



Investigative Report

North West School For The Deaf

31 January 2018



SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

File Ref No: NW /1516/0130

In the matter between:

The South African Human Rights Commission

And

North West School for the Deaf

First Respondent

**Head of Department, North West Department
of Education**

Second Respondent

**Member of the Executive Council for Education,
North West Province**

Third Respondent

Minister of Basic Education

Fourth Respondent

FINAL INVESTIGATIVE REPORT

1. INTRODUCTION

- 1.1. The South African Human Rights Commission (“the “Commission”) is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”).
- 1.2. The Commission is specifically required to:
 - 1.2.1. Promote respect for human rights;
 - 1.2.2. Promote the protection, development and attainment of human rights;
 - 1.2.3. Monitor and assess the observance of human rights in the Republic.
- 1.3. Section 184 (2) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country.
- 1.4. The *South African Human Rights Commission Act*, 40 of 2013 (“the Act”), provides the enabling framework for the powers of the Commission.
- 1.5. Section 13(3) of the Act determines the procedure to be followed in conducting an investigation regarding the alleged violation of or threat to a fundamental right.

2. PARTIES

- 2.1. The Commission, is a state institution supporting constitutional democracy, established in terms of the Constitution. The Commission, acting on its own accord in terms of Article 3(b) of the Complaints Handling Procedures, initiated an investigation into this matter in order to determine whether any fundamental human rights were violated during and after the fire that broke out at North West School for the Deaf on 24 August 2015.
- 2.2. The First Respondent is North West School for the Deaf, a public school operating from corner George and Makwassie Roads, Leeudoringsstad, North West Province (“the First Respondent” or “the School”).

- 2.3. The Second Respondent is the Head of Department for Basic Education in the North West Province. The Second Respondent bears constitutional and statutory powers and duties related to basic education in the North West Province (“the Second Respondent” or “HoD”).
- 2.4. The Third Respondent is the Member of the Executive Council for Basic Education in the North West Province. The Third Respondent bears constitutional and statutory powers and duties related to basic education in the North West Province (“Third Respondent” or “MEC”).
- 2.5. The Fourth Respondent is the Minister of Basic Education. The Minister is cited in her capacity as the accountable authority of the Department of Basic Education. She bears the responsibility for determining national education policies and directing the monitoring and evaluation of education. She also holds responsibility for ensuring constitutional and statutory compliance by the Department (“Fourth Respondent” or “Minister”).
- 2.6. Although not parties in the matter, this report makes reference to the parents of the deceased learners; hereinafter referred to as “Parent 1;” “Parent 2” and “Parent 3” or collectively as “the parents of Learners “X”, “Y” and “Z”¹.

3. BACKGROUND

- 3.1 The Commission initiated an own accord investigation arising from numerous media reports into a fire at the First Respondent’s premises leaving three learners dead.
- 3.2 News24² reported that a fire occurred in the learners’ hostel of the First Respondent in the early hours of 24 August 2015 which resulted in the death of three female learners aged 16, 17 and 18. It was also reported that twenty-three (23) female learners sustained injuries whilst trying to escape the fire by jumping from the first floor to the ground floor of the building. The surviving learners were reportedly taken to hospital for smoke inhalation and bodily injuries sustained whilst jumping out of

¹ The identity of the deceased learners is not disclosed herein out of consideration for their families.

² Genevieve Quintal “*Three burn to death at North West school for the deaf*”

<http://www.news24.com/SouthAfrica/News/Three-burn-to-death-at-North-West-school-for-the-deaf-20150824>.

the building. Finally, it was reported the cause of the fire was unknown and was being investigated.

- 3.3 The Commission's investigation did not extend to criminal or civil liability for the deaths of the three learners as such determinations are more appropriately within the authority of the courts.
- 3.4 The South African government is obliged to provide a basic education and inclusive education for learners living with disabilities³. Accordingly, existing special schools need to accommodate the special needs of learners living with disabilities.

4. ASSESSMENT

4.1. The Commission determined the incident as reported by News24 evidenced a prima facie violation of rights guaranteed in the Bill of Rights, including:

- The right to life⁴
- The right to human dignity⁵
- The right to freedom and security of the person⁶ – that learners were locked in a hostel without just cause
- The right to an environment that is not harmful to their health or well-being⁷
- The right to equality and non-discrimination⁸
- The right to receive and impart information⁹
- The rights of children¹⁰
- The right to a basic education¹¹.

³ See Section 12(5) of the *South African Schools Act, 84 of 1996* and Department of Basic Education, *Report on the Implementation of Education White Paper 6 on Inclusive Education – An Overview for the Period: 2013--2015*, (2016), p. 70.

⁴ Section 11 of the Constitution.

⁵ Section 10 of the Constitution.

⁶ Section 12 of the Constitution.

⁷ Section 24(a) of the Constitution.

⁸ Section 9 of the Constitution.

⁹ Section 16 of the Constitution.

¹⁰ Section 28 of the Constitution. Section 28 (3) of the Constitution defines a 'child' as a person under the age of 18 years.

¹¹ Section 29 of the Constitution.

- 4.2. The Commission accordingly initiated an investigation of possible violations of its own accord.
- 4.3. The Commission notes that with the assistance of Legal Aid South Africa (Legal Aid-SA), the parents of the deceased learners were provided redress from the Second Respondent. However, concerns were shared with the Commission sometime after agreements of settlements were secured through Legal Aid-SA. These concerns are recorded briefly below:
 - 4.3.1. The quantum settled is insufficient for the damages suffered.
 - 4.3.2. The parents of the deceased learners are not happy with the manner in which the settlements were negotiated.

5. STEPS TAKEN BY THE COMMISSION

- 5.1. In the investigation of this matter, the Commission held meetings with the parents of the deceased learners, the First and Second Respondents, conducted formal and semi-formal interviews, conducted inspections in loco at the premises of the First Respondent, and reviewed documents supplied by the Second Respondent.

Parents of the Learners 'X', 'Y', 'Z'

- 5.2. On 30 September 2015, the Commission interviewed parents of each of the three deceased learners telephonically. The parents expressed their devastation and pain at the loss of their children.
- 5.3. The parents of the deceased learners informed the Commission that:
 - 5.3.1. The First Respondent and education authorities did not provide adequate support to them. In particular:
 - 5.3.1.1. The Respondents had collectively or severally not provided effective support services in the form of counselling to the parents of the deceased learners;

5.3.1.2. Learner Z's father had attended a session of counselling arranged by the First Respondent but could not proceed with the session as he was very emotional;

5.3.1.3. Learner Z's father was not able to attend subsequent counselling sessions because of the distance required to travel to the place where counselling was provided;

5.3.1.4. The parents were refused entry to the building and the rooms in which their children had died, which limited their ability to find closure.

5.3.2. The Respondents failed to explain:

5.3.2.1. The specific cause of the fire, however proposed a number of theories that included overloaded electrical wiring and arson;

5.3.2.2. The reason for locking the two exit doors from the outside.

5.3.3. The parents of the deceased learners informed the Commission that Legal Aid-SA had conducted settlement negotiations with the Respondents:

5.3.3.1. A settlement agreement had been signed and executed with each deceased learners' parents;

5.3.3.2. The parents of the deceased learners were not 'happy' with the conduct of Legal Aid-SA;

5.3.3.3. The parents of the deceased learners were not 'happy' with the amount of damages agreed to and paid.

Respondents

5.4. In the process of verifying the media reports, the Commission addressed correspondence, dated 26 August 2015, to the Second Respondent indicating that it had initiated an investigation into the fire at the First Respondent's premises on 24 August 2015.

5.5. In the same correspondence, the Commission requested the Second Respondent to provide the following information:

- 5.5.1. Whether learners of the First Respondent, after the fire, had been placed in alternative accommodation and/or school(s);
 - 5.5.2. What support, if any, was offered to the learners, teachers, the staff and aggrieved parents of the learners at the First Respondent; and
 - 5.5.3. Any other information that could assist the Commission with its investigation.
- 5.6. In response, the Principal of the First Respondent confirmed:
- 5.6.1. A fire occurred in a building at the First Respondent's premises at approximately 01:00 on 24 August 2015;
 - 5.6.2. Three deaf female learners had died in the fire at the hostel, together with the identities of the deceased learners. The learners are referred to as "Learner X", "Learner Y" and "Learner Z" respectively;
 - 5.6.3. The building was a hostel accommodating both male and female learners;
 - 5.6.4. Sixty four (64) learners, comprising both male and female learners, were in the hostel at the time of the fire;
 - 5.6.5. At the time of the fire the two exit doors to this area of the accommodation were locked from the outside;
 - 5.6.6. Each bedroom in the hostel accommodates three (3) to four (4) learners;
 - 5.6.7. The fire started in the first or second room on the first floor of the hostel which is the female learners' hostel;
 - 5.6.8. The male learners were accommodated on the ground floor;
 - 5.6.9. The Principal and two teachers¹² were the only staff members present on the school premises at the time of the fire;
 - 5.6.10. The teachers supervising the girls' hostel were asleep in their rooms situated on the first floor;
 - 5.6.11. The Principal was not sure whether either of the teachers supervising at the time of the fire had received any First Aid Training. It has since been confirmed that both of the teachers had been trained;

¹² The Principal provided the teachers' first names only: Joyce and Primrose.

- 5.6.12. At the time of the fire, the Principal was asleep in his room on the ground floor of the building:
 - 5.6.12.1. He was woken up by the learners' screams;
 - 5.6.12.2. In response to the screams he went to the first floor;
 - 5.6.12.3. He unlocked one of the exit doors to the female learners' hostel;
 - 5.6.12.4. At the time of the fire the other exit door was blocked by fire;
 - 5.6.12.5. He was unable to enter the female learners' hostel due to the thick smoke;
 - 5.6.12.6. He described the fire as having a yellowish or orange coloured flames and thick smoke with a toxic smell;
 - 5.6.12.7. He had no knowledge as to who had called fire fighters, ambulance and the police to the scene;
 - 5.6.12.8. The First Respondent did not have a first aid kit.
- 5.6.13. Learner X's remains were found in a bathroom bathtub;
- 5.6.14. Learner Y's remains were found on the toilet floor;
- 5.6.15. Learner Z's remains were found on a bed;
- 5.6.16. Some learners jumped from the windows to the ground floor to escape the fire at the hostel; and
- 5.6.17. Many learners were taken to hospital and treated for smoke inhalation and minor injuries. Some learners were treated for smoke inhalation and minor injuries at the scene but not transported to hospital.
- 5.7. In respect of fire detection, fire-fighting equipment and the alarm system at the School, the Principal stated that:
 - 5.7.1. Only two fire extinguishers were in place for the entire hostel. He was not able to confirm the operational status of either fire extinguisher.
 - 5.7.2. There were no visual smoke alarms, panic alarms, alarm sprinkler system, strobe lights or any other alarm or warning device to accommodate people with hearing impairments.

- 5.7.3. There were two manually operated gas hooters in a wall mounted receptacle. At the time when the Commission conducted its inspection these were not observed and the wall mounted receptacle was empty. It is not known whether these hooters were present at the time of the fire or if they were operated.
- 5.7.4. The First Respondent had only one fire hose. The hose was not long enough to reach the rooms on the first floor and no attempt was made to use the hose.
- 5.7.5. The first floor did not have any evacuation or emergency exit signs or lighting.
- 5.7.6. The School did not have any safety or evacuation plans.
- 5.7.7. The School had not performed an evacuation drill in the last five years.
- 5.7.8. The First Respondent had not trained any of the staff or learners of or above Grade 8 in the use of the fire extinguishers.¹³
- 5.8. All the surviving learners of the School have been accommodated at Hoërskool Wolmaransstad since the fire.
- 5.9. The cause of the fire had not yet been established but the Principal suspected arson. The forensic investigative report into the cause of the fire was not released at the time of the first inspection but has subsequently been released dated 30 November 2015. The report confirms that the fire was caused by arson. This opinion is also supported by the North West Province Task Team convened by the Second Respondent.
- 5.10. On 21 April 2016, the Commission met with officials from the Second Respondent.
- 5.11. During the meeting, the Second Respondent's representatives informed the Commission that:
 - 5.11.1. The Principal with whom the Commission met in September 2015 had since resigned from the School and a new Principal had been appointed.
 - 5.11.1.1. The building, damaged by the fire had not been renovated, and

¹³ See *Regulations for Safety Measures at Public Schools* (GN 1040, Gazette 22754, GN R1128, Gazette 29376), Reg. 8F(3).

