norms
and Standards). These draft policies have been approved by the Council of
Education Ministers and the Heads of Education Committee and are awaiting
the concurrence of the Minister of Finance for finalisation. Once adopted, all
provinces will have aligned their provision programs to national norms and
standards and set targets.

(v) After the Public Protector's investigation into the complaints in this matter had
already been concluded, the Eastern Cape Provincial Department of
Education (ECDoe) released a discussion paper is to "provide an overview of
infrastructure management within the context of the Eastern Cape
Department of Education and its obligation to provide facilities for the
learners of the Province. The paper dealt with infrastructure planning and
delivery, the logistical arrangements required to manage this in terms of best
practice and legislative requirements, and some of the major challenges
facing the ECDoe in this regard.

(vi) The Public Protector subsequently, re-engaged the ECDoe, based on its
statements of intent and its public commitment to the Infrastructure Delivery
Improvement Programme, to determine if the Ntekelelo Junior Secondary
School was part of the Departmental Infrastructure Development
Plan, if it is part of the current project lists, and if not, how could the complaint be addressed as promptly as possible in view of the fact that it takes an estimated period of 2 years between identification and the commencement of construction.

(vii) The Infrastructure Chief Directorate of the ECDoe responded positively to the Public Protector’s recent engagement and advised that while Departmental funds had already been committed to other projects in terms of its iDIP, they are supported by a number of external stakeholders and donors who are able to supplement activities and projects to escalate certain matters and to identify additional deserving projects. The ECDoe will therefore take this matter forward by including the Ntekelelo Junior Secondary School in its list of priority projects that will be considered for infrastructure improvement by means of donor funding.

(viii) The Chief Directorate undertook to confirm its undertaking in writing to the Public Protector in consultation with the Accounting Officer of the ECDoe.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE
EASTERN CAPE PROVINCIAL DEPARTMENT OF EDUCATION TO PROVIDE
ADDITIONAL CLASSROOMS AND TOILET STRUCTURES FOR NTEKELELO
JUNIOR SECONDARY SCHOOL

1. INTRODUCTION

1.1 This report is submitted to Mr Khathazile (the Complainant).

1.2 This report is also submitted to the Member of the Executive Council
responsible for Education in the Eastern Cape Province and the
Superintendent General of the Department of Education in the Eastern
Cape Province in terms of section 182(1)(b) of the Constitution of the
Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public

1.3 It relates to an investigation by the Public Protector into allegations of
failure by the Eastern Cape Provincial Department of Education (ECDoE)
to provide additional classrooms and toilet structures at Ntekelelo Junior
Secondary School, Ekunene Village, Mqanduli Administrative Area,
Mthatha Region, Eastern Cape.

2. THE COMPLAINT

2.1 The Complainant, Mr S Khathazile, a member of the School Governing
Body at Ntekelelo Junior Secondary School, (School), approached the
Public Protector in December 2006 through the Mqanduli Advice Office
with a complaint that:

2.1.1 The school is a mud structure and the ECDoE has failed to provide
additional classrooms and toilet structures in spite of numerous requests
by the community of Ekunene Village
2.1.2 The School Governing Body reported the condition of the School to the District Director, but to nothing was done; and

2.1.3 The condition of some of the buildings in which learning is conducted is bad and poses a potential danger to both the teachers and learners.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

3.1 The Public Protector was established in terms of section 181(1) of the Constitution as one of the institutions that strengthen constitutional democracy.

3.2 In terms of section 182 of the Constitution and section 6(4) of the Public Protector Act, the Public Protector is empowered to investigate any conduct in state affairs, or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in an impropriety or prejudice, and to report on that conduct and to take appropriate remedial action.

3.3 Improper conduct includes allegations of mal-administration, the abuse or unjustifiable exercise of power, an improper or dishonest act with respect to public monies, improper or unlawful enrichment, improper prejudice or complaints of undue delay.

3.4 The Public Protector has the jurisdiction to investigate the conduct of the Department complained against.
4. THE INVESTIGATION

4.1 The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act, 1994 and comprised:

4.1.1 Correspondence with the department.

4.1.1.1 On the 22 January 2007 and 7 March 2007, correspondence was addressed to the District Manager and the Superintendent General of the ECDoE respectively, wherein they were apprised of the complaint lodged by the complainant, calling upon them to conduct an investigation of the matter and to furnish the Public Protector with their reports.

