

“LEARNING WITHOUT BOOKS”

Report on an investigation into alleged shortages and incorrect supply of school workbooks by the National Department of Basic Education to Eastern Cape schools

Report No: 19 of 2013/14



**PUBLIC PROTECTOR
SOUTH AFRICA**

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Executive Summary

- (i) *“Learning Without Books”* is my report as the Public Protector issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 and section 8(1) of the Public Protector Act, 23 of 1994.
- (ii) The report communicates my findings and the appropriate remedial action following an investigation into a complaint lodged on 07 August 2012 by Mr Edmund van Vuuren, Member of the Eastern Cape Provincial Legislature (MPL) and the Democratic Alliance Education Spokesperson, concerning the Eastern Cape school workbooks shortages. Mr van Vuuren alleged that he wrote to the Minister of Basic Education on 22 July 2012 and 2 August 2012 demanding a resolution to the school workbooks shortages but to no avail. He further alleged that he had undertaken visits to various schools in the Eastern Cape where it was discovered that the schools had been supplied with incorrect workbooks.
- (iii) The following issues were considered and investigated:
 - (a) Did the Department of Basic Education fail to provide adequate school workbooks in the Eastern Cape Schools? If so, did such failure constitute maladministration in terms of section 6(4)(a)(i) of the Public Protector Act?
 - (b) Was there a systems failure which resulted in the school workbooks shortages in the Eastern Cape Schools? If so, did such systems failure constitute maladministration in terms of section 6(4)(a)(i) of the Public Protector Act?
 - (c) Did the Department of Basic Education and the Eastern Cape Department of Education provide seamlessly co-ordinated leadership and management in support of optimal delivery of school books? If not, was such conduct improper and does it constitute maladministration?

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- (d) When the schools book crisis commenced, did the Department of Basic Education and the Eastern Cape Department of Education act with sufficient urgency and diligence to resolve such crisis expeditiously and decisively? and
 - (e) If there was a failure to provide adequate school workbooks in the Eastern Cape, did this result in prejudice to the affected learners?
- (iv) The investigation process included correspondence, inspections *in loco*, announced and unannounced visits to various schools, correspondence, interviews and meetings with the relevant officials and the perusal of documentation received. Applicable legislation, policies and prescripts, were also considered and applied.
- (v) My findings are the following:

Did the Department of Basic Education fail to provide adequate school workbooks in the Eastern Cape Schools? If so, did such failure constitute maladministration in terms of section 6(4)(a)(i) of the Public Protector Act?

- (a) The Department of Education failed to provide adequate school work books on time to all Eastern Cape schools in 2012 and 2013, in that:
 - (aa) Books transcribed in the incorrect language were provided to the schools, shortages of workbooks were delivered to the schools and there was late delivery of school workbooks in the following:
 1. 69% of the delivered workbooks were in the incorrect language;
 2. 75% of the delivered workbooks were in short supply;
 3. 8% of the delivered workbooks were over-supplied;

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4. Deliveries for school terms 1 and 2 occurred late in February or March 2012; and
 5. The deliveries of the school workbooks in November 2012 for the 2013 school academic year were also found to be in incorrect language, wrongly supplied and in short supply in certain schools.
- (bb) The National Department of Basic Education and the Eastern Cape Department of Education violated the provisions of section 29 of the Constitution by failing to provide basic education in the form of school workbooks to everyone in the language of their choice, section 195(1)(b),(d) and (f) of the Constitution, by failing to provide school workbooks efficiently, effectively, equitably and being accountable there for and, section 237 of the Constitution, by failing to perform its obligations diligently and without delay. The violation of the said constitutional provisions constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

Was there a systems failure which resulted in the school workbooks shortages in the Eastern Cape Schools? If so, did such systems failure constitute maladministration in terms of section 6(4)(a)(i) of the Public Protector Act?

- (a) There clearly was a systems failure in that there was inadequate monitoring of the workbook ordering process, as this process was inaccurate in determining the correct amount/quantity of workbooks required. Further that the delivery was not executed according to what was required and ordered in respect of each and every school in the province, in that:

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- (aa) The National Department of Basic Education failed to set uniform norms and standards in terms of the South African Schools Act, 1996 in providing school workbooks in the Eastern Cape schools, and such failure constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (bb) The National Department of Basic Education failed to determine national policy and regulatory framework for the provision of workbooks in the Eastern Cape in terms of section 3 of the National Education Policy Act, 1996, and such failure constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (cc) The manner in which the placement of orders and delivery of the school workbooks in the Eastern Cape was executed is against the acceptable principles of sound administration, as a result the following ensued:
1. All schools visited during the investigations did not order the workbooks from the National Department of Basic Education;
 2. All deliveries were done without schools being advised prior to the delivery;
 3. Some deliveries were done outside official school hours;
 4. Some schools did not have space to keep delivered materials as some schools were engaged with end of the year examinations;
 5. Some schools have no dedicated officials to take charge of the delivered stock or proper document management of school workbooks;

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6. The Department of Basic Education only obtained statistics of learners of the previous year roll and used such figures for the delivery of workbooks for the following academic year school roll;
7. There was no co-ordination mechanisms in place at all levels of the DBE National, Provincial, District and School levels to regulate the provision of workbooks;
8. The absence of a dedicated official or structure in the Provincial Department of Education to take responsibility for the ordering and delivery of workbooks; and
9. Schools accounting officers were not consulted by the Provincial or National Department of Basic Education concerning workbooks requirements.

Did the Department of Basic Education and Eastern Cape Department of Education provide seamlessly co-ordinated leadership and management in support optimal delivery of school books? If so, was such conduct improper and does it constitute maladministration?

- (a) The Department of Basic Education and the Eastern Cape Department of Education failed to provide seamlessly co-ordinated leadership and management in support of optimal delivery of school books in that:
 - (aa) There was over-reliance on written communication and directives, without checking the capacity to comply and the actual compliance with such directives;

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- (bb) No auditing of supplied books against national requirements and order specifications had been conducted even after the crisis played out in the public domain.

When the workbook crisis commenced, did the Department of Basic Education and the Eastern Cape Department of Education act with sufficient urgency and diligence to resolve such crisis expeditiously and decisively?

- (a) The Department of Basic Education and the Eastern Cape Department of Education did not act with sufficient urgency and diligence to resolve the school books crisis expeditiously and diligently resulting in unnecessary litigation that brought relief to affected schools in that:
- (aa) After the first court order was granted, the Department reported, without verification, that all school books had now been delivered;
- (bb) When the Public Protector enquired to the Director-General (DG), Department of Basic Education, in July 2012, about the conduct of an audit and existence of an action plan to ensure compliance and prevent a repeat in 2013, the Department did not seize the opportunity to act more decisively as overall steward of the basic education system in the entire country;
- (cc) The DG, Mr P B Soobrayan, specifically failed to exercise the necessary diligence and leadership to solve the crises by not ordering an audit and an action plan as expected or implied in the correspondence of the Public Protector in July 2012 and the HOD of the Eastern Cape Department of Education, Mr Mthunywa Lawrence Ngonzo, failed to act when circumstances demanded it.

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(dd) The conduct was in violation of section 237 of the Constitution stipulating that “all constitutional obligations must be performed diligently and without delay.” The omissions of Mr Soobrayan and Mr Ngozo accordingly constitute improper conduct and maladministration.

If there was any failure to provide adequate school workbooks in the Eastern Cape, did this result in prejudice to the affected learners?

(a) Learners in several schools in the Eastern Cape operated without some of the work books essential for their education resulting in:

(aa) Exposure to an inferior education in relation to their counterparts elsewhere and possible adverse consequences on their future prospects in the education system, work and society in violation of the right to equality enshrined in section 9 of the Constitution;

(bb) The violation of the right to education enshrined in 29 of the Constitution in respect of affected learners in the Eastern Cape Schools.

(vi) Appropriate remedial as envisaged in section 182(1)(c) of the Constitution is the following:

(a) The Minister of Basic Education should hold the Director General, Mr Bobby Soobrayan accountable for actions and omissions that resulted in the failure to prevent, contain and solve the national school books crisis.

(b) The Director-General of the National Department of Basic Education is to ensure a functional co-ordinating structure with the Head of Department (HOD) of the Eastern Cape Department of Education, keeping in mind the National Department of Basic Education’s structure and plan, with dedicated officials at

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all levels as the current processes seem to be incomplete and inadequate. The officials should have clearly defined responsibilities to ensure that district offices and school accounting officers are consulted with regard to the ordering and delivery of workbooks;

- (c) Both the Director-General of the National Department of Basic Education and the Head of Department of the Provincial Department of Education should refrain from using the statistics of learners enrolled in the previous academic year for the planning and delivery of the following year's school workbook requirements;
- (d) The Head of Department of the Provincial Department of Education should consult accounting officers with concerning the planning and delivery of school workbooks for the following academic year's rolls;
- (e) Deliveries should occur during official school hours and school accounting officers must be consulted prior to the delivery;
- (f) The Head of Department of the Provincial Department of Education should ensure that schools have adequate storage space for the safekeeping of school workbooks;
- (g) The Provincial Department of Education should ensure that schools have dedicated officials to take charge of delivered stock and proper document management of school workbooks.