5.11.1.2. The surviving learners were still being accommodated at Hoërskool Wolmaransstad.

5.12. In a letter dated 10 May 2016, the Second Respondent informed the Commission that:

5.12.1. The two teachers responsible for supervising the learners during the night of the fire had received First Aid Training.

5.12.2. Apart from segregation of the learners in terms of gender, the First Respondent did not have rules or policies regulating the learners' sleeping arrangements.

5.12.3. The School had no fire detectors, flashing alarms, wall notices for fire extinguishers, or emergency exits at the time of the fire.

5.12.4. The forensic report in respect of the fire had not been finalised.

5.12.5. It had been in contact with the parents of the deceased learners.

5.12.6. Together with the North West Department of Social Development, the Department was to provide on-going support to the parents of the First Respondent's learners, especially the parents of the deceased learners.

5.12.7. Legal Aid-SA had facilitated a settlement agreement between the Department of Basic Education and the parents of the deceased learners.

Witnesses

5.13. On 21 April 2016 the Commission interviewed one of the teachers who were present at the School at the time of the fire on 24 August 2015.

5.14. She stated that:

5.14.1. She was asleep in her room on the first floor when she heard learners crying.

5.14.2. She observed the learners' hostel was on fire and forced her way into the female learners' hostel but was restrained by the thick smoke emanating from the hostel.

5.14.3. She managed to lead a few learners out of the hostel.

- 5.14.4. Some female learners had managed to exit through the side door whilst others exited through a window that was forced open by a male learner.
 - 5.14.5. Later she noticed three female learners were missing.
 - 5.14.6. The fire had caused damage to her personal property and had impacted negatively on her and the learners psychologically.
- 5.15 On 15 May 2017 the second teacher who was present at the School at the time of the fire, was interviewed by the Commission at the Wolmaransstad School. The teacher indicated:
- 5.15.1 She was asleep in her School apartment when she was startled by the sound of glass breaking, which turned out to be the glass in the windows.
 - 5.15.3 A few male learners had broken her window and were frantically waving at her.
 - 5.15.4 She ran outside and was overwhelmed by a thick smoke and that was when she noticed that the building was on fire.
 - 5.15.5 Once she was outside she observed the female learners' hostel on the upper level of the building was on fire and some female learners were being helped to exit the building.
 - 5.15.7 She was grateful to the learners that rescued her since her apartment was also totally burnt.

Site Visits

- 5.16 The Commission undertook three (3) separate site inspections of the North West School for the Deaf over a period of time. In addition the Commission undertook two (2) visits to the Hoërskool Wolmaransstad. Summaries of the site inspections are recorded below:

- 5.16.1 The Commission conducted a joint inspection of the First Respondent's premises on 16 September 2015¹⁴.

¹⁴ The meeting was initially scheduled for 15 September 2015 but took place on 16 September 2015. Present at that inspection were the Principal of the First Respondent, a Director of the Second Respondent, South African Human Rights Commissioner Bokankatla Malatji (Commissioner responsible for the portfolio dedicated to the Rights of Persons with Disabilities and the Rights of Elderly Persons) and three investigators from the Commission's North West Provincial Office.

5.16.2 The Commission observed the extent of the damage caused by the fire. The inspection included the places where each of the deceased learners had been found.

5.16.3 On 21 April 2016, the Commission's officials and representatives of the Second Respondents' conducted a follow up site inspection at the premises of the First Respondent.

5.16.4 The site inspection confirmed the building remained in the same condition it had been immediately after the fire.

5.16.5 A third inspection was conducted at the School on 6 March 2017 and it was observed the School was being renovated and the renovation process was at an advanced stage with some classrooms almost complete. The following observations of the School were recorded:

5.16.5.1 The new structure, including the almost completed buildings, lacked fire detection systems including panic alarms, smoke detectors, visual smoke alarms;

5.16.5.2 There were no fire extinguishers and wall notices for fire extinguishers;

5.16.5.3 There were no wall notices for emergency exits; and

5.16.5.4 There were no ramps for wheelchairs¹⁵.

Hoërskool Wolmaransstad, Visit 1: 21 April 2016

5.17 A site inspection was conducted at Hoërskool Wolmaransstad on 21 April 2016. The Commission observed that:

5.17.1. Female and male learners had been accommodated at separate hostel floors.

5.17.2. The hostel building did not have emergency exit doors.

5.17.3. The hostel building had no visible emergency notices.

¹⁵ All new works must comply with the *Regulations for Safety Measures at Public Schools* (GN 1040, Gazette 22754, GN R1128, Gazette 29376) – See Regulation 4.

- 5.17.4. The hostel building lacked fire detection and fire prevention systems including panic alarms, smoke detectors, visual smoke alarms.
- 5.17.5. The hostel had no appropriate reasonable accommodation for people with hearing impairment.
- 5.17.6. Two fire extinguishers were seen lying on the floor.

Hoërskool Wolmaransstad, Visit 2: 6 March 2017

5.18. A second inspection was conducted at Wolmaransstad School on 6 March 2017. The observations are broadly recorded below:

- 5.18.1. The fire extinguishers were mounted on the wall and clearly marked.
- 5.18.2. A fire blanket was noted in the kitchen.
- 5.18.3. A half built fire sprinkler system was in place and construction thereof was said to be on-going.
- 5.18.4. The names of the learners sleeping in each bedroom were recorded on the doors of each bedroom.
- 5.18.5. There was still one entry / exit door.
- 5.18.6. There was still no emergency exit door.

Reports

- 5.19. On the 6 March 2017, the Second Respondent undertook to provide the Commission with the following documents by 10 March 2017:
 - 5.19.1. The Second Respondent's investigative report inclusive of witness statements.
 - 5.19.2. Post mortem reports of the three deceased learners.
 - 5.19.3. Forensic report(s) with contact details of the investigators.
 - 5.19.4. Report from the South African Police Service with contact details of the investigators.

- 5.19.5. Report from the Medical Emergency Services.
 - 5.19.6. Fire report.
 - 5.19.7. Local Authority Building Controllers report(s) on both buildings for the North West School for the Deaf and Hoërskool Wolmaransstad.
 - 5.19.8. Building plans lodged with the local authority, including the fire plan and any exemption certificate(s) (e.g. *National Building Regulations and Building Standards Act, Section A1 (2)*).
 - 5.19.9. Second Respondent's documents authorizing the occupation of the Wolmaransstad School by the learners from the burnt North West School for the Deaf, Leeudoringsstad.
 - 5.19.10. Correspondence(s) between the Second Respondent and the parents and/or families of the deceased learners.
 - 5.19.11. Documentation relating to the settlement agreements the Second Respondent concluded with the parents and/or families of the deceased learners.
- 5.20. On 27 March 2017 the Second Respondent was "constrained" from submitting the forensic investigative report into the matter. The Department undertook to furnish the Commission with a final report by 21 April 2017. At the time of writing this report, the Second Respondent had failed to do so.
- 5.21. The Second Respondent further advised the Commission that: *"During the Department's investigation, statements were obtained from relevant officials of the Department of Education in the North West, District Director, Acting Area Manager, Circuit Manager, the principal, learners, teachers, non-teaching staff and members of the School Governing Body. These interviews were conducted for purposes of information gathering."*
- 5.22. The Second Respondent attached documents with the information recorded below:
- 5.22.1. Post mortem reports of the three deceased learners indicating the following:
 - 5.22.1.1. Cause of death of deceased learner X:
"Consistent with charred burns (4th degree burns)";

- 5.22.1.2. Cause of death of deceased learner Y:
"Consistent with carbon monoxide inhalation"; and
- 5.22.1.3. Cause of death of deceased learner Z:
"Consistent with carbon monoxide poisoning and smoke inhalation".
- 5.22.2. Forensic report by SAPS Sgt Roberts, dated 30 November 2015, stating the most probable cause of the fire is "Arson, classified as Incendiary".
- 5.22.3. Report from the South African Police Service with contact details of the investigators.
- 5.22.4. Report from Maquassi Hills Medical Emergency Services dated 31 August 2017 stating that:
"...the incident that occurred on the 24/08/2015 early hours of the morning... The call was logged from control room at 02:21 until 03:12...As we ask about the fire, bystanders inform us the fire erupted from the residential area where the Girls and their teachers reside in the same building..."
- 5.22.5. Fire Report – Nature of crime: Arson, value of property involved: +/- R1 000 000.
- 5.22.6. The Second Respondent letter dated 23 March 2017 stating that:
"The Department has no Plans lodged with the local authority for approval of the building plans in respect of the North West School for the Deaf in Leeudoringsstad..."
- 5.22.7. A copy of a memorandum of understanding between the Second Respondent and Hoërskool Wolmaransstad date stamped 08 June 2016 states the Second Respondent sought urgent temporary accommodation for the learners and teachers of the North West School for the Deaf.
- 5.22.8. A signed copy of the settlement agreement between the Second Respondent and the representatives of the deceased three learners in which:

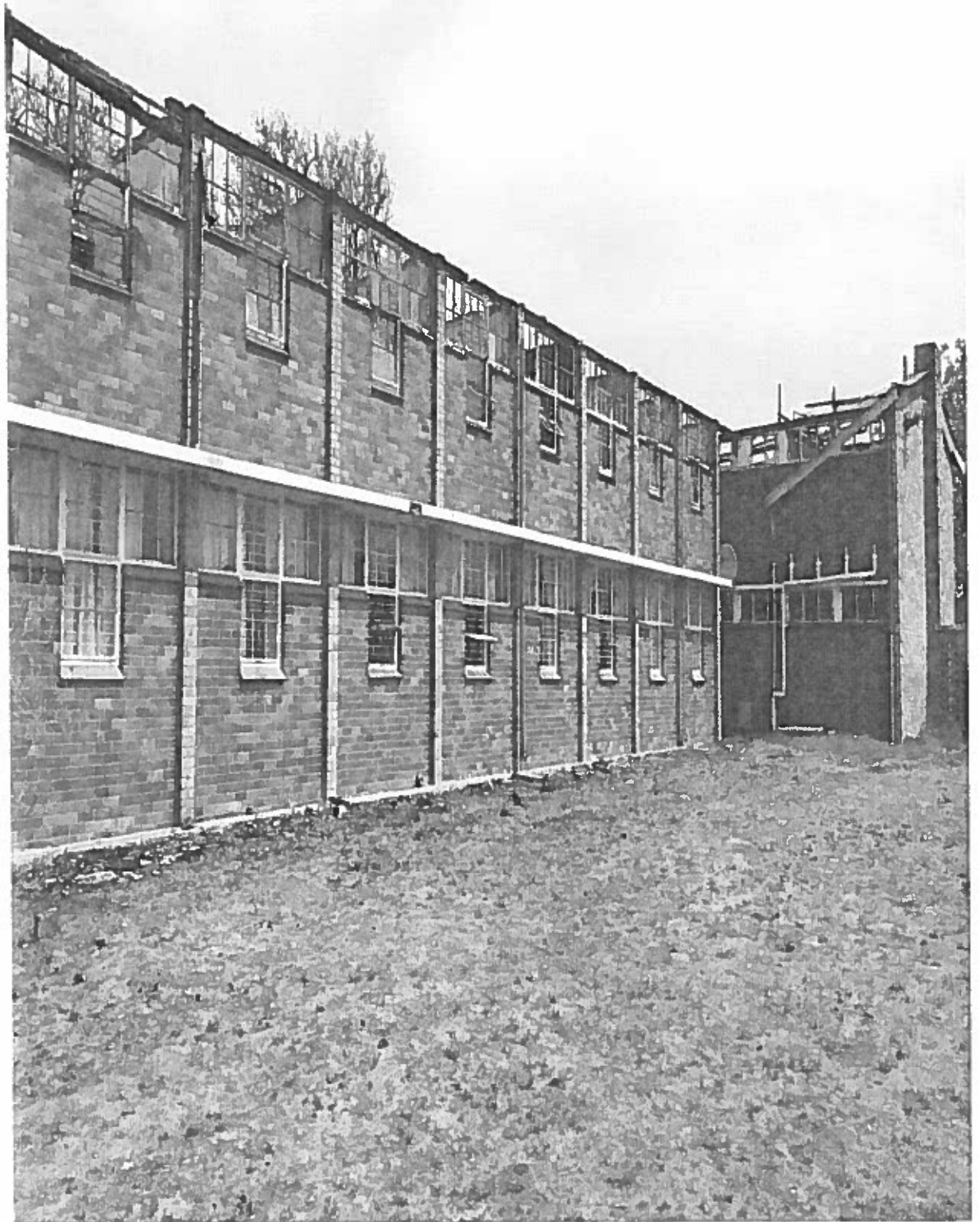
- 5.22.8.1. The Second Respondent "*concedes the necessary safety measures related to fire on the school premises was not adhered to on the day of the incident*";
- 5.22.8.2. The Second Respondent agreed to pay the amount of R300 000.00 (Three Hundred Thousand Rand) to the parent of each deceased learner in full and final settlement.