4.1.1.2 Despite numerous reminders, no response was received.

4.1.2 Consideration of the relevant legislation, the Constitution and South African Schools Act, 1996;

4.1.2.1 The Constitution, 1996

Section 29 provides that:

(1) Everyone has the right-
(a) to a basic education, including adult basic education and
(b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

4.1.2.2 South African Schools Act, 1996

4.1.2.2.1 Section 3 makes provisions for compulsory attendance.
“(3) Every Member of the Executive Council must ensure that there are enough school places so that every child who lives in his or her province can attend school as required by subsection (1) and (2).

(4) If a Member of the Executive Council cannot comply with subsection (3) because of lack of capacity existing at the date of commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the Minister on the progress achieved in doing so.”

4.1.2.2.2 Section 5A makes provisions for norms and standards for basic infrastructure and capacity in public schools.

“(1) The Minister may, after consultation with the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for-
(a) school infrastructure
(b) capacity of a school in respect of the number of learners a school can admit.”

4.1.2.2.3 The norms and standard contemplated in subsection (1) must provide for, but not be limited to, the following:
(a) in respect of school infrastructure, the availability of-
(i) classrooms
(ii) sanitation
(b) in respect of the capacity of a school-
(i) classroom size”

4.1.3 On site inspection

4.1.3.1 On the 25 February 2008, an inspection of the School was conducted and the following observations were made:
4.1.3.1.1 The School starts from grade R up to grade 9;

4.1.3.1.2 The School records that were provided by the School principal reflected a total attendance of 581 learners;

4.1.3.1.3 The School has two permanent buildings built with a face bricks;

4.1.3.1.4 One of the two buildings consists of four classes which accommodate grades 1, 6, 8 and 9 and the other building consists of two classes which accommodate grade R and 7;

4.1.3.1.5 The School also has three mud structured separate rondavels all of which serve as classrooms accommodating grade 4 and 5, however the third rondavel is defective in that there is no properly constructed roof, no windows and no doors but it is used as a classroom;

4.1.3.1.6 There is no staff room and the office for the principal;

4.1.3.1.7 Grades 2 and 3 have no classes and therefore learning is conducted outside the classrooms;

4.1.3.1.8 The School has one separate building built with face brick which serves as a toilet for both learners and teachers; and

4.1.3.1.9 Photographs of the school buildings and toilet structure were taken.
Photograph 1: The above picture shows the two permanent buildings built with face bricks.
Photograph 2: The above picture shows the first and second mud structured rondavels.

Photograph 3: The above picture shows the third rondavel that has a defective structure.
Photograph 4: The above picture shows the toilet structure.

4.1.4 Interviews with the School governing body, School principal and community members

4.1.4.1 Interviews conducted with the School Governing Body, Principal and community members revealed that the three rondavels at the School were built through the efforts of the community and that learners whose classes are conducted outside the classrooms and who are exposed to the activities taking place in the nearby community have to be accommodated in the other classrooms during rainy weather.

4.1.4.2 This invariably culminates in overcrowding which in turn results in a learning environment which is not conducive.
4.1.5  **Response from the Department**

4.1.5.1 A further communication addressed to the ECDoE, which enclosed photographs taken during the inspection in loco, observations made and responses received in the course of interviews, elicited a response dated 28 August 2008 and which was as follows:

“Our records reveal that the school is not a mud structure but there is a mud structure that is being utilised as a classroom. As indicated in your correspondence the school is an overcrowded school which needs additional classrooms. The school is not in the current financial year’s list of district priorities and thus the matter is being referred back to them (District Office) for further investigation and prioritisation.”

4.1.6  **Further investigation**

4.1.6.1 On 05 March 2009, the Public Protector made enquiries from the school principal regarding condition of the buildings.