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REPORT ON AN INVESTIGATION INTO THE ALLEGED SHORTAGES AND INCORRECT SUPPLY OF SCHOOL WORKBOOKS BY THE NATIONAL DEPARTMENT OF BASIC EDUCATION TO EASTERN CAPE SCHOOLS

1. INTRODUCTION

- 1.1 *'Learning without books'* is my report as Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).
- 1.2 The report is submitted in terms of section 8(2)(b) of the Public Protector Act to:
- (a) The Minister of Basic Education, Hon. M A Motshekga;
 - (b) The Director-General (DG) of the Department of Basic Education, Mr P B Soobrayan;
 - (c) The Eastern Cape Member of the Executive Council (MEC) for Education, Mr M Makupula; and
 - (d) The Superintendent-General of the Eastern Cape Department of Education, Mr M L Ngonzo.
- 1.3 A copy of the report is also provided to Mr Edmund van Vuuren, Member of the Eastern Cape Provincial Legislature, MPL (the Complainant).
- 1.4 The report communicates my findings as Public Protector and indicates the appropriate remedial action required to address each finding following an investigation into a complaint of school workbooks shortages in the Eastern Cape and the alleged failure by the Minister of Basic Education to respond to two letters addressed to the Minister by the Complainant in that regard.

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- 1.5 The shortage of school workbooks was widely reported in the media, more especially in Limpopo and in the Eastern Cape.
- 1.6 On 4 May 2012, Section 27, an NGO, which has a public interest law centre that seeks to influence, develop and use the law to protect, promote and advance human rights, instituted action against the Department of Basic Education in the North Gauteng High Court for the failure to deliver school workbooks.
- 1.7 The Application was heard on an urgent basis on 14 May 2012 and judgement was granted on 17 May 2012. Among the relief sought by Section 27 was an order declaring that the failure by the Department of Education in Limpopo to provide textbooks to schools amounted to a violation of the right to basic education, equality and dignity and the South African Schools Act, 1996 and section 195 of the Constitution. The court granted the relief sought by Section 27.
- 1.8 The Court further ordered that textbooks be provided to learners in Limpopo by no later than 15 June 2012 and that a “catch-up plan” be formulated and a copy thereof lodged with the court by 8 June 2012.
- 1.9 On 14 June 2012 the delivery of workbooks was not completed by the Department as directed by the Court, despite public assurances to the contrary and the Head of the Limpopo Education Intervention Team undertook to finalise the delivery by 20 June 2012. This was not realised.
- 1.10 On 21 June 2012 Section 27 and a senior delegation from the department of Basic Education (without the authority of the Minister) entered into an out of court settlement, which were to be made an order of court, to:
 - i. *“That all textbooks would be delivered to all schools by or on Wednesday 27th June.*

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- ii. *The DBE would provide SECTION27 with written updates of the progress of the delivery on Saturday June 23; Monday June 25; and Tuesday June 26.*
- iii. *That an official DBE circular would be issued on Friday 22nd June to all school principals informing them of this and requesting them to make arrangements with learners to return to school on Thursday 28th June to collect their textbooks. This would ensure that learners are able to study over the coming school holidays.*
- iv. *That detail of the 'catch up plan', including extra tuition and teacher support, would be developed by the DBE with input from SECTION27. As required by the court order, the DBE would report to the court on the implementation of the plan.*
- v. *That a joint public media statement would be made on the conclusion of delivery.” (<http://www.section27.org.za/2012/06/28/section27-statement-on-limpopo-textbook-crisis-state-of-delivery-by-deadline-of-27-june/>; accessed on 12 September 2013)*

- 1.11 My Office received a number of complaints regarding alleged inadequacies in the delivery of school books in a number of provinces, principally the Eastern Cape, Limpopo and Free State. A consolidated report on Limpopo and the other provinces is currently being finalised.
- 1.12 Although the complaint regarding the alleged shortage of books in the Eastern Cape related to provincial activities, the specific complaint was lodged against the Minister of Education, with regard to alleged failed leadership and failure to respond to correspondence from the Complainant. For this reason, the investigation targeted both national and provincial state actors' actions and omissions.
- 1.13. On receipt of the complaint I immediately wrote to the Director General, Basic Education, Mr Soobreyan who assured me that the problem had been solved, an assurance, which later proved untrue.

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2. THE COMPLAINT

- 2.1 The Complainant was lodged by Mr Edmund van Vuuren (Member of the Eastern Cape Provincial Legislature (MPL) and the Democratic Alliance Education spokesperson) on 07 August 2012, who complained that there was an extensive school workbooks shortage in the Eastern Cape that required urgent attention to minimise a negative impact on affected learners.
- 2.2 The Complainant alleged that maladministration by the Department of Basic Education had resulted in and was response for failure to resolve Eastern Cape school workbooks shortages. He also alleged that he had written to the Minister of Basic Education on 22 July 2012 and 2 August 2012 respectively, demanding a solution to the school workbooks shortage problem and that the Minister never responded.
- 2.3 The Complainant further alleged that he had undertaken visits to various schools in the Eastern Cape where he had discovered that schools were supplied with incorrect workbooks.
- 2.4 He further alleged that having realised the magnitude of the workbook shortages around the country, he had embarked on an investigation into various schools across the Eastern Cape Province and found that indeed there were shortages and incorrect deliveries of workbooks to various areas.
- 2.3 The Complainant alleged that he had advised the Provincial Department of Education (hereinafter referred to as the ECDoE) of the shortages but it did not attend to the problem, thereby depriving learners of their right to receive and access education as prescribed by the Constitution.

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2.4 He further alleged that he had written two letters to the Minister of Education that had never been responded to.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution established in terms of section 181(1) (a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that the Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice, to report on that conduct and to take appropriate remedial action. Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.

3.3 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve related disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.4 The Department of Basic Education, the Eastern Cape Department of Education and the Minister of Basic Education are organs of state and conduct attributed thereto amounts to conduct in state affairs. The matter, accordingly, falls within the mandate of the Public Protector.

3.5 The jurisdiction of the Public Protector was not disputed by any of the parties.

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4. ISSUES CONSIDERED AND INVESTIGATED

4.1 The following issues were considered and investigated:

- 4.4.1 Did the Department of Basic Education fail to provide adequate school workbooks in the Eastern Cape Schools? If so, did such failure constitute maladministration in terms of section 6(4)(a)(i) of the Public Protector Act;
- 4.4.2 Was there a systems failure which resulted in the school workbooks shortages in the Eastern Cape Schools? If so, did such systems failure constitute maladministration in terms of section 6(4) (a) (i) of the Public Protector Act?
- 4.4.3 Did the Department of Basic Education and the Eastern Cape Department of Education provide seamlessly co-ordinated leadership and management in support of optimal delivery of school books? If not, was such conduct improper and does it constitute maladministration?
- 4.4.4 When the schools book crisis commenced, did the Department of Basic Education and the Eastern Cape Department of Education act with sufficient urgency and diligence to resolve such crisis expeditiously and decisively? and
- 4.4.5 If there was a failure to provide adequate school workbooks in the Eastern Cape, did this result in prejudice to the affected learners

5. THE INVESTIGATION

The investigation was conducted in terms of section 7 of the Public Protector Act, 1994 and comprised of the following:

- (a) Analysis and application of the relevant legal and regulatory framework;
- (b) A meeting with the Complainant;



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- (c) Correspondence with the Director General Department of Basic Education and different sections within the Department of Basic Education and the ECDoE;
- (d) Inspections *in loco*;
- (e) Review of the documents received;
- (f) Announced and unannounced visit(s) to schools.

5.1 Key sources of information:

5.1.1. Media Reports:

- 5.1.1.1. A media report by City Press dated 9 July 2012 accessed on 4 September 2013 and titled "*Eastern Cape workbooks returned – DA*".
- 5.1.1.2. A media report by News24 dated 18 January 2013 accessed on 18 July 2013 and titled "*Motshekga denies textbook accountability*".

5.1.2. Circulars and documents retrieved from the National Department of Basic Education's website:

- 5.1.2.1. Circular S8 of 2013 dated 26 June 2013 and titled "*VERIFICATION, CONFORMATION AND SIGNING OFF LIST OF SCHOOLS CONTAINING LEARNER NUMBERS AND LANGUAGES TO INFORM PRINTING AND DELIVERY OF 2014 WORKBOOKS*".
- 5.1.2.2. An internet page displaying Frequently Asked Questions regarding workbooks (<http://education.gov.za/WorkbookDownload/Workbooks/tabid/535/Default.aspx>) accessed on 4 September 2013.