Photographic records from the inspection

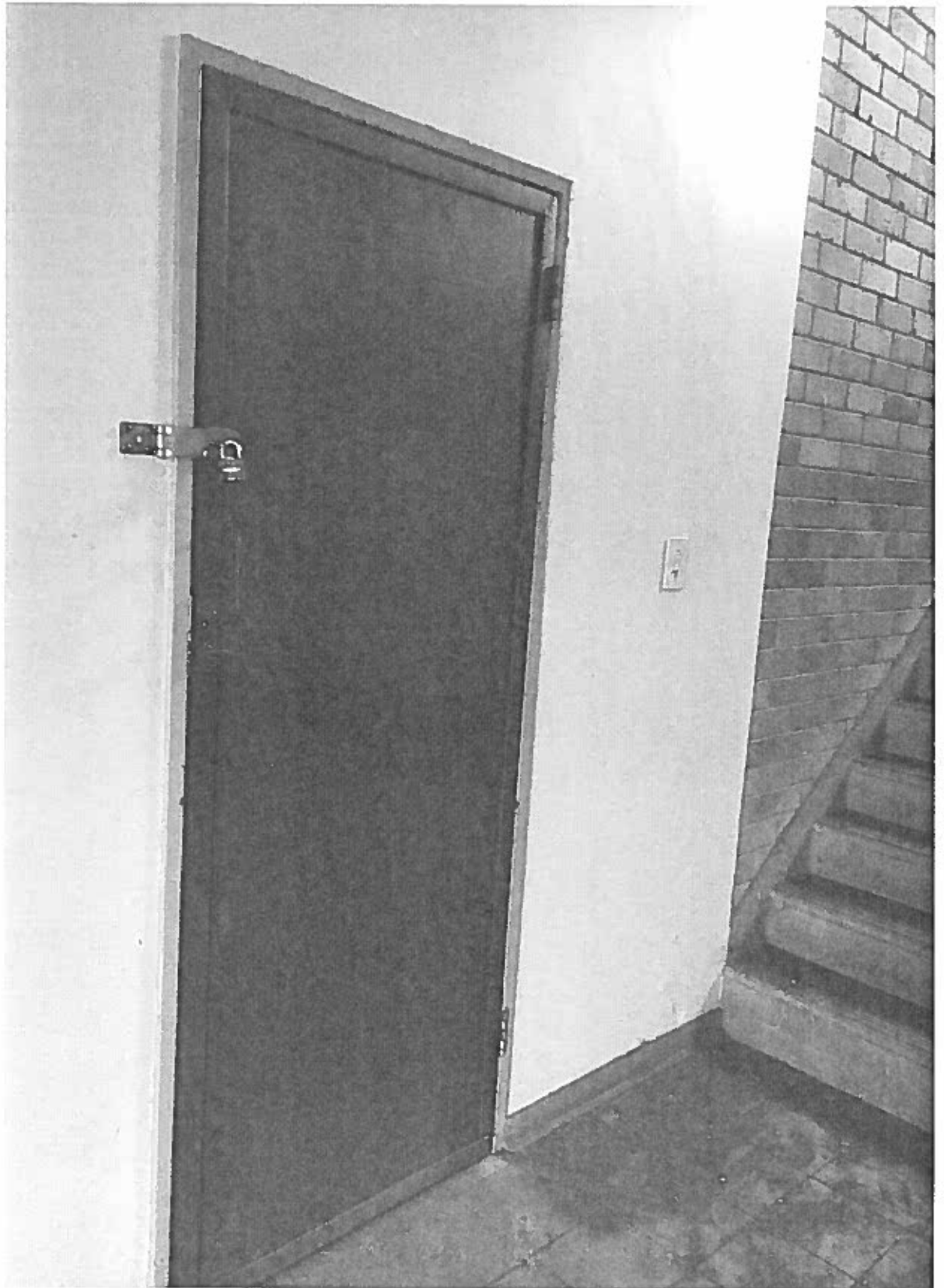
During the inspection on 16 September 2015 the following photographs were taken of the damage observed.



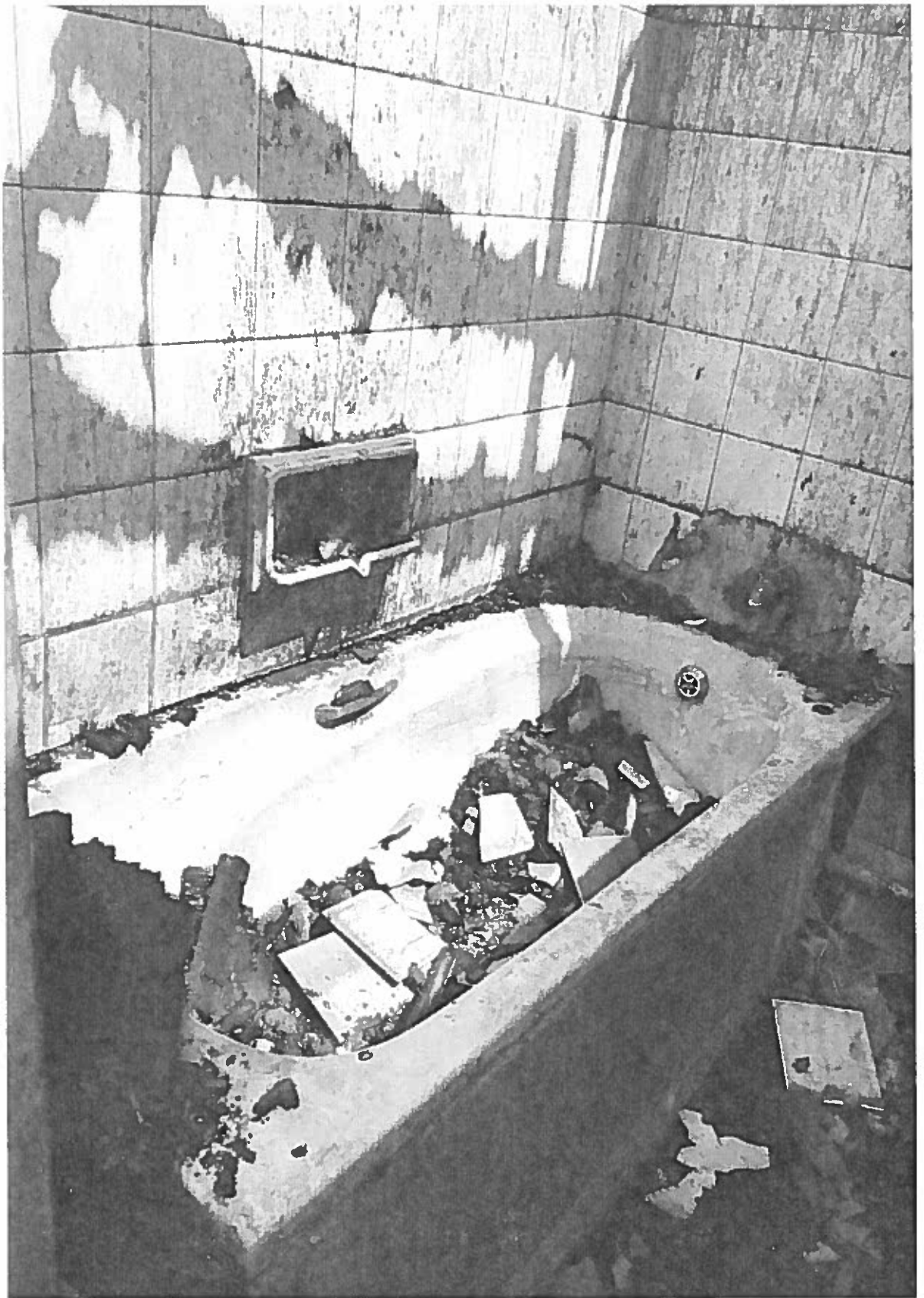
Picture 1: The main entrance to the School's administration offices. The hostel is situated behind the administrative offices



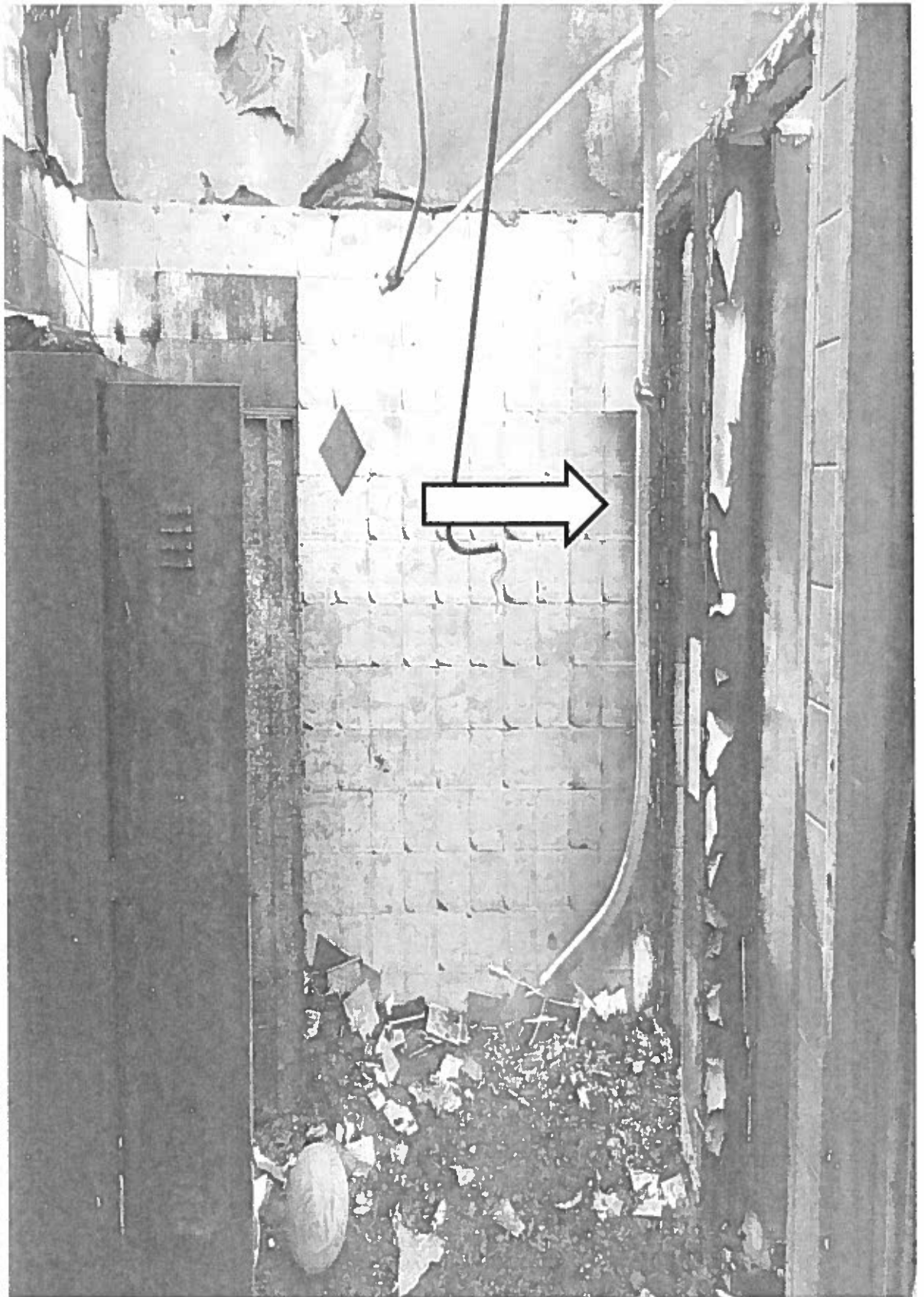
Photograph 2: Damage caused by the fire to the first floor of the hostel