4.1.6.2 The school principal informed the Public Protector that the following changes have been made, namely:

4.1.6.3 The number of learners has increased from 581 to 584;

4.1.6.4 Grades 4 and 5 have been combined to one of the classrooms in the building that consist of 4 classrooms;

4.1.6.5 Grades 7 and 8 have also been combined to one of the classrooms in the building that consists of 4 classrooms;

4.1.6.6 The school principal further indicated that there had been no action from the side of the Department;
4.1.6.7 Further correspondence was addressed to the then Superintendent General of the department on the 06 March 2009 giving him a copy of the draft report of the Public Protector and drawn his attention to our recommendations and there was no response.

4.1.7 Further on site inspection

4.1.7.1 Another inspection was conducted on the 05 August 2009 and the following observations were made:

4.1.7.2 Rondavels in photograph number 2 above had become damaged due to bad weather conditions and their current condition is as depicted below:

Photograph 5: The above picture shows the outside damaged structure of the rondavel which is used as a classroom.
Photograph 6: The above picture shows the inside of the damaged structure of the rondavel in photograph 5 above.

4.1.7.3 The rondavel in photograph number 3 above is no longer used as a classroom, it is used as a cooking room for school nutrition.

4.1.7.4 The school, through the efforts of the community, is in the process of building a two room structure.
Photograph 7: The above photograph shows the two room structure that is being built.

4.1.7.5 The school has no electricity installation and the solar system that was used is no longer functioning.

4.1.7.6 The school has two tanks which contain water for drinking purposes and each tank has a capacity of 2500 litres.

4.1.7.7 The school has two play grounds, one for volley ball and one for netball. It is not possible for the school to have soccer and other play grounds because of the landscape.
5. EVALUATION OF FACTS AND EVIDENCE

5.1 When the complaint was lodged with the Public Protector, the complainant alleged that the School is a mud structure and it only had one toilet structure.

5.2 During a site inspection, it was discovered that the School has two permanent classroom structures built with face bricks, three mud structured rondavels which are used as classrooms and one building for the toilet structure.

5.3 Taking into account the number of learners against the number of the classrooms at the School, it was discovered that some of the classes are conducted outside the classrooms.

5.4 It was further discovered that during rainy weather conditions the learners conducting classes outside have to be accommodated in other classrooms, leading to overcrowding.

5.5 It was further discovered that learners conducting classes outside are exposed to the activities taking place in the nearby community and lessons are disturbed.

6. OBSERVATIONS AND FINDINGS

6.1 The following observations were made:

6.1.1 The School starts from grade R up to grade 9;
6.1.2 The School records that were provided by the School Principal reflected a total attendance of 581 learners;

6.1.3 The School has two permanent buildings built with face bricks;

6.1.4 One of the two buildings consists of four classes which accommodate grades 1, 6, 8 and 9 and the other building consists of two classes which accommodate grade R and 7;

6.1.5 The School also has three mud structured separate rondavels all of which serve as classrooms accommodating grade 4 and 5. However, the third rondavel is defective in that there is no properly constructed roof, no windows and no doors but it is used as a classroom;

6.1.6 There is no staff room and office for the principal;

6.1.7 Grades 2 and 3 have no classes and therefore learning is conducted outside the classrooms; and

6.1.8 The school has two water tanks for drinking water and each tank has a capacity of 2500 litres.

6.1.9 The school has no installation for electricity and the solar system that was used is no longer functioning.

6.1.10 The School has one separate building built with face brick which serves as a toilet for both learners and teachers;

7. THE FOLLOWING KEY FINDINGS WERE MADE

7.1 The environment in which classes are conducted is not conducive to learning, productive and optimal;
7.2 The non availability of a staff room and office of the principal are not conducive to teaching, and the administration of the school;

7.3 The water supply for the school is inadequate, taking into account 584 learners, and 14 teachers; and

7.4 The toilet structure of the school is inadequate, taking into account 581 learners, and 14 teachers in the school;

8. REMENDIAL ACTION TO BE TAKEN BY THE ECDGE

8.1 In view of the above observations and findings the remedial action to be taken in terms of section 182(1)(b)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, 1994 is that:

8.1.1 The Department should build additional classrooms as that will address the challenges of overcrowding and maintenance of a proper learning environment;

8.1.2 As an urgent interim measure, the Department should construct temporary classrooms, an office of the principal and a staff room;