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5.1.3. Circulars and documents retrieved from the ECDoE's website:

- 5.1.3.1. Circular 16 of 2012 dated 27 August 2012 and titled "*PROCUREMENT OF TEXTBOOKS FOR 2013 ACADEMIC YEAR*"
- 5.1.3.2. Circular 17 of 2012 dated 3 September 2012 and titled "*PROCUREMENT OF LTSM – TEXTBOOK AND STATIONARY FOR SECTION 21 QUINTILES 1,2, AND 3 SCHOOLS*"

5.1.4. Legislation and other Prescripts

- 5.1.4.1. The Constitution of the Republic of South Africa, 1996
- 5.1.4.2. National Education Policy Act, 27 of 1996
- 5.1.4.3. South African Schools Act, 84 of 1996
- 5.1.4.4. Eastern Cape Education Act, 1 of 1999
- 5.1.4.5. Governing Body of the Juma Masjid Primary School and another vs Ahmed Asruff Essay N.O and other [2011] ZACC 13
- 5.1.4.6. Section 27 and others vs Minister of Education and another unreported case no: 24565/2012 heard in the North Gauteng High Court on 17 May 2012

6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

6.1. The Complainant's Submission

- 6.1.1 The Complainant alleged that after noting media reports regarding the alleged shortage of school books:
- 6.1.2 He had visited Louis Rex Primary School in the Queenstown district and identified shortages of school workbooks across all subjects from Grades R to 7. The schools received Xhosa workbooks for Afrikaans learners in some learning areas. The total

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shortage at Louis Rex Primary School was estimated to be 2300 across all grades for all learning areas in that school.

- 6.1.3 He took up the matter with the Queenstown District Director, Mr Nkosinathi Godlo, who conceded that the shortages were widespread in the District and it was established that the whole Eastern Cape Province was affected by the shortages and incorrect supply of school workbooks.
- 6.1.4 He established that school work books had not been delivered in some of the schools and that where the workbooks had been delivered some were in a wrong language or inadequate quantities.
- 6.1.5 He further alleged that he immediately wrote to the Minister of Basic Education from whom he received no reply.

6.2 Responses received during the investigation and media reports relating to the matter

6.2.1 Correspondence with the Director-General (DG) of the Department of Basic Education

- 6.2.1.1 When the issue of the shortages of school books in Limpopo schools emerged, I immediately wrote to Mr P B Soobrayan during July 2012 and specifically asked if he was aware of the school work book shortage in the Eastern Cape, the delivery system and whether an audit was done at the end of each delivery process to confirm delivery. The answer at the time gave the impression that all was under control. The DG indicated that the Department of Basic Education had embarked on a vigorous process aimed at supporting and monitoring provinces to ensure that proper management of procurement processes as well as timeous delivery of textbooks to schools takes place. He further indicated that Provinces had been

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asked to furnish a report on deliveries of textbooks ordered for the 2012 academic year.

6.2.1.2 My correspondence, during July 2012, to Mr Soobrayan referred to above specifically requested a response to the following questions:

- (a) Whether the Department has conducted a national audit on how many schools are affected by the alleged late delivery of school books. If so what the Department's plan of action to address it was.
- (b) Whether the terms of reference of the Task Team set up to investigate the late delivery of books in and around Limpopo, extended to investigating the status of delivery of school books nationally.
- (c) Whether the Department made plans to avoid a similar crisis in the next schooling year.

6.2.1.3 The DG responded by correspondences dated 31 July 2012 and 13 September 2012 to the questions raised by the Public Protector as follows:

- (a) The DBE has embarked on a vigorous process aimed at supporting and monitoring provinces to ensure that proper management of procurement processes as well as timeous delivery of textbooks to schools take place. The DG also indicated that provinces had been asked to furnish a report on deliveries of textbooks ordered for the 2012 academic year.
- (b) In addition to the timeous delivery of textbooks, the DBE is concerned about the overall availability of books and the effect; an audit of availability of textbooks for all learners in all grades is underway.

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- (c) The Task Team only investigated late deliveries in Limpopo.
- (d) The National Catalogues for Grades 4-6 and 11 which will be supporting the implementation of the Curriculum and Assessment Policy Statement (CAPS) in 2013 were released timeously, with Grades 4-6 released ahead of schedule.
- (e) The early release had enabled provinces to commence with their procurement processes in time.
- (f) The DBE has formed an inter-provincial committee of officials who are role-players in textbooks procurement who develop, implement, monitor and report on all textbooks procurement processes in the provinces.
- (g) The committee comprises provincial CFOs, managers in Supply Chain Management and Learning and Teaching Support Material (LTSM) managers.
- (h) Provinces have developed Textbooks Procurement and Delivery Managements plans and submitted them to the DBE.
- (i) The DBE developed a national sector plan to complete textbook delivery by end of October 2012.
- (k) A report on provincial readiness to deliver within agreed timeframes would be presented to CEM and HEDCOM.
- (l) Provinces had been requested to align their timeframes with the DBE plan.
- (m) The agreed on timeframes would ensure that schools receive their books from end October to the middle of November, allowing time until the closure of schools for mop-up operations.

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- (n) The DBE together with the inter-provincial committee had met with Publishers who had given assurances that they would meet the department's printing and delivery deadlines.
- (o) The DBE had requested provinces to indicate their available budgets and those would be assessed against the projected expenditure for textbooks procurement.
- (p) Provinces would report to the DBE on a regular basis using a reporting tool which captures reporting per milestone.
- (q) The DBE would be conducting visits to all provinces as part of its monitoring of adherence to the plans.
- (r) The DBE had conducted a risk assessment from which it developed a risk management plan aimed at averting any recurrence of textbooks delivery challenges that had been experienced.

6.2.1.4 When the problem persisted, I wrote again to Mr Soobrayan on 05 October 2012, specifically with regard to the alleged systemic shortages of school workbooks across the Eastern Cape in 2012, and requested him to provide a report in that regard.

6.2.1.5 The DG responded on 18 November 2012 stating that the Department delivers workbooks to all public (ordinary and special) schools for the targeted grades and subjects. The DG further stated that provinces are informed in advance of titles of workbooks to be delivered, procedures for reporting shortages, and how the Department planned to mitigate shortages. The DG also stated that the Department

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delivered additional workbooks to districts and provincial offices to mitigate any reported shortages and providing the following documents as annexures:

- (a) *Annexure A*: A copy of undated letter addressed to the Complainant by the Public Protector but erroneously bearing the DBE's physical address which was an acknowledgement of the complaint and informing him that the Public Protector was proceeding with a preliminary investigation in the matter. It appears that the letter went to the DBE instead of the Complainant;
- (b) *Annexure B*: A report on the delivery of the 2012 workbooks in the Eastern Cape Province;
- (c) *Annexure C*: A letter dated 24 October 2011 addressed to the Superintendent-General (SG) of the Department of Education in the Eastern Cape, Adv M Mannya, by the Acting DG, Mr S Padayachee, "*requesting for signing off of the statistics on learner numbers for use in printing and delivery of workbooks for academic year 2012*". The letter specifically requested the SG to provide the learner numbers and languages for each school in the Eastern Cape, sign off and send back to the acting DG's office by no later than 4 November 2011. The DBE alleged that Heads of Departments (HoDs) in all provinces were requested to sign off the data that was to be used in the delivery of 2012 workbooks;
- (d) *Annexure D*: A schedule indicating the names of districts, number of schools in a district, the subjects, grades and the total number of books delivered to the schools. The DBE alleged that the delivery was based on the data received from each province;
- (e) *Annexure E*: A letter dated 14 December 2011 addressed to school principal(s) informing them of the Learning and Teaching Support Materials (LTSM) provided by the DBE for the 2012 academic year. The letter further informed

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that the resources (inclusive of delivery costs) are funded entirely by the DBE at no costs to the School or the Provincial Education Department. The letter also requested the principal(s) to assign an official to receive, check and sign the proof of delivery upon receipt of the items. The letter further indicated that the National, Provincial and District officials would be monitoring delivery and the use of the resources. The letter also indicated that if there are any shortages, the principal(s) should complete the feedback form that comes with the delivery and forward to their district office within 2 days. The letter further indicated that additional material would not be provided if the feedback form has not been completed;

- (f) *Annexure F*: A CD with voluminous information regarding the deliveries of books to schools and districts in the Eastern Cape which were allegedly completed by 15 March 2012 and additional deliveries which were allegedly made from April 2012 to districts and schools that indicated the need for additional workbooks;
- (g) *Annexure G*: E-mail correspondences from Makondelela Tshitema with officials in the provinces including Eastern Cape dated 26 April 2012, 14 March 2012, 9 March 2012 and 10 February 2012 allegedly requesting them to report the need for additional workbooks to the DBE. It is noted that in the e-mail dated 9 March 2012 it is indicated that e-mails were written to all districts and provinces requesting reports on shortages in order for the DBE to address it quickly and that no response was received as at that date from all the provinces on the matter;
- (h) *Annexure H*: E-mail correspondence from the Eastern Cape LTSM IT Support, Xolani Tyolwana dated 16 May 2012, addressed to Makondelela Tshitema allegedly a report advising on the shortages was attached thereto. The DBE alleged that some districts were requesting for workbooks that were not on the list of workbooks provided by the DBE for 2012 academic year;

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- (i) *Annexure I*: A schedule of additional books allegedly delivered to districts in the Eastern Cape after cleaning the list received as indicated in Annexure H. It is alleged that the district shortages were sent to the service provider on 17 May 2012 for them to deliver to the Eastern Cape;
- (j) *Annexure J*: a letter dated 23 May 2012 addressed by the DG to the Acting SG, Mr M L Ngonzo, "*Request for a report on the unresolved problems regarding shortages of workbooks and LTSM*". In the letter the DG allegedly requested the office of the Acting SG of Education in the Eastern Cape to provide a report regarding any unresolved problems regarding the delivery of the Grades R-9 workbooks and the Grades 10-12 Mathematics and Physical Sciences textbooks to the DBE on or before 25 May 2012. A follow up letter dated 24 August 2012 was addressed by the DG to the SG of Education in the Eastern Cape, Mr M L Ngonzo, raising a concern at the lack of prompt response of the Eastern Cape Province in dealing with problems related to workbook deliveries; and
- (k) *Annexure K*: Copies of delivery notes of additional workbooks delivered to the districts and schools in the Eastern Cape.