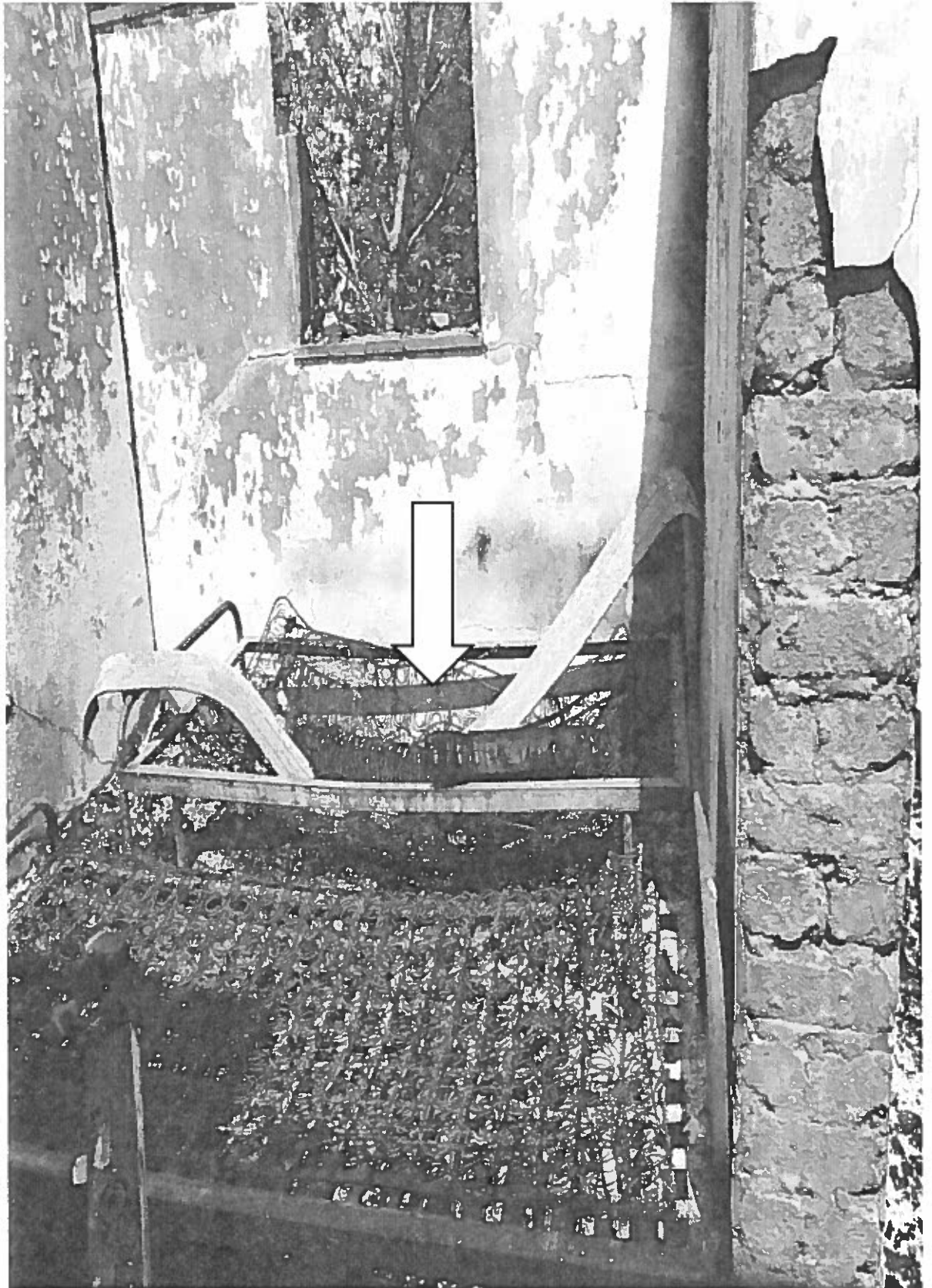
Photograph 3: The door through which the ground floor may be accessed is locked from the outside. This door is similar to the burnt door referred to in this report



Photograph 4: The bathtub in which the remains of Learner X were found



Photograph 5: The white arrow in this photograph indicates the toilet in which the remains of Learner Y were found



Photograph 6: The bed next to the window (indicated by a white arrow) was pointed out as the bed on which the remains of Learner Z were found



Photograph 7: The empty wall mount for the gas hooter

A Legacy

- 5.23. The Commission noted other earlier instances in the North West Province where in the past fires had broken out at schools damaging property and resulting in the death of learners. These include:
- 5.23.1. The Christiana School for the Blind where three blind learners died as result of a fire in 2010; and
 - 5.23.2. The Hoër Volksskool Potchefstroom where a fire broke out at the male learners' hostel on 31 August 2015. No deaths were reported at this school.
- 5.24. The Commission requested the Second Respondent to provide the Commission with:
- 5.24.1. Reports of the investigations conducted into both these fires; and
 - 5.24.2. The Department of Basic Education's plan to improve safety in schools for learners with special needs in the North West Province.
- 5.25. At the time of the publication of this investigative report, the office of the Second Respondent had not provided the information requested by the Commission.

6. FACTS

Agreed Facts

- 6.1. A fire occurred in a building at the First Respondent's premises at approximately 01:00 on 24 August 2015.
- 6.2. The fire was reported to emergency services between 02:21 and 03:12 on the 24 August 2015.
- 6.3. Emergency services attended the scene at the time of the fire.
- 6.4. The fire started in the first or second room on the first floor of the hostel which is the female learners' hostel.
- 6.5. Three (3) Learners died in the hostel during the fire, their deaths are consistent with injury sustained as a result of the fire.

- 6.6. Twenty three (23) surviving learners were treated at the scene of the fire or at a hospital for minor injuries and an unknown number were treated for smoke inhalation.
- 6.7. The building in which the fire occurred was a hostel accommodating both male and female learners.
- 6.8. Approximately sixty four (64) learners, comprising both male and female learners, were in the hostel at the time of the fire.
- 6.9. Each bedroom in the hostel accommodates three (3) to four (4) learners.
- 6.10. The First Respondent did not have rules or policies regulating the learners' sleeping arrangements at the time of the fire.
- 6.11. The Principal and two teachers were the only staff members present on the school premises at the time of the fire.
- 6.12. One teachers' room was situated on the first floor and the second room was on the ground floor of the building.
- 6.13. At the time of the fire:
 - 6.13.1. The only access doors to this area were locked from the outside;
 - 6.13.2. The locked the doors prevented/delayed the learners from exiting the building safely through the doors;
 - 6.13.3. The Principal was asleep in his room on the ground floor of the building, woke and went to the first floor and unlocked one of the two doors;
 - 6.13.4. The teacher asleep in her room on the first floor, woke and assisted some learners to exit the building; and
 - 6.13.5. Some learners exited the building by jumping from first floor windows while others exited through the side door when it was unlocked by the Principal.
- 6.14. No explanation has been provided for the reason for locking the first floor doors from the outside.
- 6.15. The cause of the fire is not conclusive and has been attributed to probable arson.
- 6.16. The School had no fire detectors, fire alarms that are audible in all parts of the school premises, visual flashing/strobe alarms, panic alarms, sprinkler system, emergency

- exit doors able to be unlocked from the inside, wall notices for fire extinguishers, and stairs or emergency exits at the time of the fire.
- 6.17. The first floor did not have any evacuation or emergency exit signs or lighting to indicate the direction to be travelled in the case of fire or other emergency.
 - 6.18. No emergency evacuation plans or procedures were displayed in the hostel, and the School did not have any safety or evacuation plans or procedures.
 - 6.19. The School had not performed an evacuation drill in the last five (5) years.
 - 6.20. There was inadequate equipment for fighting, controlling and extinguishing a fire. Equipment for firefighting constituted:
 - 6.20.1. Two (2) fire extinguishers;
 - 6.20.2. One (1) hose which was not long enough to reach the rooms on the first floor.
 - 6.21. The First Respondent had not trained any of the staff or learners of or above Grade 8 in the use of the fire extinguishers.
 - 6.22. The two teachers responsible for supervising the learners during the night of the fire had received First Aid Training.
 - 6.23. The School did not have a first aid kit.
 - 6.24. All the learners of the School were accommodated at Hoërskool Wolmaransstad at the time of the first inspection in September 2015 and at the time of this report remain accommodated at the Hoërskool Wolmaransstad.
 - 6.25. Legal Aid-SA facilitated settlement agreements between the Second Respondent and the parents of the deceased learners.
 - 6.26. The Second Respondent contacted the parents of the deceased learners.
 - 6.27. Learner Z's father attended one session of counselling arranged by the First Respondent but did not continue to access this counselling.
 - 6.28. The parents of the deceased learners have not had access to the site of the fire, specifically the locations where their children died.
 - 6.29. The Principal at the time of the fire has resigned and a new Principal has been appointed.

6.30. The Second Respondent has no plans or exemption certificate for the First Respondent lodged with the local authority.

Disputed Facts

6.31. The parents of the deceased learners assert the Respondents have not provided adequate support to them. In particular:

6.31.1. The Respondents had collectively or severally not provided effective counselling services to the parents of the deceased learners;

6.31.2. Learner Z's father attended one counselling session but was not able to finish it because of his trauma and was not able to attend subsequent counselling sessions because of the distance and time taken to access counselling.

6.32. The parents of the deceased learners assert Legal Aid - SA facilitated a settlement agreement between them and the Second Respondent which was inadequate.

7. LEGAL FRAMEWORK

7.1. A consideration of a number of inter-related and inter dependent rights have been considered in this matter. The rights recorded earlier in this report are considered in the context of our Constitution, statute and legislation. Where appropriate reference is made to international and regional norms and standards. While not specifically canvassed in this report, the rights of the child to enjoy the fundamental rights in the Constitution as individual rights-bearers frames the consideration. Their rights are not dependent on the rights of their parents or delayed until they reach adulthood, but inhere from birth.¹⁶

7.2. The context which framed the legal review is:

¹⁶ *Teddy Bear Clinic for Abused Children and Another V Minister of Justice and Constitutional Development and Another* (CCT 12/13) [2013] ZACC 35; 2013 (12) BCLR 1429 (CC); 2014 (2) SA 168 (CC); 2014 (1) SACR 327 (CC) (3 October 2013) at paragraph 38, 40 and 52.

- 7.2.1. That the North West School for the Deaf is a public school provided for the education of children living with the disability of hearing impairment;¹⁷
- 7.2.2. The North West School for the Deaf provided dormitory residential accommodation for the learners of the school; and
- 7.2.3. That a fire occurred in the dormitory residential accommodation.