8.1.3 The Department should make arrangements for additional tanks to supply water at the said school;

8.1.4 The Department should as a matter of extreme urgency, provide temporary toilet structures in order to avoid a possible outbreak of diseases; and

8.1.5 The teachers should be provided with a toilet/toilets of their own to protect their privacy and dignity.
9. SUBSEQUENT DEVELOPMENTS ON NATIONAL AND PROVINCIAL LEVEL: NATIONAL POLICY FOR AN EQUITABLE PROVISION OF AN ENABLING ENVIRONMENT FOR TEACHING AND LEARNING, ESTABLISHMENT OF NORMS AND STANDARDS FOR SCHOOL INFRASTRUCTURE AND THE PUBLICATION OF A DISCUSSION PAPER ON INFRASTRUCTURE BY THE ECDOE

9.1 National Education Infrastructure Management Systems Report 2009

9.1.1 The National Education Infrastructure Management Systems [NEIMS] Report 2009 outlines the continuing crisis that many schools in the country face. The report deals with the provision of electricity water; sanitation; libraries; laboratories; computer centres and sports facilities and provides the details of what is still required in order to ensure that school environments are conducive to achieving an improvement in learning outcomes.

9.1.2 According to NEIMS, of the 24 460 public ordinary schools:

9.1.2.1 3600 have no electricity supply, while a further 800 had an unreliable electricity supply, the largest number of these schools being in the Eastern Cape and Kwazulu-Natal);

9.1.2.2 2444 have no water supply, while a further 2563 have an unreliable water supply (the Eastern Cape and Kwazulu-Natal being the worst provinces);

9.1.2.3 only 7 847 have municipal flush toilets, while 970 still do not have any ablution facilities and 11 231 still use pit-latrine toilets;

9.1.2.4 Only 8% of public ordinary schools have stocked and functioning libraries;
9.1.2.5 10% of public ordinary schools have stocked computer centers; and

9.1.2.6 Only 5% of public ordinary schools have stocked laboratories.¹

9.1.3 Despite vast increases in budget allocations for school infrastructure over the last 14 years NEIMS still reflect a critical backlog. By its own admission, the progress made by the National Department of Education (DoE) has been “inadequate and uneven” and in circumstances where there is not a clear policy framework.

9.1.4 This seems to be the basis for the development of the National Policy for an Equitable Provision on an Enabling School Physical Teaching and Learning Environment (National Policy), and the National Minimum Norms and Standards for School Infrastructure (Minimum Norms and Standards). The Department of Education drafted and tabled the National Policy and the Minimum Norms and Standards, in November 2008, both of which were tabled in the Government Gazette, No. 31616, Notice 1438 and Notice 1439 (respectively) of 2008. These documents were tabled with a call for public comment.

9.2 National Policy for an Equitable Provision of an Enabling Environment for Teaching and Learning

9.2.1 There is sufficient international, regional and local research to demonstrate the causal connection between the level of resources and infrastructure that a school has, and its learner outcomes.² The significance of this correlation between school infrastructure and learner performance

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¹ Taken from Submission to Portfolio Committee on Basic Education – Comments on How to Improve Basic Education: from Equal Education 26 February 2010

² National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment, Government Gazette, Number 31616, Notice 1438 of 2008, Executive Summary, para 1.5, pg 7

³ Equal Education: Submission to Portfolio Committee on Basic Education – Comments on How to Improve Basic Education: 28 February 2010
becomes even more crucial when one considers the historically inherited inequalities in South Africa’s education system, which are exceedingly high compared to all other countries included in the SACMEQ II report. “South Africa has by far the highest recorded values”.4

9.2.2 The National Policy was drafted after consultation with the Council of Education Ministers in terms of s 3(4) of the National Education Policy Act, 27 of 1996. In its Executive Summary, this draft policy document emphasised the link between “the physical environment learners are taught [sic], and teaching and learning effectiveness, as well as student learning outcomes.”5 The Policy reflects in detail on the detrimental effects of poor physical learning environment and the positive implications of a good physical learning environment, all of which is based on ‘recent studies.’ The draft National Policy also notes the current “deplorable school infrastructural landscape and lack of efficient progress in addressing this”.