6.2.2 Media Reporting on the Eastern Cape Workbook Shortage Crisis

6.2.2.1 In an article published by the City Press dated 9 July 2012 it was stated that the Eastern Cape education spokesperson, Loyiso Pulurnani, had referred the workbook crisis to the national spokesperson, Panyaza Lesufi, and stated that the national department is the department responsible for the books and that they could comment on it.

6.2.2.2 In return Lesufi stated that the national department delivers workbooks based on numbers provided by the provinces and added that all the other provinces received

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their workbooks thus it is only the Eastern Cape that experienced problems and that it was a reflection on that province.

6.2.2.3 In an article dated 18 January 2013 and published by News24 it was reported that the Minister of Basic Education, Hon Angie Motshekga, stated that: *"It [delivering textbooks] is an administrative function and it has nothing to do with me as a minister."*

6.2.3 Circulars

6.2.3.1 In Circular 16 of 2012 dated 27 August 2012 the Eastern Cape's Acting Head of Education, Mr ML Ngonzo, and addressed to all DDG's, all chief Directors, all District directors, KTSM Project Manager, all Principals of s21 schools and all Chairpersons of SGB's stated that: *"Improving the quality of teaching and learning constitutes the core mandates of the department and is output 1 of the Minister's Delivery agreement."* (Emphasis added)

6.2.3.2 He further stated that: *"It is equally true that the process for procurement of TEXTBOOKS have always been beset with challenges which has infringed on the learners' constitutional right to basic education."*

6.2.3.3 He further indicated the implementation procedure to be followed for the procurement of textbooks would be for the 2013 academic year.

6.2.3.4 In Circular 17 of 2012 dated 3 September 2012 and addressed to all DDG's, all chief Directors, all District directors, KTSM Project Manager, all Principals of s21 schools and all Chairpersons of SGB's the Acting Head, Mr M L Ngonzo, indicated to all recipients the process to be followed when procuring stationary.

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6.2.3.5 In Circular S8 of 2013, dated 26 June 2013, addressed to Heads of Provincial Education Departments, Heads of Provincial Curriculum Branches, Provincial LTSM Managers, District Directors and LTSM Officials and School Principals it was confirmed that *“the Department of Basic Education (DBE) will continue to print and deliver workbooks to all public schools...”*

6.2.3.6 It was further stated that during the 2013 deliveries of workbooks there was provision made to indicate shortages and incorrect deliveries of workbooks on the proof of delivery and that shortages and incorrect deliveries had to be reported through the Department’s Call Centre.

6.2.3.7 According to the Circular, information captured on the proof of deliveries and the Call Centre records *“learner statistics and languages in some schools have been revised to provide a base data set for 2014 deliveries.”*

6.2.3.8 The circular further requests that *“the lists”* in the CD should be verified and confirmed alternatively new lists of learner numbers should be provided and should be forwarded to the Department before 22 July 2013.

6.2.4 DoBE website

6.2.4.1 According to the official DoBE website pertaining to workbooks it is stated that:

“How will schools receive the workbooks?”

The Department is in the process of delivering the workbooks to all primary schools for all Grade 1 – 6 learners. Each learner will receive two books... and again in the second half of the year.

Is there any cost involved for the school or parents?

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The books will be supplied for free at no cost to the schools or parents. They are funded by the Department.

Will the learners still get textbooks?

Workbooks do not replace textbooks. They are in an additional and teaching aid."

6.2.5 Meetings with schools' accounting officers

6.2.5.1 During the meetings held with various schools' accounting officers as part of the investigation process, the following picture emerged:

6.2.5.2 The school accounting officers did not place orders or requisitions for school workbooks;

6.2.5.3 School workbooks were delivered direct from the National Department of Basic Education;

6.2.5.4 The National Department of Basic Education use projected figures; or

6.2.5.5 There is no co-ordination or link between the National Department of Basic Education, Provincial Department, district offices and accounting officers; and

6.2.5.6 The accounting officers do not know who to contact in the district offices as there is no dedicated official dealing with school workbooks.

6.2.6 Meeting with the Provincial Department of Education officials

6.2.6.1 A communiqué was sent to an official responsible for Learners Teachers Support Materials (LTSM), Mrs Noxolo Gwarube, who provided the Public Protector with some documents relating to the school workbooks delivery in the Eastern Cape.

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6.2.6.2 Mrs Gwarube indicated that there is no official assigned or dedicated to deal with workbooks within the Province. Upon finishing the school workbooks investigation on schools, the Public Protector organised a meeting with the Provincial Department of Education for purposes of seeking clarity or gathering more evidence on processes and logistics relating to the deliveries of school workbooks. The meeting was held at the offices of the Department of Education in Zwelitsha on 11 December 2012 at 08h30. Present in the meeting was the Public Protector Investigation Team, Mrs N. Gwarube, and Deputy Director General: Institutional Organisation Management (IOM), Mr S.S. Zibi and Mr Tywakathi.

6.2.6.3 The following emerged during the meeting:

6.2.6.4 Mr Tywakathi conceded that there were problems with regard to the 2011/2012 deliveries of school workbooks;

6.2.6.5 Mr Tywakathi alluded to the fact that the Department has a 10-day return policy, which is a validation exercise, which is done every January, to solve problems that might have occurred during the deliveries of the previous year;

6.2.6.6 The Provincial Department of Education has no regulatory frame work or Provincial Implementation Plan when school workbooks are delivered;

6.2.6.7 Mr Zibi also alluded to the fact that the school management team or the existing structure in the district or grass roots level has the responsibility to manage the school workbooks when they are delivered by the National Department of Basic Education. Mrs Gwarube indicated that there is no delegated or dedicated official who is hands-on in the delivery of school workbooks at provincial level;

6.2.6.8 Mrs Gwarube also indicated that the issue of a dedicated official for workbooks in the Province was discussed at length at one of the National Department of Basic

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Education meetings in Pretoria as she felt that there was a need for such an official but such an effort was not successful or considered by the Department. Mrs Gwarube also indicated that the Provincial Department of Education has no say in the delivery of school workbooks by the National Department of Basic Education;

6.2.6.9 Mrs Gwarube also indicated further that there is a dedicated directorate in the National Department responsible for school workbooks and she finds it strange that at Provincial level there is none; and

6.2.6.10 Mr Tywakathi conceded that there were problems with regard to the 2011/2012 deliveries of school workbooks.

6.2.7 Collection of delivery notes

6.2.7.1 During the investigation delivery notes in respect of school workbooks were collected from the affected schools as part of documentary evidence. During the collection process schools were asked to give a brief comment on the following:

- (a) How they receive school workbooks;
- (b) Shortages of school workbooks;
- (c) Oversupply of school workbooks; and
- (d) Wrong or incorrect language in learning areas.