Limitation of Rights

- 7.3. The constitutional rights and implementing legislation referred to below must be read in conjunction with Section 36 of the Constitution. Section 36(1) states these rights may be limited in law and application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:
 - (a) the nature of the right;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relation between the limitation and its purpose; and
 - (e) less restrictive means to achieve the purpose.
- 7.4. Additionally, international obligations such as those recorded in Article 18(4) of *The African Charter on Human Rights and Peoples' Rights*¹⁸ people with disabilities ' . . . have the right to special measures of protection in keeping with their physical or moral needs.'
- 7.5. Once a limitation of a right has been found to exist the burden of justification for such a limitation, under Section 36(1) rests on the party asserting the limitation is saved

¹⁷ See Article 1 of the *Covenant for the Rights of People with Disabilities*, 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'

¹⁸ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

by the application of the provisions of the section to the factual and/or policy considerations.¹⁹

Right to Life and Dignity

7.6. Human dignity is recognised as a protected human right in both international covenants and Sections 10 and 11 of the Constitution.²⁰ In *Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others*²¹ the Court stressed the importance of the right to dignity:

*“The Constitution asserts dignity to contradict our past in which human dignity for black South Africans was routinely and cruelly denied. It asserts it too to inform the future, to invest in our democracy respect for the intrinsic worth of all human beings.”*²²

7.7. The South African government through policies such as the *Department of Public Works Disability Policy Guidelines* (“Policy Guidelines”) demonstrates a positive intention to entrench the rights and dignity of persons with disabilities and to ensure promotion and protection of the inherent dignity and human rights of persons with disabilities into the activities of the Department of Public Works.

7.8. In *Nokotyana v Ekurhuleni Metropolitan Municipality*²³ it was held the right to life and human dignity as protected in Section 10 and 11 of the Constitution are the most important of all human rights, and the source of all other personal rights.²⁴ However, in this case it was stated the right to dignity alone is rarely dispositive of a constitutional matter and where an infringement of a more specific right can be identified that right should be invoked rather than the general right (i.e. to dignity).

¹⁹ *Moise v Greater Germiston Transitional Local Council: Minister of Justice and Constitutional Development Intervening* [2001] ZACC 21; 2001 (4) SA 491 (CC) at paragraph 19.

²⁰ See also the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention on the Rights of the Child and African Charter on Human and Peoples Rights.

²¹ [2000] ZACC 8; 2000 (3) SA 936 (CC).

²² Paragraph 35.

²³ 2010 (4) BCLR 312 (CC).

²⁴ *S v Makwanyane* at paragraph 144.

7.9. The *Covenant for the Rights of People with Disabilities* is premised on the principles of dignity and equality. Article 24 (1) includes dignity as a determinant of the right of persons with disabilities to education:

“States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

- (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity.”*

Freedom and Security of the Person

7.10. The protection of personal liberty is entrenched in South African law by the guaranteed right of everyone in Section 12(1) of the Constitution²⁵ to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause.²⁶

7.11. This right can only be limited for the reasons of both:

7.11.1 A just cause, i.e. the reason the person has been deprived of their liberty must be grounded upon and consonant with the values expressed in Section 1 of the Constitution and gathered from the provisions of the Constitution as a whole; and

7.11.2 Procedural fairness, i.e. the manner in which the person has been deprived their freedom;²⁷ are satisfied.

7.12. The international and domestic norms reflect a universal consensus that an individual cannot be deprived of liberty except pursuant to specific legislative authority and with due respect for procedural safeguards. Section 28(1)(g) of the Constitution recognises the vulnerability of children adding extra safe guards, stating that every child has the right:

²⁵ See also Article 9(1) of the Universal Declaration of Human Rights, Article 9(1) of the International Covenant on Civil and Political Rights, Article 37(b) of the Convention on the Rights of the Child and Article 6 of the African Charter on Human and Peoples’ Rights.

²⁶ *Minister of Home Affairs v Rahim* (CCT 124/15) [2016] ZACC 3.

²⁷ *Coetzee v Government of the Republic of South Africa* 1995 (4) SA 631 (CC); 1995 (10) BCLR 1382.

“(g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under Sections 12 and 35, the child may be detained only for the, shortest appropriate period of time, and has the right to be -

- (i) kept separately from detained persons over the age of 18 years; and*
- (ii) treated in a manner, and kept in conditions, that take account of the child’s age.”*

Safe Environment

- 7.13. Foundational to the enjoyment of the right to childhood is the right guaranteed in Section 24(a) of the Constitution which protects the right, as far as possible to live in a secure and nurturing environment free from violence, fear, want and *avoidable trauma*.²⁸
- 7.14. Section 24 impacts on the scope of these constitutional guarantees, as it refers to considerations of environmental integrity beyond that of the maintenance of life, i.e. it provides a criteria upon which to evaluate the quality of the environment.
- 7.15. These rights are reflections of international conventions to which South Africa is a party, such as Article 18 of *The African Charter on Human Rights and Peoples’ Rights*²⁹ and domestic policies such as Article 10 of the *Disability Rights Charter of South Africa*³⁰ which states the quality of the all new environments ‘. . . shall be accessible and safe to disabled people and all reasonable steps shall be taken to make existing built environments accessible and safe.’
- 7.16. As part of the State’s obligation to passively and proactively implement these Constitutional and policy rights, Regulation 8F of the Regulations for Safety

²⁸ *Teddy Bear Clinic for Abused Children and Another V Minister of Justice and Constitutional Development and Another* (CCT 12/13) [2013] ZACC 35; 2013 (12) BCLR 1429 (CC); 2014 (2) SA 168 (CC); 2014 (1) SACR 327 (CC) (3 October 2013) at paragraph 74

²⁹ ‘The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.’ (Organization of African Unity (OAU), *African Charter on Human and Peoples’ Rights* (“Banjul Charter”), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982))

³⁰ ‘All new environments shall be accessible and safe to disabled people and all reasonable steps shall be taken to make existing built environments accessible and safe.’

Measures at Public Schools³¹ requires public schools like the First Respondent and *Hoërskool Wolmaransstad* to ensure that:

7.15.1 Emergency evacuation procedures are established.

7.15.2 Emergency evacuation procedures are displayed in all offices, classrooms and amenities.

7.15.3 Measures are taken to install:

7.15.3.1 Fire extinguishers, which the principal must ensure are checked regularly; and

7.15.3.2 Fire alarms that are audible in all parts of the school premises.

7.15.4 Staff members and, where applicable, learners in Grades 8 or higher are trained to use the fire extinguishers.

7.15.5 Where reasonably practicable, the local fire chief assesses and reviews all fire evacuation procedures every year.

7.17. Additionally, the *Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure* (“Uniform Norms and Standards”)³² provide minimum uniform norms and standards for public school infrastructure to ensure the is compliance with:

7.16.1 Minimum uniform norms and standards in the design and construction of new schools and additions, alterations and improvements to schools (Regulation 2).

7.16.2 Relevant requirements of the National Building Regulations and SANS 10-400 (Regulation 6(1)(viii)).

7.18. Regulation 17 of the Uniform Norms and Standards require state school buildings and other school facilities to comply with fire regulations in the National Building Regulations and SANS 10-400.³³

7.19. Part T of the application of the National Buildings Regulations provides for fire protection. Specifically relevant to this issue is:

³¹ Regulations for Safety Measures at Public Schools, Notice No. 1040 of 12 October 2001 published in terms of Section 61 of the South African Schools Act, 1996.

³² Government Notice R920 in *Government Gazette* 37081 of 29 November 2013.

³³ “SANS 10400” means the South African National Standards with that number, issued by the South African Bureau of Standards in terms of the National Building Regulations.

7.19.1. Part C.2.1 that requires in terms of 4.16.1, all buildings shall be provided with one or more escape routes that can be used in case of fire or other emergencies. The two most important aspects are *'the route should, at all points be wide enough ... and that it should not, at any time, be obstructed in any way'*; and

7.19.2. Part T1 that requires:

"(1) Any building shall be so designed, constructed and equipped that in case of fire:

(a) the protection of occupants or users, including persons with disabilities, therein is ensured and that provision is made for the safe evacuation of such occupants or users;

(b) the spread and intensity of such fire within such building and the spread of fire to any other building will be minimized;

(c) ...

(d) the generation and spread of smoke will be minimized or controlled to the greatest extent reasonably practicable; and

(e) adequate means of access, and equipment for detecting, fighting, controlling and extinguishing such fire, is provided."

Reasonable Accommodation³⁴

7.20. Article 2 of the *Convention on the Rights of Persons with Disabilities*³⁵ (CRPD) defines reasonable accommodation to mean necessary and appropriate modification and adjustments to ensure the enjoyment or exercise of right by persons with disabilities, on an equal basis with others of all human rights and fundamental freedoms. The UN Committee on the Rights of Persons with Disabilities explains the standard in the CRPD to mean that the duty to provide reasonable accommodation is enforceable from the moment an individual with an impairment needs it in a given

³⁴ Note, unless otherwise indicated whenever the term 'reasonable accommodation' is used it will mean a modification or adjustment made to suit a disability or to make a system fair for an individual based on their disability.

³⁵ *UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007.*

situation ...in order to enjoy his or her rights on an equal basis in a particular context.³⁶

7.21. This obligation is reflected in Section 25(1) of the *Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)*³⁷ which provides the State must, where necessary with the assistance of the relevant constitutional institutions:

7.20.1 Take measures to develop and implement programmes in order to promote equality; and

7.20.2 Where necessary or appropriate:

7.20.2.1 enact further legislation that seeks to promote equality and to establish a legislative framework in line with the objectives of this Act;

7.20.2.2 develop codes of practice as contemplated in this Act in order to promote equality, and develop guidelines, including codes in respect of reasonable accommodation; and

7.20.2.3 provide assistance, advice and training on issues of equality.

7.22. In *Basic Education For All and Others v Minister of Basic Education and Others*³⁸ the Court held it was the State's obligation to budget for the right to access basic education.³⁹ This includes the government's obligation to facilitate inclusive education for people living with disabilities by ensuring sufficient allocation of technical, human and financial resources for their implementation.⁴⁰

Promoting Equality

7.23. The Constitutional Court held in *Minister of Finance and Others v Van Heerden* that:

"The achievement of equality goes to the bedrock of our constitutional architecture. . . . Thus the achievement of equality is not only a guaranteed and justiciable right in our Bill of Rights but also a core and foundational value; a

³⁶ UN Committee on the Rights of Persons with Disabilities, General Comment No 2, para 26.

³⁷ Act 4 of 2000.

³⁸ 2014 (9) BCLR 1039 (GP).

³⁹ At paragraph 43.

⁴⁰ *Committee on the Rights of the Child*, Concluding Observations on the Second Periodic Report of South Africa, 30 September 2016, paragraph 41(c).

*standard which must inform all law and against which all law must be tested for constitutional consonance.*⁴¹

7.24. International instruments such as the *UN Committee on Economic, Social and Cultural Rights* (General Comment No. 5, Clause 9) and *Convention on the Rights of Persons with Disabilities* (Article 7) create an obligation for governments and their institutions to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities.

7.25. In *Standard Bank v Commission for Conciliation, Mediation and Arbitration*,⁴² the Court identifies that:

*"Integration and inclusion in mainstream society aims not only to achieve equality but also to restore the dignity of people with disabilities..."*⁴³

7.26. Equality includes the full and equal enjoyment of all rights and freedoms, and depends on the State promoting equality through legislative mechanisms.⁴⁴ In South Africa the obligation to take active measures to promote the equality of people with disabilities can be found in both Section 9 (2) of the Constitution, and the PEPUDA.

7.27. The principle of 'progressive realization' tempers the international and domestic obligation to promote equality for people living with disabilities as it is recognised that substantive equality may require special measures of protection in keeping with their special physical or moral needs. The obligation is to promote equality '...to the maximum of their available resources.' In this context the rule through the lens of child rights must take into account that a child's best interests are of paramount importance in every matter concerning a child. As stated in Article 18(4) of the *African Charter on Human Rights and Peoples' Rights*⁴⁵ the additional resources and

⁴¹ 2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC); [2004] 12 BLLR 1181 para 22.

⁴² (JR 662/06) [2007] ZALC 98; [2008] 4 BLLR 356 (LC) 29 ILJ 1239 (LC) (25 December 2007).

⁴³ Ibid paragraph 65.