9.2.3 Furthermore, the draft National Policy correctly highlights that without a clear policy framework there is a clear risk that:

“...more resources may be invested without a clear definition of what constitutes an enabling physical teaching and learning environment in South Africa’s schools of the future, without clear benchmarking of progress toward the attainment of that environment, and without clear monitoring of the impact of that environment on the attainment of our core sector policy targets and outcomes.”6

9.2.4 The National Policy provides that:

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5 National Policy for an Equitable Provision of an Enabling Environment for Teaching and Learning. Executive Summary, pg 7, paragraph 1.2

6 Ibid. at paragraph 1.7
"Effectively from 2008, norms and standards for the physical teaching and learning environment will be set at the national level by the Department of Education. National Norms and Standards will (be) set and express in terms of minimum and optimum provision. Along this continuum, norms and standards for school safety, functionality, effectiveness and enrichment will be explicitly defined at a national level by the Department of Education. The DoE will also set clear target dates by which a set proportion of schools will meet each level of enablement in its environment. The DoE will also set a clear date by which all South African schools will meet norms and standards for effectiveness. National norms and standards will be developed during 2008, and fully adopted by the end of 2009. Effective from January 2010, all provinces will have aligned their provision programs to national norms and standards and set targets. (own emphasis)

9.3 National Minimum Norms and Standards for School Infrastructure

9.3.1 The draft Minimum Norms and Standards were published for comments on 21 November 2008 in terms of section 5A of the South African School Act, 1996. The norms and standards provide a clear classification of schools and a minimum and optimum package that constitutes a functional and an effective school.

9.3.2 The proposed norms and standards deal with the classification of school types, capacity of a school, space norm per learner, classroom size, school site size and location, accommodation spaces required by school type, norms and standards for sports facilities as well as norms and standards for basic services.

9.3.3 On implementation, the DoE said the minimum norms and standards will ensure equity in the provision of the physical teaching and learning environment, facilitate quality of the teaching and learning environment
and the consequent impact on learning outcomes and facilitate efficient use of resources. The DoE will set up a specialist unit to focus on the efficient and effective delivery.

9.3.4 Schools will be classified as meeting norms and standards of safety, functionality and effectiveness. During strategic planning, the DoE will determine a target date by which schools will meet each level of provisioning. Schools that do not meet safety norms by 2012 “will not be tolerated and will be closed with immediate effect. Safety norms and standards are therefore regarded as emergency norms and all efforts will be made to not have any school at this level beyond the current sector strategy plan period (2012)”.

9.3.5 The DoE will oversee and ensure effective implementation and compliance with the norms and standards as well as the assessment of their intended impact and outcomes. In this regard, the DoE will assess its delivery capacity and that of the Provinces to develop a “capacity development program to be implemented alongside the implementation of the norms and standards”. A Key part of the capacity strengthening initiatives will entail the establishment of a new unit dedicated to the provisioning of elements of physical teaching and learning environment. The Unit will report directly to the Director General. “Provinces will implement the norms and standards”, and “... may adapt national norms and standards to their specific context within parameters set by the DoE”.

9.3.6 Minister of Basic Education, Minister Angie Motshekga, recently stated in Parliament that the “[n]orms and standards for physical infrastructure (were) approved by the Council of Education Ministers and the Heads of

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7 National Minimum Norms and Standards for School Infrastructure, Government Gazette, Number 31615, Notice 1438 of 2008
Education Committee in 2008... (and) are awaiting the concurrence of the Minister of Finance for finalisation.\textsuperscript{8}

9.4 ECDoe Discussion Paper on Infrastructure

9.4.1 After the Public Protector’s investigation into the complaints in this matter had already been concluded, the ECDoe released a discussion paper is to "provide an overview of infrastructure management within the context of the Eastern Cape Department of Education and its obligation to provide facilities for the learners of the Province. The paper intends to present the unique aspects of infrastructure planning and delivery, the logistical arrangements required to manage this (in terms of best practice and legislative requirements), and some of the major challenges facing the Department in this regard."\textsuperscript{9} (own emphasis)

9.4.2 According to the Discussion Paper the ECDoe’s infrastructure delivery programme has suffered a number of setbacks since 1995. "These have usually been as a result of unfortunate budget cuts, but the most recent disruption (2007 – 2008) was due to a management decision on the delivery model (which has since been reversed)". The infrastructure unit has also been grossly understaffed, a situation that has grown steadily worse over the past few years. Only a few years ago the ECDoe was acknowledged nationally as a leader in the field of infrastructure delivery, for its record of expenditure and the number of leading edge initiatives it had introduced. "Unfortunately this has changed to such an extent (over a period of only some 2 years) that the Department now lags behind most provinces".