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6.2.8 The responses are tabled below:

	SCHOOL	ORDERED	SUPPLIED	CORRECT LANGUAGE	INCORRECT LANGUAGE	SHORTAGE	OVER SUPPLY	OTHER
1	INKQUBELA J.P.SCHOOL	NO	242	✓	NIL	✓	NIL	
2	DUMISA J.P. SCHOOL	NO	258	✓		✓	NIL	
3	FANTI GAQA S.P SCHOOL	NO		✓	NIL	217	NIL	
4	VULUMZI J.P. SCHOOL	NO		-	-	-	-	
5	AQUA VISTA PRIMARY	NO		✓	NIL	✓	✓	
6	ASPIRANZA PRIMARY SCHOOL	NO			✓	453	NIL	
7	CREW PRIMARY SCHOOL	NO			✓	504	NIL	
8	CAMBRIDGE PRIMARY	NO			✓	157	NIL	
9	TRANSKEI PRIMARY SCHOOL	NO			✓	✓	NIL	
10	CANDILANG A S.P. SCHOOL	NO		✓	NIL	✓	NIL	
11	ASHTON NKALA JSS	NO	62	✓	NIL	✓	NIL	Books were late
12	WATERFALL PARK S.PS	NO	60	✓	NIL	NIL	NIL	
13	TIPINI JS.S	NO	50	✓	NIL	NIL	NIL	
14	<u>MZINVUBU J.S SCHOOL</u>	NO	100	✓	NIL	NIL	NIL	
15	<u>MKATINI S.PS</u>	NO	90	✓	NIL	NIL	NIL	
16	<u>JONGUHLAN GA JS</u>	NO			✓	949	NIL	

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	<u>SCHOOL</u>							
17	<u>IKHWEZI COMMUNITY SPS</u>	NO		✓		✓		NIL
18	<u>NXEKO MTIRARA SP.SCHOOL</u>	NO		✓	NIL	✓		NIL
19	<u>NORGATE SP SCHOOL</u>	NO		✓	NIL	NIL		NIL
20	<u>RETREAT STATE AIDED SCHOOL</u>	NO		✓	NIL	30		NIL
21	<u>GQAQHALA JS PRIMARY</u>	NO		✓	NIL	NIL		NIL
22	<u>BALUNGISE JSS</u>	NO		✓	NIL	NIL		NIL
23	<u>DALIBANGO JS</u>	NO		✓	NIL	✓		NIL
24	<u>ENKALWENI P S SCHOOL</u>	NO			✓	312		NIL
25	<u>GABULINKU NGU J.SS</u>	NO		✓	NIL	✓		NIL
26	<u>E.T.THABAN EPUBLIC SCHOOL</u>	NO		✓	NIL	✓		NIL
27	<u>UGIE HIGH</u>	NO			✓	623		NIL
28	<u>NKULULEKO JPS</u>	NO		✓	NIL	✓		NIL
29	<u>NOKWANDA J.P</u>	NO		✓	NIL	✓		NIL
30	<u>UNATHI MKEFA</u>	NO		✓	NIL	623		NIL
31	<u>LONWABO JP SCHOOL</u>	NO		✓	NIL	✓		NIL
32	<u>EZIBELENI J.P.</u>	NO				✓		
33	<u>LUKHANJI SP SCHOOL</u>	NO		✓	NIL	NIL		NIL

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34	<u>LOIUS REX PRIIMARY</u>	NO		✓	NIL	978	NIL	
35	<u>ALIWAL NORTH PRIMARY</u>	NO			✓	300	NIL	
36	<u>ALIWAL NORTH AMASANGO</u>	NO		✓	✓	✓	22	
37	<u>VULAMAZIBU KO</u>	NO			✓	✓	NIL	
38	<u>NCHFATSO P SCHOOL</u>	NO		✓	NIL	✓	NIL	
39	<u>PELEMOSA P.SCHOOL</u>	NO		✓	NIL	198	NIL	
40	<u>MALETSWAI PRIMARY</u>	NO		✓	NIL	NIL	NIL	
41	<u>VUMILE PRIMARY</u>	NO		✓	NIL	110	NIL	
42	<u>ALHEIT VAN DER MERWE</u>	NO			✓	1222	NIL	
43	<u>CRADOCK PREP.SCHOO L</u>	NO		✓	NIL	94	NIL	
44	<u>CRADOCK HIGH</u>	NO		✓	NIL	✓	NIL	
45	<u>MICHAUSDA L PRIMARY</u>	NO		✓	NIL	NIL	NIL	
46	<u>CARINUS PRIMARY</u>	NO			✓	100	NIL	
47	<u>MICHAUSDA L SS</u>	NO			✓	✓	✓	
48	<u>A.B. ZAMBODLA J.P SCHOOL</u>	NO		✓	NIL	✓	NIL	
49	<u>NXUBA S.P</u>	NO		✓		✓	NIL	
50	<u>J.A. NCACA P.SCHOOL</u>	NO		✓	NIL	✓	NIL	
51	<u>KUDE KWALAPHA</u>	NO		✓	NIL	NIL	NIL	

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	PRIMARY							
52	SOLOMON AKENA PRIMARY	NO		✓	NIL	NIL	NIL	
53	E. MACEMBE JP	NO		✓	NIL	NIL	NIL	
54	LAER VOLKSKOOL	NO		✓	NIL	NIL	NIL	
55	UNION P.SCHOOL	NO			✓	✓	NIL	
56	ROODEBLOE M	NO		✓	NIL	✓	✓	
57	THEMBALESI ZWE	NO			✓	441	✓	
58	NQWEBA S.SCHOOL	NO			✓	✓	NIL	
59	GRAAFF- REINET PRIMARY	NO		✓	NIL	✓	NIL	
60	ASHERVILLE SEC	NO		-	-	-	-	
61	NARSINGSTR EET P.SCHOOL	NO		✓	NIL	246	NIL	
62	RYNEVELD PRIMARY	NO		✓	NIL	104	NIL	
63	DE VOS MALAN PRIMARY	NO			✓	57	NIL	
64	ABRAHAM LEVY PRIMARY	NO			✓	1303	NIL	
65	ASTRA PRIMARY	NO		✓	NIL	615	NIL	
66	CANZIBE PRIMARY	NO		✓	NIL	43	NL	

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6.2.8.1 In summary, the irregularities with regard to the identified issues are as follows:

i NOT ORDERED	=	66/66	=	100%
ii CORRECT LANGUAGE	=	46/66	=	69%
iii INCORRECT LANGUAGE	=	20/66	=	31%
iv SHORTAGE	=	50/66	=	75%
v OVER SUPPLY	=	5/66	=	7.5%

6.2.8.2 The following emerged on the comments:

6.2.8.3 That schools or accounting officers did not order or requisition school workbooks.

6.2.8.4 That shortage was prevalent in most schools and few schools indicated that there were no shortages.

6.2.8.5 That there was an oversupply of school workbooks in some schools.

6.2.8.6 That books in the incorrect language was received in some learning areas.

6.2.8.7 Schools reported that the receipt of the school workbooks for school term 1 was received late and that these school workbooks were essential and helpful in the learning areas affected.

6.2.8.8 Copies for school educators are not sent as a result educators have to use same copies as the learners.

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6.2.9 Information obtained from the National Intervention Team of the Department of Basic Education

6.2.9.1 The Team Leader of the National Intervention Team of the Department of Basic Education conceded that:

6.2.9.2 There were challenges with the delivery of workbooks for the academic period 2011/2012;

6.2.9.3 There is no regulatory policy framework for the workbooks both at national and provincial level to ensure compliance with section 195(1) (b) and section 195(1) (d) of the Constitution.

6.2.10 Response to the Provisional Report of the Public Protector issued on 16 September 2013

6.2.10.1 The response from the Complainant

6.2.10.1.1 The Complainant unequivocally agreed with all findings and the remedial action proposed by the Public Protector in the Provisional Report. The Complainant stated that they feel that their complaint had been vindicated by the Public Protector's provisional report, especially in the light of the Department's unresponsiveness to the concerns they have been raising. The Complainant further expressed the view that specific action to be taken against the national DG, Mr Soobrayan be explicitly stated in the report. The Complainant also expressed the view that specific action also be outlined in the report to be taken against specific officials at provincial level.

6.2.10.2 The response from the Provincial Department of Education

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6.2.10.2.1 The HOD Mr Ngonzo responded that a response be expected from the National Department of Basic Education.

6.2.10.3 The response of the Acting Director-General of Basic Education, Mr S G Padayachee

6.2.10.3.1 Mr S G Padayachee responded to the Provisional Report on 7 October 2013. In overall the Acting Director-General is disputing the findings of the Public Protector. In a nutshell the DBE therefore concludes as follows regarding the alleged shortage and incorrect supply of work book, with reference to the introductory portion, being the subject of investigation, to the schools of the Eastern Cape Province.

6.2.10.3.2 He indicated that, it is evident that DBE achieved an almost complete but materially substantial delivery of workbooks to schools in the Eastern Cape by the milestone-dates, and the allegations that the DBE failed to provide Basic Education in the Eastern Cape relating to the alleged shortage or incorrect delivery of workbooks is therefore incorrect.

6.2.10.3.2 In his response, Mr S G Padayachee further specified that, the Public Protector cannot and should not make adverse findings against the DBE. Mr Padayachee contended that the DBE duly fulfils its constitutional mandate regarding the provision of basic education to learners in the Eastern Cape with reference to workbooks. He further contended that in the event that the Public Protector persist with an adverse finding against the DBE, its Minister, DG or any of its officials, the DBE requests the Public Protector the opportunity to avail itself of its rights as contained in section 7(9) of the Public Protector Act and specifically to question witnesses consulted by the Public Protector in the course of the investigation and also adduce evidence before the Public Protector.

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6.2.10.3.3 In a nutshell, there are only two undisputed issues in the Provisional Report, and principally all other issues and findings of the Public Protector are disputed. The undisputed issues relate to incorrectness of the data used in supplying the school workbooks. Another one is that the Provincial Department of Education did not have a plan to execute for the supply of school workbooks to the Eastern Cape schools.