⁴⁴ *National Coalition for Gay and Lesbian Equality v Minister of Justice* (CCT11/98) [1998] ZACC 15; 1999 (1) SA 6 paragraph 62.

⁴⁵ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

- adjustments must be provided/made to protect the rights of persons with disabilities without imposing a disproportionate or undue burden on the State.⁴⁶
- 7.28. Domestic legislation such as Section 34(1) of the Schools Act, 84 of 1996 reflects the obligation to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education within the available resources of public revenue.
- 7.29. Domestic policies such as the *Department of Public Works Disability Policy Guidelines* further ensure:
- 7.28.1 An Enabling Environment – to facilitate the progressive realisation of access to services and infrastructure by persons with disabilities.
- 7.28.2 Recognition of Diversity – this Policy Guideline recognises access needs of all diverse disabilities, including lighting, sound, signage, tactile, ramp, parking, ablution facilities, lifts, etc.⁴⁷

Discrimination

- 7.30. Article 2 of the *Convention on the Rights of Persons with Disabilities* defines discrimination on the basis of disability as:
- “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”*
- 7.31. Section 9 of the Constitution prohibits discrimination, directly or indirectly, against anyone on the grounds of disability that is unfair. Unfair discrimination ‘. . . means treating persons differently in a way which impairs their fundamental dignity as human beings, who are inherently equal in dignity.’⁴⁸
- 7.32. As explained in *Harksen v Lane N.O. & Others*⁴⁹ for discrimination to be captured by Section 9 a two stage analysis is required:

⁴⁶ See the definition of ‘Reasonable accommodation’ in Article 2, *Convention on the Rights of Persons with Disabilities*.

⁴⁷ See also Article 9 and 28 of the *Convention on the Rights of Persons with Disabilities*.

⁴⁸ *Prinsloo v Van der Linde and Another* 1997 (6) BCLR 759; 1997 (3) SA 1012 paragraph 31.

⁴⁹ 1998 (1) SA 300 (CC) paragraph 53.

- 7.32.1. Are people or categories of people differentiated for a purpose that is not legitimate, i.e. does the differentiation amount to “discrimination”;
- 7.31.2. If it is on a specified ground, then discrimination is *prima facie* established;
- 7.31.3 Does the discrimination amount to “unfair⁵⁰ discrimination”;
- 7.31.4 If it has been found to have been on a specified ground, then unfairness will be presumed.⁵¹
- 7.33. PEPUDA is a legislative measure designed to promote the achievement of equality and prevention of discrimination as envisaged under Section 9(2) of the Constitution.
- 7.34. Section 1(viii) of PEPUDA defines discrimination as:
- “. . . any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly:*
- (a) imposes burdens, obligations or disadvantage on; or*
- (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds.”*

PEPUDA's prohibition from unfair discrimination against any person includes acts or omissions by the State which result in unfair discrimination.⁵²

- 7.35. Section 9(c) of PEPUDA expressly prohibits unfair discrimination against people living with disabilities including the failure to take steps to reasonably accommodate the needs of such persons.⁵³
- 7.36. The question of fairness is a rebuttable presumption⁵⁴ and if the discrimination is found to be unfair then a determination must be made as to whether the unfair discrimination can be justified under the limitations clause, Section 36 of the Constitution. Section 14 of the PEPUDA gives a criteria for the determination of fairness or unfairness, especially Sections 14(2) and (3) which state that:

⁵⁰ The test of unfairness focuses primarily on the impact of the discrimination on the complainant and others in their situation.

⁵¹ See Section 13(2) of the *Promotion of Equality and Prevention of Unfair Discrimination Act*, 4 of 2000.

⁵² See Section 6.

⁵³ *MEC for Education: Kwazulu-Natal and Others v Pillay* CCT 51/06 (2007) ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) at paragraph 72 and 77.

⁵⁴ See *IMATU v City of Cape Town* [2005] 11 BLLR 1084 (LC) at para 79.

- “(2) In determining whether the respondent has proved that the discrimination is fair the following must be taken into account:*
- (a) The context;*
 - (b) The factors referred to in Sub-section (3);*
 - (c) Whether the discrimination reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned.*
- (3) The factors referred to in Sub-section (2)(b) include the following:*
- (a) Whether the discrimination impairs or is likely to impair human dignity;*
 - (b) The impact or likely impact of the discrimination on the complainant;*
 - (c) The position of the complainant in society and whether he or she suffers from patterns of disadvantage or belongs to a group that suffers from such patterns of disadvantage;*
 - (d) The nature and extent of the discrimination;*
 - (e) Whether the discrimination is systemic in nature;*
 - (f) Whether the discrimination has a legitimate purpose;*
 - (g) Whether and to what extent the discrimination achieves its purpose;*
 - (h) Whether there are less restrictive and less disadvantageous means to achieve the purpose;*
 - (i) Whether and to what extent the respondent has taken such steps as being reasonable in the circumstances to—*
 - (i) address the disadvantage which arises from or is related to one or more of the prohibited grounds; or*
 - (ii) accommodate diversity.”*

7.37. At the time of writing this report the Respondents have not provided any information that would rebut the conclusion of unfair and unjustifiable discrimination.

Duty to Protect

7.38. Section 28(1)(d) of the Constitution states that every child has the right to be protected from maltreatment, neglect, abuse or degradation. In *Centre for Child Law v Minister of Justice and Constitutional Development and Others*⁵⁵ the Court held that:

“...The Constitution draws this sharp distinction between children and adults not out of sentimental considerations, but for practical reasons relating to children’s greater physical and psychological vulnerability... They are less able to protect themselves, more needful of protection, and less resourceful in self-maintenance than adults.”

7.39. The school is given temporary custody of a child by the child’s parents for the purposes of receiving an education (in this case a residential school environment). In the context of providing education, schools take on the duty of performing tasks that include protecting pupils from maltreatment, neglect, abuse or degradation whilst they are under the supervision of the school⁵⁶. The level of protection for which a school is responsible includes basic protections, to comply with regulatory standards, and to put in controls occasioned by special needs and or particular risks that school children within its environment and control may be subjected.⁵⁷

Access to Information

7.40. Section 32(1)(a) of the Constitution states that everyone has the right of access to any information held by the State. This constitutional right is given effect by both:

7.40.1. Section 59(1) of the *Schools Act* which states a school must make information available for inspection by any person, insofar as such information is required for the exercise and protection of such person’s rights; and

⁵⁵ 2009 (2) SACR 477 (CC); 2009 (6) SA 632 (CC); 2009 (11) BCLR 1105 (CC) at paragraph 26.

⁵⁶ I.e. The role of the *diligens paterfamilias* recognised in our law.

⁵⁷ *Ramesega and Another v MEC for Education Gauteng Province* (14863/2013) [2016] ZAGPJHC 345 (9 December 2016) at paras 38 and 39.

7.40.2. *The Promotion of Access to Information Act (PAIA)*.⁵⁸

7.41. Additionally, Section 8(2) of the *Regulations for Safety Measures at Public Schools*⁵⁹ provides that a person can access school property provided they:

“ . . . make an appointment with the principal of the school for a personal appointment with him or her prior to the visit and must state the reason for the visit and the persons who may be involved during the visit.”

Counselling

7.42. There is no explicit legal right for a child or parent to receive bereavement counselling after a traumatic event. However, when read together, the provisions below provide the basis for a child’s constitutional right to basic health care that includes trauma counselling⁶⁰ in an environment which fosters the health, self-respect and dignity of the child:

7.42.1. Section 28(1)(c) of the Constitution - Every child has the right to basic nutrition, shelter, basic health care services and social services;

7.42.2. Section 28(1)(d) of the Constitution – Every child has the right to be protected from maltreatment, neglect, abuse or degradation.

8. ANALYSIS

Limitation of Rights

8.1. It is conceded that no teacher was actively supervising the learners during the course of the night and early hours of the morning. Instead learners were locked into the hostel, with a lock being affixed from the outside of the hostel. The failure to implement active teacher supervision in the course of the night and ‘locking in’ of the learners constitute a failure to exercise a duty of care towards vulnerable learners.

⁵⁸ Act 2 of 2000.

⁵⁹ GN 1040, Gazette 22754, GN R1128, Gazette 29376.

⁶⁰ See also Article 39 of the Convention on the Rights of the Child which creates a positive obligation for governments and their institutions to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment.

8.2. It is conceded that at the time of the fire the doors were locked from the outside and that subsequent to one being unlocked by the Principal, many learners were able to use it to exit the building. As discussed below, locking the doors from the outside placed limitations on a number of constitutionally protected rights. The burden of justification of a limitation under Section 36(1) rests with the Respondents who, at the time of writing this report, are silent on this issue.⁶¹

Right to Life and Dignity

8.3. Human dignity has two basic elements:

8.3.1. Being Human - every human being possesses an intrinsic worth;

8.3.2. Relational - this intrinsic worth should be recognized and respected by others, and some forms of treatment by others are inconsistent with, or required by, respect for this intrinsic worth.

8.4. These two basic elements of human dignity are reflected in the legislation and policies that relate to the minimum building standards for residential facilities such as that provided by the School for the learners. Standards such as those relating to sanitation, minimal living space, and gender segregation in residential facilities for children enhance privacy, safety and dignity of the learners.

8.5. Safety standards, signs, equipment and building design respects basic rights of users being both protective and preventative in nature. These protective standards and obligation are intended in this instance to protect the safety of learners and aim to secure their rights to both life and a safe environment in the case of an emergency.

8.6. Non-compliance with legislation and policies such as the *National Building Standards, Regulations and National Norms and Standards, Regulations for Safety Measures at Public Schools and Uniform Norms and Standard the Department of Public Works Disability Policy Guidelines* ("Policy Guidelines") compromises, and in this case defeats the positive intention to entrench the rights to safety and dignity of persons, especially the learners' living with disabilities.

⁶¹ *Moise v Greater Germiston Transitional Local Council: Minister of Justice and Constitutional Development Intervening* [2001] ZACC 21; 2001 (4) SA 491 (CC) at para 19.

- 8.7. It is clear that the very deaths of the three learners and the manner of death were most heinous and undignified.

Freedom and Security of the Person

- 8.8. While detention is often viewed in the context of law enforcement actions, in this instance the First Respondent, by locking in the learners from the outside, confined the learners in that space. A confinement over which they had little control and which was subject only to the control of the principal. This limitation on the movement of the learners stopped the learners from exercising their constitutionally guaranteed right to freedom.
- 8.9. At the time of writing this report it is not known if, as required in Section 12(1) of the Constitution, whether:
- 8.9.1. A just cause that recognised the vulnerability of the children existed to warrant the locking of the doors, or
 - 8.9.2. In making the decision to lock the doors from the outside, procedural fairness, involving some measure of consultation with learners and the School community had been observed.
- 8.10. Further, it is not known whether any or all of the parents or learners, especially the older more mature learners, opinions had been sought or had given consent to the doors being locked from either side.
- 8.11. The lack of information from the Respondent has limited the Commission's ability to make a definitive finding that the constitutional right to freedom has been violated. Based on the information before the Commission, no grounds have been advanced to justify a limitation of this right.

Safe Environment

- 8.12. The Second Respondent conceded in the settlement agreement it signed with the parents of the deceased learners and which is confirmed by the Commission, that the necessary safety measures relating fire safety on the school premises were not adhered to on the day of the incident. In particular the learners' hostel building at the School was non-compliant in that it:

- 8.12.1. Did not have adequate or unobstructed means of access or egress in case of fire or other emergencies;
 - 8.12.2. Did not have adequate or effective equipment for detecting, fighting, controlling and extinguishing such fire;
 - 8.12.3. Had no emergency evacuation signage or procedures;
 - 8.12.4. Had not practiced evacuation procedures or trained personnel in the use of fire extinguishers.
- 8.13. It is not known if the non-compliance of the Respondents to the legislative and policy requirements relating to building and safety standards would have prevented the death of three learners and injury to others. However, it is a logical assumption that adequate signage, training and proper equipment could have served their purpose as early warning systems and later have assisted the learners to move through the heavy smoke observed by the Principal when he opened the door.
- 8.14. The lack of readiness by the School for such an emergency impacted on the ability of the School and the learners to mitigate the impact of the harm to the learners.
- 8.15. The conceded fact that the environment did not comply with the minimum building, safety and fire standard is evidence that the quality of the environment did not meet the constitutional guarantee of ‘. . . *an environment that is not harmful to their health or well-being.*’ This was demonstrated by the injuries and death of the learners – death being the ultimate irrevocable harm caused to the learners and untold psychological trauma to survivors and staff.
- 8.16. The failure to take steps to protect the right to life and a safe environment is further aggravated by the fact the only alarm system was an audible one.
- 8.17. The Commission notes that conditions at the *Hoërskool Wolmaransstad*, and the limitations evident from the renovations to the School continue to show deficiencies for the protection of the rights of learners with special needs. This situation reveals what the Commission can only classify as systemic failure by the Second Respondent to provide a safe environment for learners in the North West Province.