9.4.3 The ECDoe currently has 5788 public ordinary schools in the Province, which serve approximately 2.17 million learners. These are

\textsuperscript{8} In response to an Internal Question Paper 12-2009, Question 1418, on the 25 September 2009,

\textsuperscript{9} Discussion Paper on Infrastructure: http://www.ecdoe.gov.za/
accommodated in 54,501 classrooms. The condition of these facilities is set out in the table below.

<table>
<thead>
<tr>
<th>Condition of Classrooms</th>
<th>Number of Schools</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Weak</td>
<td>1030</td>
<td>18%</td>
</tr>
<tr>
<td>Weak</td>
<td>1620</td>
<td>28%</td>
</tr>
<tr>
<td>In Need of Repair</td>
<td>2141</td>
<td>37%</td>
</tr>
<tr>
<td>Good Condition</td>
<td>637</td>
<td>11%</td>
</tr>
<tr>
<td>New Building</td>
<td>276</td>
<td>5%</td>
</tr>
<tr>
<td>Being Upgraded</td>
<td>84</td>
<td>1%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>5788</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

9.4.4 The ECDoE conducted an analysis of the number of learners with insufficient access to the desired level of service, and the cost of providing facilities to this level:

9.4.4.1 Facilities Backlog Cost

The facilities backlog cost is based on providing facilities in accordance with the norms and standards of the Department. When this backlog is quantified using prevailing building costs, it yields a backlog cost of some R23,4bn.

9.4.4.2 Upgrade Cost

In this case, “upgrading” refers to the replacement of an existing facility where its condition is such that it is no longer considered functional or economically repairable, eg: mud structure schools/classrooms. Also included, are the costs of providing services such as electricity, water supply or fencing if these are not provided at an existing facility. The total cost of upgrading (replacing) such facilities are estimated at R1,5bn.
9.4.4.3 Repair Cost

This estimate is based on the condition rating of the buildings. This comes from the EFMS database, the data of which was captured during condition assessments that were undertaken in 2003, and escalated to today’s costs. The current repair (reinstatement) cost is very approximately estimated at R3,6bn.

9.4.4.4 Total Backlog Cost

The total backlog cost (sum of the above) thus amounts to R28,5bn at current day rates.

9.4.5 The ECDoe confirmed that its infrastructure budgets have increased substantially over the past number of years, with the current (2009/10) budget being R981m. It emphasises that while these budgets are “hopelessly inadequate to eradicate the backlogs in the province ... however, of greater concern is the reliability of the indicative budgets.” For example, the indicative budget 2009/10 in the previous MTEF periods for was R 1 299m, but only months before the start of the financial year it was cut by over R300m. “This is a major problem as by that time the funds were already committed. Reliability of indicative budgets is crucial for effective infrastructure delivery.”