7 EVALUATION OF THE EVIDENCE OBTAINED DURING THE INVESTIGATION

7.1 Did the Department of Basic Education fail to provide adequate school workbooks in the Eastern Cape Schools?

7.1.1 The investigation has revealed that there was a shortage and incorrect supply of workbooks to schools in the Eastern Cape as illustrated by the table at paragraph 6.2.8 above and the evidence obtained from interviews with various officials of the Provincial Department of Education during investigations indicated that it was the DBE's responsibility to supply and deliver workbooks to provinces.

7.1.2 Issues not in dispute

7.1.2.1 The DBE only obtained statistics of learners of the previous year roll and used such figures for the delivery of workbooks for the following academic year school roll; and

7.1.2.2 The DBE found that school principals did not check deliveries and report on shortages and wrong consignments, to allow immediate remedial action, this supports lack of co-ordination for the provision of school workbooks at national, provincial, district, school level, and inter se

7.1.3 Issues in dispute

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- 7.1.3.1 Although the Department of Basic Education disputes that it did not meet the required standard regarding the delivery of school books in the Eastern Cape and that there are no proper procedures and management processes in place to assure the effective and efficient supply and delivery of workbooks and labels it as patently wrong and disproved, the evidence obtained during inspections *in loco* tells a different story.
- 7.1.3.2 Further, the DOE did not provide any evidence that contradicts the information provided in the table in paragraph 6.2.7 of this report. Incidentally, the DOE's denial characterised the Limpopo court debacle requiring extensive auditing to verify claims that unduly consumed time and money needed for operational purposes.
- 7.1.3.3 The DBE responded by claiming that it has a very high success rate in the delivery of the workbooks for both 2012 and 2013 yet investigation revealed that there was gross incorrect supply and wrong supply of workbooks in the Eastern Cape for 2012. Investigation conducted and evidence gathered indicates that there were wide spread shortages and incorrect supply of workbooks in Eastern Cape Schools.
- 7.1.3.4 .The interviews conducted with accounting officers during November 2012 revealed that accounting officers who are well conversant with the needs of the learners and teachers for school workbooks were never consulted before DBE decided on the workbooks consignment to be sent to schools, this therefore contributes to the failure of DBE to provide adequate school workbooks.
- 7.1.3.6 The complainant had visited Louis Rex Primary School in the Queenstown district and found that there were shortages of school workbooks across all subjects from Grades R to 7. The schools received Xhosa workbooks for Afrikaans learners in some learning areas. The total shortage at Louis Rex Primary School was estimated to be 2300 across all grades for all learning areas and this is corroborated by the

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evidence adduced during the inspection in loco and interviews conducted during the investigation.

7.2 Was there a systems failure which resulted in the school workbooks shortages in the Eastern Cape Schools?

7.2.1. All schools visited during the investigations did not order the school workbooks from the National Department of Basic Education. School workbooks are delivered directly from the National Department of Basic Education.

7.2.2. The Department of Basic Education only obtains school statistics for the previous year roll from the Provincial Department of Education, information obtained from the proof of deliveries and Department Call Centre and uses such figures for the delivery of school workbooks for the following academic year school roll.

7.2.3 Issues in dispute

7.2.3.1 The DBE responded to the issue of the use of previous year's academic statistics by indicating that all printing materials require time for printing, binding and delivery. Publishers and printers will require a period of two to three months to prepare a print the required books. Large scale logistical exercise is required to collect the books from publishers and printers and deliver them to schools across South Africa. The only practical means of determining the number of books required for each school is to use previous year's enrolment figures and add a buffer of between 2 to 7 percent for growth to determine the number of books for which printing must start. This may not be accurate and can only be address through remedial programmes once the actual number of pupils per school is known.

7.2.3.2 Be this as it may, it transpired during investigations that Department did not take regard of this as in some schools deliveries were initially made during second term for the first term supplies and no remedial programmes were in place resulting in

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some schools having to improvise. Loius Rex had shortages amounting to 2300 across all grades, Cambridge received Xhosa instead of English, Aqua Vista received Xhosa books while they are an English-medium school.

7.2.3.3 Schools accounting officers are not consulted by the National Department of Basic Education or Provincial Department of Education concerning school workbooks requirements and consequently this leads to incorrect language supply and shortages of school workbooks because of lack of planning and the migration of learners from one area to another. This can be reconciled with evidence received and interviews conducted with school accounting officers regarding migration of learners.

7.2.3.4 All schools deliveries were done without schools being advised prior to the delivery and as a result some deliveries were done outside school hours. At one school, it was discovered that school workbooks were delivered to one of the houses in the village far from school. The school in question did not account for delivery note. The people doing the delivery did not have the contact details of the accounting officers.

7.2.3.5 The DBE denies that the deliveries are done without schools being advised prior to the delivery, yet investigation revealed that all schools were never advised of the deliveries.

7.2.3.5 There is no co-ordinating relationship between Provincial Department of Education, district offices and schools accounting officers concerning school workbooks because there is no project implementation plan for the delivery of school workbooks.

7.2.3.6 The DBE denies and rejects this allegation; however evidence obtained from the provincial department, as enunciated in the correspondence from Mrs Gwarube whom advised the investigation team that there was no official assigned or dedicated to deal with workbooks within the province, and during an interview, with

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Messer's Zibi (IOM) and Tywakadi informed the Public Protector team during December 2012, that there were problems with regard to the 2011/12 deliveries of school workbooks.

7.2.3.7 During investigation it has been established that there is no dedicated official or structure in the Provincial Department of Education that is responsible for the ordering and delivery of school workbooks, but in response to provisional report the HOD has advised that an official has been appointed to spearhead the entire process of workbooks from ordering to delivery and monitoring.

7.2.3.8 In some schools there is a challenge with regard to the document filing which may have serious consequences for accounting purposes.

7.2.3.9 Some schools have no dedicated officials to take charge of the delivered stock or proper management of school workbooks.

7.2.3.10 On the matter of achieving an almost complete but materially substantial delivery of workbooks in the Eastern Cape clearly was a systems failure in that there was inadequate monitoring of the workbook ordering process, as this process was inaccurate in determining the correct amount/quantity of workbooks required.

7.2.3.11 The Provincial Department of Education conceded that it had no regulatory framework or Provincial Implementation Plan for the delivery of school workbooks for the period under investigation but has advised that implementation plan is now in place for the 2013 school year.

7.3 Did the Department of Basic Education and the Eastern Cape Department of Education provide seamlessly co-ordinated leadership and management in support of optimal delivery of school books?

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7.3.1 Issues disputed

7.3.1.1 Although the Department of Basic Education disputes that it did not manage the supply and delivery of school books in the Eastern Cape and;

7.3.1.2 That there are no proper procedures and management processes in place to assure the effective and efficient supply and delivery of workbooks is patently wrong and disproved

7.3.1.3 The evidence on the inspections *in loco* conducted during November 2012 to all 66 visited schools, interviews conducted with school accounting officers in all 66 schools during November 2012, and correspondence received from the Eastern Cape Department of Education LTSM co-ordinator during investigations in the Eastern Cape schools revealed contrary to the submissions. This therefore sustains the view of the Public Protector

7.3.1.4 Mr Zibi also alluded to the fact that the school management team or the existing structure in the district or grass roots level has the responsibility to manage the school workbooks when they are delivered by the National Department of Basic Education. Mrs Gwarube indicated that there is no delegated or dedicated official who is hands-on in the delivery of school workbooks at provincial level this prove contradiction between provincial and national departments and that points to seamless provision of workbooks in the Eastern Cape schools.

7.3.1.5 The DBE contradicts its self on response that schools did not indicate shortages on proof of delivery notes or any other means; therefore, they assumed schools received sufficient number of work books. Also on their response they indicated that the DBE thereafter delivered additional workbooks, both relating to volume 1 and volume 2 to the various District Office in the Eastern Cape, as set out in annexure "DB17," 9.6.1

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7.3.1.6 The DBE in its comments in the provisional report is silent as to whether the obligations and responsibilities of the Minister as stated in the South African schools Act have been fulfilled.

7.4 When the schools book crisis commenced, did the Department of Basic Education and the Eastern Cape Department of Education act with sufficient urgency and diligence to resolve such crisis expeditiously and decisively?

7.4.1 The evidence indicates that school workbooks for term 1 of the 2012 academic year were delivered in February and March while schooling was already in progress. This means learners did not have school workbooks when the schools opened in January 2012.

7.4.2 School workbooks for the 2013 academic year were delivered early in November 2012 and although this was not part of the investigations, it was noted that the shortages, incorrect delivery of school workbooks and short supply was still prevalent.

7.4.3 Issues in dispute

7.4.3.1 The DBE alleged that the allegations made hereunder are wrong and in this regard, the details of the delivered workbooks as contained in the verified report of independent auditor supports the contention that there is no veracity in what is stated in this paragraph.

7.4.3.2 The investigation conducted reveals that school workbooks for term 1 were delivered in February and in March whilst schooling was already in progress thereby adversely prejudicing learners and this is strongly supported by signed delivery notes.