Reasonable Accommodation

- 8.18. Reasonable accommodation of persons with disabilities is deemed as the standard to ensure the elimination of discrimination and the promotion of equality.⁶² Certain rights are of such a basic nature and inhere to all human beings that reasonable accommodation is a positive measure which States must fulfil to ensure that children, in particular, those children with disabilities are able to access education, enjoy their right to dignity, and develop to their full potential. At the core of reasonable accommodation is the notion that additional expense is a necessity to ensure people with disabilities are not relegated to the margins of society because they do not or cannot conform to certain social norms.⁶³
- 8.19. Section 25(1) of PEPUDA specifically entrenches the imperative for the State to take measures to develop and implement programmes in order to promote equality and develop guidelines, including codes in respect of reasonable accommodation. The ultimate goal of the international and domestic obligation to reasonably accommodate the physical environment, services, activities, information and documentation is to achieve the key concept of 'universal design'. I.e. a unified product or environment for all persons, thereby making the need for 'reasonable accommodation' redundant.
- 8.20. Article 2 of the *Convention on the Rights of Persons with Disabilities* merely records minimum norms, which the Bill of Rights and statutory frameworks through the Children's Act and PEPUDA take far further, than the threshold for progressive realisation advocated in the *Convention on the Rights of Persons with Disabilities*. The ultimate goal for substantive equality, supported as it is within the meaning of the right to access education, the rights of the child and on-going systemic discrimination mean positive action is necessary.
- 8.21. The right to basic education is not limited by considerations which make the right progressively realisable by the State. The ruling by the Western Cape High Court is apposite in this instance, where the Court ruled that children with profound

⁶² A 5(3) of the CRPD See also the definition of "reasonable accommodation" in a 2 of the CRPD: "necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the equal enjoyment or exercise on an equal basis with others of all human rights and human freedoms".

⁶³ MEC v Pillay at paragraph 73.

disabilities should have “affordable access to a basic education of an adequate quality⁶⁴.” The quality of education in public schools should not be narrowly construed to mean actual teaching only, but extends to the environment in which teaching and living (in this instance) takes place. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) in its guidelines lends credence to this interpretation. In the guidelines, UNESCO advocates to State Parties to the Convention that “the whole...environment...guarantees their children equality in the entire process of their education.” The recommendation recognises that an enabling environment includes levels of support and effective individualised measures to facilitate the effective education of children with disabilities.⁶⁵

- 8.22. The duty to secure substantive equality, in the context of the right to education, includes accessibility, quality of education, and quality of the learning environment, infrastructure, and materials. Equality standards which prevail in public schools to advance learning, need to be consulted and agreed on to achieve substantive equality. At a minimum the guarantees and measures implemented at public schools should be put in place in the same measure to public schools for children with disabilities, but should be designed to meet their specific needs. These duties cannot be seen as imposing a disproportionate or undue burden on the State. They also cannot mean that a regression in the standard of provision of access is acceptable. Instead it becomes of vital importance that the various protections and standards are interpreted substantively to reduce inequality, remove barriers and are interpreted positively to mean that there is no regression in standards, but that accessibility to education is meaningful for all learners.
- 8.23. Thus while the Northwest School for the Deaf is intended to improve access to education for people living with a disability (hearing impairment), whether this has been meaningfully achieved in this matter is questionable.⁶⁶
- 8.24. The conditions at the Northwest School for the Deaf as conceded, do not meet minimum compliance standards set by our laws in the form of building, safety and

⁶⁴ Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa and the Government of the Western Cape, 2011, 5 SA, WCC, p31

⁶⁵ United Nations Committee on the Rights of Persons with Disabilities, General Comment No 2 (2014), Article 9: Accessibility, para 39, cited in the Human Rights Watch report, “Complicit in Exclusion” South Africa’s Failure to Guarantee an Inclusive Education for Children with Disabilities, August 2015, p 19.

⁶⁶ See Section 29(1)(a) - access to basic education.

fire standards for the residential facilities made available to the learners. Nor did the Northwest School for the Deaf, as the name suggests, take or implement any obvious and necessary measures to reasonably accommodate the generic disability – hearing impairment, of the learners to whom it provided a service. In fact the main ‘alarm system’ that is said to exist at the time of the fire was an audible one which was inappropriate for people living with this disability as proved to be the case in this matter.

- 8.25. The Commission has observed with extreme concern that the alternate residential facilities for learners provided at Hoërskool Wolmaransstad also does not have signage, policies, procedures and alarm systems in compliance with regulatory standards or which can be said to reasonably accommodate the disability of the learners.
- 8.26. Additionally, the Commission observed the new facilities being built at the First Respondent’s premises in Leeudoringsstad, do not comply with the Department of Public Works Disability Policy Guidelines in relation to access ramps.
- 8.27. The Respondents have not provided the Commission with any basis for continued non-compliance or the basis for inadequate accommodation of the learners needs.⁶⁷
- 8.28. Despite significant advances in legislation and policy in South Africa promoting the equality of people living with disabilities, non-compliance with minimum standards appears to be systemic in the province. In this matter specifically, and at the Hoërskool Wolmaransstad these standards have clearly not been met over a period of time.

Equality

- 8.29. Equality is a core and foundational value that includes the full and equal enjoyment of all rights and freedoms. In South Africa it is both a guaranteed and justiciable right in our Bill of Rights that is dependent on both:
 - 8.29.1. The State taking steps to promote equality through legislative and policy mechanisms, and;
 - 8.29.2. The implementation of those legislative and policy mechanisms.

⁶⁷ *Basic Education For All and Others v Minister of Basic Education and Others*, *ibid.*

- 8.30. A relevant example is noted in Section 34(1) of the Schools Act which reflects the obligation to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education within the available resources of public revenue.
- 8.31. While South Africa has a combination of legislation and policy to give full effect to Article 24 of the *Convention on the Rights of Persons with Disabilities*, a rights based approach to an interpretation of the Bill of Rights, international instruments, existing domestic statutes and policies, clearly point to a need for a coherent set of commitments from the State which ensure that children living with disabilities in the basic education system are treated inclusively and substantively equally.
- 8.32. Domestic legislation such as *Uniform Norms and Standard for Public School Infrastructure* (GN R920, Gazette 37081) and policies such as the Department of Public Works Disability Policy Guidelines provide for 'progressive realisation' of access to education facilities. These mechanisms require:
- 8.32.1. An enabling environment for access to services and infrastructure by persons with disabilities, and
- 8.32.2. Recognition of diversity of needs of people living with disabilities in the access provided is to be included in the planning for both new buildings and the renovation of existing ones. They also require the retrofitting of existing building where renovations are not planned.
- 8.33. As discussed in this report, the conceded and observed failure of the Respondents to comply with the minimum building, safety and fire standards required by policy, law, rule, practice disadvantaged the learners' right to a safe environment and access to other human rights including their right to life and dignity. The acts and omissions of the Respondents include a conceded failure to 'reasonably accommodate' the learners' disability, which in terms of Section 9(c) of PEPUDA is unfair discrimination.⁶⁸ The provision merely of a school for hearing impaired learners, is not a measure of reasonable accommodation, if the real threat to their right to life is a likely possibility at such a school.

⁶⁸ *MEC for Education: Kwazulu-Natal and Others v Pillay* CCT 51/06 (2007) ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) at paragraph 72 and 77.

Duty to Protect

- 8.34. The duty to protect human rights rests significantly with the State through its policies, officials and institutions.
- 8.35. Public schools and government officials who implement policies, codes of conduct and who carry the responsibility of enabling and protecting rights have the obligation of protecting learners in their care. The type and level of protection is determined by the context of the education environment provided by the school. In a residential school environment, duties in addition to those of providing education fall onto the school and its staff as in the residential context they act as the control enabler and protector or the *diligent paterfamilias*.
- 8.36. In the North West Province the risk of fatal fires in schools is a known risk. The Christiana School for the Blind (2010: three blind learners died) and Hoër Volksskool Potchefstroom (2015) are tragic examples of this legacy. Since such previous occurrences were a known risk, the actions and continued non-compliance by the Respondents by way of example; through the locking of the doors to the residential facilities from the outside and the failure to put in place protective controls demonstrate a failure of the duty of care to safe guard against known risks. This failure impacted on a number of inter-related and interdependent rights such as the learners' freedom of movement, increased likelihood of physical and psychological harm, or death, when a fire again exacted its tragic toll at a special needs school in the province.
- 8.37. Actions which are attendant on restoration and renovation of the damaged premises of the First Respondent, and existing conditions at the Hoërskool Wolmaransstad, indicate that no clear measures have been put in place to enable the Second and Fourth Respondents to fulfil their duty of care to learners with special needs in the province at the time of this Report and demonstrate a continued failure to protect the learners' rights.
- 8.38. At the time of writing this report the Respondents have not provided the Commission with any information that justifies the limitation of the rights of the learners from either the perspective of their disabilities or as children.

Access to Information

- 8.39. The parents of the deceased learners required access to information from the School about the events of 24 August 2015. Section 32(1)(a) of the Constitution, and other provisions in law⁶⁹ together give everyone the right access information required to exercise or protect a right subject to justifiable limitations expressly recorded in the legislation and regulations.
- 8.40. Based on the statements from the parents of the deceased learners, they required the information relating to the tragic death of their children. It is assumed these parents also required the information to exercise their legal rights.
- 8.41. In relation to access to the site of the fire it is not known whether Section 8(2) of the Regulations for Safety Measures at Public Schools of the School Act was complied with by any parent or learner, including the parents of the deceased learners. Nor is it known what the basis of the refusal was or what if any, action was taken to appeal that refusal.
- 8.42. It is not known whether the procedural steps required for the exercise of the rights to information in terms of the statutes or regulations were followed by any of the parties, or whether the alleged refusal of information had any basis in law.
- 8.43. However, a rights based approach would permit the disclosure of information, subject to necessary conditions, to the affected parents, from a humane point of view, and would permit fuller disclosure at a stage where, by way of example, factors militating against full disclosure such as forensic investigations or court proceedings were concluded and full disclosure was permissible.

Counselling

- 8.44. The provision of trauma counselling and support to children and by extension their families is a necessity in events of the nature that occurred at the North West School for the Deaf.
- 8.45. As detailed in this report, a reading of the Constitution and the Convention on the Rights of the Child, would require governments and their institutions to take all

⁶⁹ Section 59(1) of the Schools Act and Section 8(2) of the Regulations for Safety Measures at Public Schools (GN 1040, Gazette 22754, GN R1128, Gazette 29376).

appropriate measures to promote physical and psychological recovery and social reintegration of a child victim. The CRPD specifically requires that the best interest of the child shall be the primary consideration and that a child's right to basic health care includes trauma counselling.

- 8.46. In relation to the surviving learners it is not known at the time of writing this report whether any or all of the learners were assessed by a medical professional to determine their need for counselling. Nor is it known if any or all of them were offered counselling at all.
- 8.47. Further, with the exception of the parents of the three deceased learners it is not known if any or all of the parents of the learners were offered counselling or accessed counselling.
- 8.48. It is known the parents of the three deceased learners were offered counselling and at least one accessed counselling for part of one session.
- 8.49. It appears that the teachers who were present at the premises of the First Respondent also require some counselling to come to terms with what happened and the trauma they experienced.