9.4.6 To eliminate the backlogs as described above within a reasonable timeframe “will require a quantum step up from existing budget levels.” To illustrate this, the required budgets to eliminate the current backlogs over a 10 year period are shown graphically in the figure below. “The graph above clearly shows that annual budgets in the order of R6bn would be required for a number of years to eliminate the backlogs”
9.4.7 While the budget cycle is annual but covers a 3 year MTEF period each year, the infrastructure cycle covers a much longer period. "It includes a large number of activities, as are shown later herein, and many of these must meet legislative requirements (such as the Division of Revenue Act) and go through legislated processes (such as Supply Chain Management). These stages are ... shown graphically in the diagram" and include the Infrastructure Plan(IP), Infrastructure Programme Management Plan (IPMP) Infrastructure Programme Implementation Plan (IPIP), which must all be submitted to Treasury in the preceding financial year.
9.4.8 The ECDoe emphasised in the Discussion Document that infrastructure planning constitutes a significant amount of work. "In fact the very first step, that of drafting a master list of projects is in itself a protracted process. It involves extensive consultations with the Districts and other sections within the Department, as well as external stakeholders. This process usually takes months to complete. Once site assessments have been done there are often numerous adjustments required to the scope of work, and often the projects themselves, as the actual conditions on site may differ from those in databases". The timeframes involved are in the order of 6 months for all the planning activities, and a further 10 months for design and procurement, thus a total of 16 months (and often longer) before construction can commence on a particular project.
9.4.10 According to the ECDoe, there are extensive consultations required before the project list can be signed off. This involves drawing up a master list based on prioritization criteria set by the Department, which are in turn based on strategic imperatives. The projects thus identified need to be confirmed by the Districts and other stakeholders, before endorsement by the Head of Department and MEC. The criteria used and the basis for identifying new projects must be transparent to ensure universal support for the project list. This is of paramount importance. “However, the process is time consuming, and should therefore be done well in advance of implementation to avoid delays. Beneficiaries therefore need to realize that there is a significant time period (up to 2 years) between project identification and commencement of construction. This is a reality of infrastructure delivery, and is a consequence of the unique attributes of each project, the nature of the building industry, and the obligations of meeting legislative requirements.” (own emphasis).
9.4.12.4 Scholar transport

Scholar transport is employed to link learner demand with the supply of learning space, thus complementing the infrastructure programme by utilizing learning space more effectively.

9.4.12.5 Maintenance pressures

The Department has an obligation to maintain all its assets in a condition that render them fit for their intended purpose. As stated earlier the industry norm of budgeting 2% of replacement value annually for maintenance would mean that 80% of the current annual budget should be utilized for maintenance, not even to mention the maintenance backlog.

9.4.12.6 Monitoring & evaluation

Due largely to the current lack of capacity, the aspects of monitoring, evaluation and research do not receive the attention they require.

10. RE-ENGAGEMENT WITH THE INFRASTRUCTURE CHIEF DIRECTORATE OF THE ECDOE

10.1 In view of the policy developments and commitments by the DoE and the ECDoe on National and Provincial Level, the Public Protector recently approached the Infrastructure Chief Directorate of the ECDoe (the Chief Directorate) again to determine if the Ntekelelo Junior Secondary School is part of the Departmental Infrastructure Development Plan, if it is part of the current project lists. If not, how could the complaint be addressed as promptly as possible in view of the fact that it takes an estimated period of 2 years between identification and the commencement of construction.
10.2 The Public Protector was mindful of the fact that projects have already been identified for the current infrastructure planning cycles based on the prioritisation criteria set by the ECDоE, which are in turn based on its strategic imperatives.

10.3 It was however, emphasised that the Public Protector has been engaging the ECDоE on this matter since the receipt of the complaint in 2006, and while the challenges as recently highlighted by the ECDоE have been duly noted, it is a major source of concern that no progress has been made whatsoever to achieve any form of remedial action or redress for the community that approached the Public Protector on what they experience as a critical state of affairs.

10.4 The Chief Directorate responded positively to the Public Protector’s recent engagement and advised that while Departmental funds have already been committed to other projects in terms of its IDIP, they are supported by a number of external stakeholders and donors who are able to supplement its activities and projects to escalate certain matters and to identify additional deserving projects.

10.5 The Public Protector was informed that the ECDоE will therefore take this matter forward by including the Ntekelelo Junior Secondary School in its list of priority projects that will be considered for infrastructure improvement by means of donor funding.

10.6 The Chief Directorate undertook to confirm its undertaking in writing to the Public Protector in consultation with the Accounting Officer of the ECDоE.

11. **CONCLUSION**

The Public Protector will monitor the undertaking of the ECDоE to include the Ntekelelo Junior Secondary School in its Infrastructure Development
Improvement Programme, on a monthly basis until the planning cycle has been confirmed.

ADV. T. N. MADONTSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 04/06/2010

Assisted by: Nceba Mangesi: Investigator-Eastern Cape Office
            Adv N vd Merwe: Senior Investigator: National Office