7.4.3.3 Annexure J: a letter dated 23 May 2012 addressed by the DG to the Acting SG, Mr M L Ngonzo, "Request for a report on the unresolved problems regarding shortages

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of workbooks and LTSM". In the letter the DG allegedly requested the office of the Acting SG of Education in the Eastern Cape to provide a report regarding any unresolved problems regarding the delivery of the Grades R-9 workbooks and the Grades 10-12 Mathematics and Physical Sciences textbooks to the DBE on or before 25 May 2012. A follow up letter dated 24 August 2012 was addressed by the DG to the SG of Education in the Eastern Cape, Mr M L Ngonzo, raising a concern at the lack of prompt response of the Eastern Cape Province in dealing with problems related to workbook deliveries. This clearly indicates that the DBE failed to meet the targets for the delivery of workbooks and is the testimony of the crisis faced by the Eastern Cape Schools,

7.4.3.4 The evidence adduced relating to relief of affected schools proves and sustains the issue relating to act with sufficient urgency and diligence to resolve the crisis of school books

7.5 If there was a failure to provide adequate school workbooks in the Eastern Cape, did this result in prejudice to the affected learners?

7.5.1 It is undisputed that school workbooks are an essential component in the current curriculum as implemented by the DoBE.

7.5.2 The remainder of the enquiry into this issue is a legal one and will be fully discussed in the Analysis and Conclusion below.

7.5.3 Issues in dispute

7.5.3.1 The National Department of Basic Education and the Eastern Cape Department of Education violated the provisions of section 29 of the Constitution by failing to provide basic education in the form of school workbooks to everyone in the language of their choice, section 195(1)(b),(d) and (f) of the Constitution, by failing to provide school workbooks efficiently, effectively, equitably and being accountable

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there for and, section 237 of the Constitution, by failing to perform its obligations in terms of section and section 195(1) diligently and without delay. The violation of the said constitutional provisions constitutes maladministration in terms of section 6(4) (a) (i) of the Public Protector Act, and

7.5.3.2 Learners in several schools in the Eastern Cape operated without some of the workbooks essential for their education resulting in exposure to an inferior education in relation to their counterparts elsewhere and possible adverse consequences on their future prospects in the education system, work and society; and ultimately, the right to education in terms of section 29 of the Constitution was violated in respect of affected learners in the Eastern Cape Schools.

8. LEGAL AND REGULATORY FRAMEWORK

8.1. The Constitution of the Republic of South Africa, 1996

8.1.1. Section 29(1) of the Constitution provides that:

*“(1) everyone has the right-
(a) to a basic education, ...”*

8.1.2. Section 29 is not contingent on the resources of the state therefore the principle of progressive realisation is not applicable.

8.1.3. A corresponding responsibility to the right to basic education is that the state must provide the necessary resources and conditions for learners to enjoy such right.

8.1.4 Section 29(2) provides that everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable.

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8.1.5 Section 195 of the Constitution states that:

"195 Basic values and principles governing public administration.-(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (a) ...*
- (b) Efficient, economic and effective use of resources must be promoted.*
- (c) ...*
- (d) Services must be provided impartially, fairly, equitably and without bias.*
- (e) ...*
- (f) Public administration must be accountable."*

8.1.6 Section 195(1) (b) provides that efficient, economic and effective use of resources must be promoted.

8.1.7 Section 195(1) (d) services must be provided impartially, fairly, equitably and without bias.

8.1.8 Section 195(1) (f) provides that public administration must be accountable.

8.1.9 Section 237 of the Constitution states that:

"237 Diligent performance of obligations - All constitutional obligations must be performed diligently and without delay."

8.1.10 Section 237 provides that all constitutional obligations must be performed diligently and without delay.

8.2. National Education Policy Act, 27 of 1996

8.2.1. Section 3 of the National Education Policy Act states:

"3. (1) The Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.

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(2) ...

(3) *Whenever the Minister wishes a particular national policy to prevail over the whole or a part of any provincial law on education, the Minister shall inform the provincial political heads of education accordingly, and make a specific declaration in the policy instrument to that effect.*

(4) *Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, staffing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system, and without derogating from the generality of this section..."*

8.2.2. Section 3(1) provides that the Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.

8.2.3. Section 3(3) provides that whenever the Minister wishes a particular national policy to prevail over the whole or a part of any provincial law on education, the Minister shall inform the provincial heads of education accordingly, and make a specific declaration in the policy instrument to that effect.

8.2.4. Section 3(4) provides that, subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, staffing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system, and without derogating from the generality of this section.

8.3. South African Schools Act, 84 of 1996

8.3.1. The Preamble to this Act provides among others that:

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“WHEREAS it is necessary to set uniform norms and standards for the education of the learners at schools and the organisation, governance and funding of schools throughout the Republic of South Africa.”

8.3.2. Section 5A states that:

“5A. Norms and standards for basic infrastructure and capacity on public schools. –

(1) The Minister may, after consultation with the Minister of Finance and the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for –

- (a) ...*
- (b) ...*
- (c) the provision of learning and teaching support material.”*

8.3.3. Section 5A provides a mechanism for the Minister to implement the preamble to the act which creates the goal of the act.

8.3.4 In view of the above legislation the minister has a duty to ensure that uniform norms and standards are in place and shall inform the provincial heads of education accordingly, and make a specific declaration in the policy instrument to that effect and MEC shall determine school education policy in the province within the framework aimed at achieving cost efficient and effective use of educational resources

8.4. Eastern Cape Education Act, 1 of 1999

8.4.1. Section 4 of the Act states that:

“4. Determination of provincial education policy.— (1) The MEC shall determine school education policy in the Province within the framework of the following principles:

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(k) education policy shall be aimed at achieving cost efficient and effective use of educational resources, eliminating wastage, inefficiency, maladministration and corruption;

...

(l) educational policy shall be aimed at improving the quality and availability of educational opportunities, educator development and resources to the people of the Province..."

8.4.2. Section 4 places a duty on the MEC to create an education policy in the Province keeping in mind certain principles.

8.4.3. The administrative responsibility is placed on the MEC who in turn delegates such responsibility to SG who has failed to put the policy in place.

8.5. Governing Body of the Juma Musjid Primary School and another vs Ahmed Asruff Essay N.O and other [2011] ZACC 13 and Section 27 and others vs Minister of Education and another unreported case no: 24565/2012 heard in the North Gauteng High Court on 17 May 2012

8.5.1. In the Governing Body of the Juma Musjid Primary School matter the court stated that: *"Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be 'progressively realised' within 'available resources' subject to 'reasonable legislative measures'. The right to a basic education in section 29(1)(a) may be limited only in terms of a law of general application which is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom'."*

8.5.2. In the Section 27 case the court held that: *"The right to education however, is not a stand-alone right but it is a means through which other rights are realised..."*

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8.5.3. It further asked: *“What is relevant, however, in the context of the right, is the narrow question in this application whether the provisions of text books is a component of the right to basic education?”* and continued to answer the question by stating: *“Accordingly ... the provision of learner support material in the form of text books, as may be prescribed is an essential component of the right to basic education and its provision is inextricably linked to the fulfilment of the right. In fact, it is difficult to conceive, even with the best of intentions, how the right to basic education can be given effect to in the absence of text books. On that basis, it must accordingly follow, given the respondents’ [Department of Basic Education] own goals and indicators in its annual performance plan and its target setting of 100% in respect of work books and text books for the entire school year, that the failure to provide text books, somewhat midway through the academic year would prima facie constitute a violation of the right to basic education.”*

8.1.4. In light of the abovementioned cases it is clear that the right to basic education is viewed as an imperative right and that the failure to provide resources complementing the right, in this case workbooks, constitutes a violation of the right to basic education.

9. ANALYSIS AND CONCLUSION

9.1 The DoBE has a Constitutional duty to provide education and subsequently to provide formal means to realise the right to education by providing support materials which was not provided.

9.2 The National Department of Basic Education is primarily responsible for the procurement and delivery of school workbooks in the Eastern Cape in order to realise the basic right to education provided for in section 29(1) of the Constitution.

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- 9.3 In view of the failure by the Director –General to execute 9.1&9.2 above this resulted in the absence of regulatory framework for the delivery of workbooks which therefore resulted in the absence of uniform norms and standards for the delivery of workbooks in the Eastern Cape and that amounts to maladministration
- 9.4 The accounting officers in the schools are only requested to submit the statistics of the current learner enrolment to the Provincial Department for National Department of Basic Education.
- 9.5 The deliveries are subsequently affected straight from the National Department of Basic Education to the schools.
- 9.6 In view of paragraphs 9.5 and 9.4 above which elucidate the absence of uniform norms and standards in regulating supply of workbooks and the data of previous years enrolment is not accurate for the supply of workbooks for current year enrolment
- 9.7 In terms of section 195 and 237 of the Constitution, both the National Department of Basic Education and the Provincial Department of Education have the duty to provide workbooks to schools without delay, and must be accountable.
- 9.8 In terms of the South African Schools Act, the National Department of Education has an obligation to set uniform norms and standards for the education of the learners including the organisation of the resources for learning. This obligation is realised by formulation of legal regulatory policy framework in terms of section 3 of the National Education Policy Act wherein the Minister shall determine national policy and inform provincial competences accordingly.