9. SUBMISSION OF THE PROVISIONAL INVESTIGATIVE REPORT TO THE RESPONDENTS

- 9.1. The Respondents were provided with the Commission's Provisional Investigative Report in this matter on 21 July 2017, for their response in accordance with the Commission's Complaints Handling Procedures.
- 9.2. On 22 August 2017, the Office of the Third Respondent apologised for the delay and requested a meeting with the Commission on 31 August 2017. The meeting was requested to discuss the Provisional Investigative Report and for the Commission to explain the process followed when a Provisional Investigative Report is made final. The meeting with the Third Respondent was scheduled as requested.

- 9.3. The Office of the Fourth Respondent responded on 21 August 2017 indicating that it would finalise and submit its response once internal departmental processes for finalisation of the response were completed.
- 9.4. The Commission discussed the Provisional Investigative Report with the Acting Head of Department of the North West Department of Education and the Chief of Staff in the Third Respondent's Office at a meeting held on 1 September 2017.
- 9.5. At the meeting referred to above, the Second and Third Respondents requested an extension for submission of comments to the Provisional Investigative Report. An extension was granted for submission by 15 September 2017.
- 9.6. A further request for an extension to submit comments was granted for submission of comments by 22 September 2017. No comments were received on or before 22 September 2017.
- 9.7. On 29 September 2017, the Commission received a written correspondence from the Office of the Second Respondent. In said correspondence, the Second Respondent undertook to implement the recommendations relevant to it, within the time frames stipulated in the Provisional Investigative Report. The Second Respondent further undertook to communicate with the Commission in respect of recommendations it is unable to implement, for whatever reason. In addition, the Second Respondent advised that the Commission communicate any recommendations to be implemented directly to the relevant institutions.
- 9.8. The First, Third and Fourth Respondents have not furnished comments to the Provisional Investigative Report, to date.
- 9.9. On 2 November 2017 the Commission released the Provisional Investigative Report to SACE, Legal Aid-SA and SAPS for submission of their respective comments by 24 November 2017.
- 9.10. At the time of finalising this Investigative Report, SACE had not submitted its comments.

- 9.11. Legal Aid-SA, indicated in its response⁷⁰ that it had provided support to the bereaved family and that this support was in its view both procedurally and substantively fair and sound. Legal Aid-SA recommended, that dissatisfaction with the settlements amounts agreed to and accepted by the affected families be taken under legal advice outside of Legal Aid-SA. The Commission will thus provide the bereaved families with legal advice and to challenge the settlements should they wish to do so.
- 9.12. The comments from SAPS⁷¹ were not of a material nature and do not change or impact on the Commission's findings that serious human rights have been violated.

10. FINDINGS

Right to Life and Dignity

10.1. The following findings are made:

10.1.1. The Respondents did not comply with legislation and policies such as the National Building Standards, Regulations and National Norms and Standards, Regulations for Safety Measures at Public Schools and Uniform Norms and Standard the Department of Public Works Disability Policy Guidelines.

10.1.2. The fire which ensued resulted in the death of the three learners. The failure to comply with the legislative and policy provisions referred to above is a contradiction to the promotion and protection of the right to access to basic education, the right to equality, the right to a safe environment and the right to life. Non-compliance with the legislative and policy frameworks directly and or, indirectly violated the rights of learners, in particular:

10.1.2.1. The Respondents did not protect the human dignity of the learners;

⁷⁰ Letter received from Legal Aid-SA on 24 November 2017 and dated 24 November 2017

⁷¹ SAPS letter dated 23 November 2017 and received on 24 November 2017

- 10.1.2.2. The Respondents did not protect the right to life of Learners X, Y and Z.

Freedom and Security of the Person

- 10.2. Based on observations and information available to the Commission at the time of this report, especially the fact that a supervising teacher was alleged to have been in residence on the first floor, there is a qualified finding that no 'just cause' exists for the locking of the doors from the outside.
- 10.3. This finding is qualified on the basis that the Respondent did not provide information that would establish either that a 'just cause' for the action existed or that the approach was one which was reached and implemented in accordance with 'procedural fairness' as required in Section 12 of the Constitution.

Safe Environment

- 10.4. The following findings are made:
- 10.4.1. The Respondents failed to provide the minimum safety and fire standards relating to fire safety on the School premises.
- 10.4.2. The renovations to the School fail to provide the minimum safety and fire standards relating to fire safety on the School premises.
- 10.4.3. Additionally, the Respondents have failed to ensure and provide the minimum safety and fire standards relating to fire safety at the Hoërskool Wolmaransstad.
- 10.4.4. The past and continued failure to comply with minimum building, safety and fire standards indicate systemic failures by the Respondents to provide a safe environment for learners.

Reasonable Accommodation

- 10.5. The following findings are made:
- 10.5.1. The Respondents and other government institutions have developed, and continue to develop, legislative and policy imperatives for the State to take measures to develop and implement programmes, policies and guidelines

in order to promote equality and reasonably accommodate people living with disabilities.

- 10.5.2. The legislative and policy imperatives for reasonable accommodation for the learners living with disabilities are not being fully implemented. Systemic non-compliance with the minimum building, safety and fire standards for the residential facilities at both North West School for the Deaf and Hoërskool Wolmaransstad is indicative of this failure.
- 10.5.3. Reasonable accommodation for the learners of the North West School for the Deaf was not adequately implemented at the time of the fire.
- 10.5.4. Reasonable accommodation at the North West School for the Deaf is not adequately provided for in the rebuilding and renovations at the North West School for the Deaf.

Equality

10.6. The following findings are made:

- 10.6.1. North West School for the Deaf learners do not have equal access to human rights, specifically the human rights discussed in this report.
- 10.6.2. The conceded and observed failure of the Respondents to provide reasonable accommodation, and to comply with the minimum building, safety and fire standards required by policy, law, and practice, preventing access to a safe environment for learners with disabilities is unfair discrimination to the rights of learners with disabilities to access education.
- 10.6.3. The North West School for the Deaf was specifically created for the purpose of addressing past and current disadvantages in accessing basic education that arise from disability, i.e. to reasonably accommodate learners with a disability.
- 10.6.4. The hostel residential facilities provided at the School, the alternate accommodation and the partially complete facilities do not reasonably accommodate the disabilities of the learners.
- 10.6.5. The residential facilities provided by the Respondents unfairly discriminate against the learners.

10.6.6. The Respondents have not provided any information that would rebut the presumption that this discrimination is unfair.

10.6.7. The learners access these facilities in the course of exercising their right to a basic education. The inadequate facilities impact on the right to a basic education of the learners.

Duty to Protect

10.7. The following findings are made:

10.7.1. The Respondents have a duty to protect learners in their care. The extent of this duty of care is determined by the context of the education environment provided by the School.

10.7.2. The Respondents in a residential school environment in addition to the protection associated with those relating to providing education must protect the rights associated with the residential component of the service provided to the learners.

10.7.3. The Respondents must reasonably have known of the risk of fatal fires in schools in the North West Province, based on previous outbreaks.

10.7.4. The Respondents failure to take positive steps to protect the learners is compounded by:

10.7.4.1. Locking of the doors to the residential facilities from the outside;

10.7.4.2. Non-compliance with the minimum building, safety and fire standards and the failure to reasonably accommodate the disabilities of the learners.

10.7.5. The Respondents systemically continue to fail to protect the rights of the learners by failing to comply with these standards.

Access to Information

10.8. The following findings are made:

10.8.1. The surviving learners and the parents of the deceased learners, have a constitutional and legislative right to access information subject to justifiable restrictions.

10.8.2. The Commission has insufficient information to determine:

10.8.2.1. If a request for information or access to the School was made for or on behalf of the learners or their parents (surviving or deceased).

10.8.2.2. If the Respondents severally or collectively refused to provide information and or access as requested.

Counselling

10.9. The following findings are made:

10.9.1. The sixty-one (61) surviving learners have a right to basic health care which includes counselling after a traumatic event.

10.9.2. The counselling offered to the parents of the learners who died in the fire at the North West School for the Deaf was not effective.

11. RECOMMENDATIONS

11.1. In terms of Section 13 (1)(a)(i) of the Act, the Commission is *“entitled to make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution”*.

11.2. As required by Section 18(4) of the Act, the Minister and the MEC must, within sixty (60) days of the issuing of this Final Investigative Report, provide a written response to the Commission indicating the intention to take any steps to give effect to the recommendations below.

The Commission directs that:

11.3. The Second Respondent conducts a full audit of all special needs schools in the North West Province to identify existing controls, training needs and risks to learners, including staff, and property in respect of fire and other emergency situations.

- 11.4. The Second Respondent set up a centralised system through which compliance with safety standards is monitored and which enable timely interventions for corrective action where non-compliance is noted.
- 11.5. A time-bound plan of action is developed by the Second Respondent to ensure that schools in the North West Province are in full compliance with regulations such as the National Building Standards, Regulations for Safety Measures at Public Schools and Uniform Norms and Standard and compliance with Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure; and best practice for the protection of persons at schools in the event of fire or such other emergency which potentially impact on the rights of learners.
- 11.6. The time-bound plan is to include:
 - 11.6.1. First Aid Training programs for staff at special needs schools in the North West Province to be completed within six (6) months of the issuing of this report;
 - 11.6.2. The initiation of a program of emergency drills for special needs schools within two (2) months of the issuing of this report; and
 - 11.6.3. Timelines for the submission of the annual report from the MEC to the Minister of Basic Education in terms of Regulation 4(6) of the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure.
 - 11.6.4. The initiation of a program to secure full compliance with PAIA, and the Regulations for Safety Measures at Public Schools, and to ensure that the program includes training for officials on the PAIA.
 - 11.6.5. The framework and timelines for the centralised compliance monitoring system referred to in paragraph 11.4 above.
- 11.7. The audit report and time-bound action plans referred to above are provided to the Commission by the Second Respondent within three (3) months of this report.
- 11.8. With regard to the First Respondent's learners specifically, the First to Fourth Respondents are required to provide a report to the Commission, within two (2) months of receipt of this finding, indicating their plans for the renovation of the North West School for the Deaf, and if not, the measures to be put in place to ensure that

learners impacted by the closure of the North West School for the Deaf are able to access basic education without interruption or hardship occasioned by such closure.

11.9 The Second Respondent appoints suitably qualified specialists, within three (3) months of receipt of this report, to assist the families of the deceased learners and the learners of the North West School for the Deaf with proper counselling.

11.10 Recommendations to South African Council of Educators (SACE); Legal Aid-SA and the South African Police Service (SAPS)

11.10.1 SACE to initiate disciplinary proceedings, within three (3) months of receipt of this report, against employees and/or officials of the Second Respondent, responsible for school safety and which employees and/or officials failed and/or neglected to ensure that safety measures were in place at the First Respondent's premises on 24 August 2015.

11.10.2 Where disciplinary measures have already been invoked either by SACE or the Second Respondent, such party is to provide the Commission with a detailed report of the disciplinary steps taken in the matter if any, within three (3) months of the issuing of this report.

11.10.3 The SAHRC shall engage with the SAPS to establish and request that criminal proceedings be initiated against all implicated in the investigations by the SAPS.

11.10.4 The Commission will engage with the families of the deceased learners about the securing of such support in accordance with the response by Legal Aid-SA⁷² regarding the settlements.

12 APPEAL

You have the right to lodge an appeal against this decision. Should you wish to lodge such an appeal, you are hereby advised that you must do so in writing within 45 days of the date of receipt of this finding, by writing to:

⁷² Please see footnote 70 above

The Chairperson, Professor B. Majola
South African Human Rights Commission
Private Bag X2700
Houghton
2041

SIGNED AT JOHANNESBURG ON THIS THE 22nd DAY OF DEC. 2017



Commissioner AM Makwetla
South African Human Rights Commission



Commissioner BJ Malatji
South African Human Rights Commission



Commissioner AH Gaum
South African Human Rights Commission