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- 9.9 The Provincial Department failed to fulfil its duty to develop an education policy in the Province and in doing so achieving “...*cost efficient and effective use of educational resources, eliminating wastage, inefficiency, maladministration and corruption...*” and “...*improving the quality and availability of educational opportunities, educator development and resources to the people of the Province...*”
- 9.10 Section 29(2) of the Constitution provides that everyone has the right to receive education in a language of their choice and the National Department of Basic Education’s incorrect supply of school workbooks denies learners such right.
- 9.11 The failure of the DBE as enunciated in paragraphs 9.8 - 9.10 amounts to maladministration and resulted in shortages and incorrect supply of the school workbooks and that amounts to maladministration.

10. FINDINGS

The Public Protector makes the following findings:

- 10.1. Did the Department of Basic Education fail to provide adequate school workbooks in the Eastern Cape Schools? If so, did such failure constitute maladministration in terms of section 6(4) (a) (i) of the Public Protector Act?
- 10.1.1. The Department of Education failed to provide adequate school work books on time to all Eastern Cape schools in 2012 and 2013, in that:
- 10.1.1.1. Books transcribed in the incorrect language was provided to the schools, a shortage of workbooks were delivered to the schools and there was late delivery of school workbooks. in the following:
- 10.1.1.2. 69% of the delivered workbooks were in the incorrect language;

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- 10.1.1.3. 75% of the delivered workbooks were in short supply;
- 10.1.1.4. 8% of the delivered workbooks were over-supplied;
- 10.1.1.5. Deliveries for school terms 1 and 2 occurred late in February or March 2012; and
- 10.1.1.6. The deliveries of the school workbooks in November 2012 for the 2013 school academic year were also found to be in incorrect language, wrongly supplied and in short supply in certain schools.
- 10.1.2. The National Department of Basic Education and the Eastern Cape Department of Education violated the provisions of section 29 of the Constitution by failing to provide basic education in the form of school workbooks to everyone in the language of their choice, section 195(1),(b),(d), and (f) of the Constitution, by failing to provide school workbooks efficiently, effectively, equitably and being accountable there for and, section 237 of the Constitution, by failing to perform its obligations diligently and without delay. The violation of the said constitutional provisions constitutes maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.
- 10.2. Was there a systems failure, which resulted in the school workbooks shortages in the Eastern Cape Schools? If so, did such systems failure constitute maladministration in terms of section 6(4) (a) (i) of the Public Protector Act?**
- 10.2.1. There clearly was a systems failure in that there was inadequate monitoring of the workbook ordering process, as this process was inaccurate in determining the correct amount/quantity of workbooks required. Further that the delivery was not

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executed according to what was required and ordered in respect of each and every school in the province, in that:

- 10.2.1.1. The National Department of Basic Education failed to set uniform norms and standards in terms of the South African Schools Act, 1996 in providing school workbooks in the Eastern Cape schools, and such failure constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- 10.2.1.2. The National Department of Basic Education failed to determine national policy and regulatory framework for the provision of workbooks in the Eastern Cape in terms of section 3 of the National Education Policy Act, 1996, and such failure constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- 10.2.2. The manner in which the placement of orders and delivery of the school workbooks in the Eastern Cape was executed is against the acceptable principles of sound administration, as a result the following ensued:
 - 10.2.2.1. All schools visited during the investigations did not order the workbooks from the National Department of Basic Education;
 - 10.2.2.2. All deliveries were done without schools being advised prior to the delivery;
 - 10.2.2.3. Some deliveries were done outside official school hours;
 - 10.2.2.4. Some schools did not have space to keep delivered materials as some schools were engaged with end of the year examinations;
 - 10.2.2.5. Some schools have no dedicated officials to take charge of the delivered stock or proper document management of school workbooks;

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- 10.2.2.6. The Department of Basic Education only obtained statistics of learners of the previous year roll and used such figures for the delivery of workbooks for the following academic year school roll;
- 10.2.2.7. There was no coordination mechanisms in place at all levels of the Department of Basic Education between National, Provincial, District and School level to regulate the provision of school workbooks;
- 10.2.2.8. The absence of a dedicated official or structure in the Provincial Department of Education to take responsibility for the ordering and delivery of workbooks; and
- 10.2.2.9. Schools accounting officers were not consulted by the Provincial or National Department of Basic Education concerning workbooks requirements.
- 10.3. Did the Department of Basic Education and Eastern Cape Department of Education provide seamlessly co-ordinated leadership and management in support optimal delivery of school books? If so, was such conduct improper and does it constitute maladministration?**
- 10.3.1. The Department of Basic Education and the Eastern Cape Department of Education failed to provide seamlessly co-ordinated leadership and management in support of optimal delivery of school books in that:
- 10.3.1.1. There had been an over-reliance on written communication and directives, without checking the capacity to comply and the actual compliance with such directives;
- 10.3.1.2. No auditing of supplied books against national requirements and order specifications had been conducted even after the crisis played out in the public domain.

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10.4. When the workbook crisis commenced, did the Department of Basic Education and the Eastern Cape Department of Education act with sufficient urgency and diligence to resolve such crisis expeditiously and decisively?

10.4.1. The Department of Basic Education and the Eastern Cape Department of Education did not act with sufficient urgency and diligence to resolve the school books crisis expeditiously and diligently resulting in unnecessary litigation that brought relief to affected schools in that:

10.4.1.1. After the first court order was granted, the Department reported, without verification, that all school books had now been delivered;

10.4.1.2. When the Public Protector enquired to the Director-General (DG), Department of Basic Education, in July 2012, about the conduct of an audit and existence of an action plan to ensure compliance and prevent a repeat in 2013, the Department did not seize the opportunity to act more decisively as overall steward of the basic education system in the entire country; and

10.4.1.3. The DG, Mr P B Soobrayan, specifically failed to exercise the necessary diligence and leadership to solve the crises by not ordering an audit and an action plan as expected or implied in the correspondence of the Public Protector in July 2012 and the HoD of the Eastern Cape Department of Education, Mr Mthunywa Lawrence Ngonzo, failed to act when circumstances demanded action.

10.5. If there was any failure to provide adequate school workbooks in the Eastern Cape, did this result in prejudice to the affected learners?

10.5.1. Learners in several schools in the Eastern Cape operated without some of the workbooks essential for their education resulting in;



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- 10.5.1.1. Exposure to an inferior education in relation to their counterparts elsewhere and possible adverse consequences on their future prospects in the education system, work and society;
- 10.5.1.2. The right to education in terms of section 29 of the Constitution was violated in respect of affected learners in the Eastern Cape Schools.

11. REMEDIAL ACTION

The Public Protector directs the following appropriate remedial action be taken in terms of section 182(1) of the Constitution:

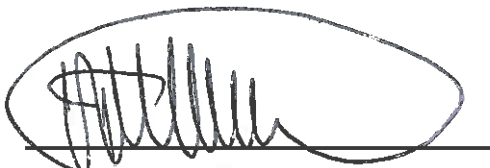
- 11.1 That the Minister of Basic Education hold the Director General, Mr Bobby Soobrayan accountable for actions and omissions that resulted in the failure of preventing or solving the national school books crisis.
- 11.2 The Director-General of the National Department of Basic Education is to establish a co-ordinating structure with the Head of Department (HOD) of the Eastern Cape Department of Education, keeping in mind the National Department of Basic Education's structure and plan, with dedicated officials at all levels as the current processes seem to be incomplete and inadequate. The officials should have clearly defined responsibilities to ensure that district offices and school accounting officers are consulted with regard to the ordering and delivery of workbooks;
- 11.3 Both the Director-General of the National Department of Basic Education and the Head of Department of the Provincial Department of Education should refrain from using the statistics of learners enrolled in the previous academic year for the planning and delivery of the following year's school workbook requirements.

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- 11.4 The Head of Department of the Provincial Department of Education should consult accounting officers concerning the planning and delivery of school workbooks for the following academic year's rolls;
- 11.5 Deliveries should occur during official school hours and school accounting officers must be consulted prior to the delivery;
- 11.6 The Head of Department of the Provincial Department of Education should ensure that schools have adequate storage space for the safekeeping of school workbooks;
- 11.7 The Provincial Department of Education should ensure that schools have dedicated officials to take charge of delivered stock and proper document management of school workbooks

12. MONITORING

- 12.1 The DG of the National Department of Basic Education should provide a comprehensive and detailed action plan on the implementation of remedial action within 30 days of this report.



ADV T MADONSELA

PUBLIC PROTECTOR SOUTH AFRICA

DATE: 05/12/2013

Assisted by: Adv. GM Maxakato: Senior Investigator EC

Adv. VE Ngamlana: Investigator