

# Hoërskool Driehoek tragedy: Who should take the blame and compensate victims?

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When a massive concrete walkway slab collapsed at Die Hoërskool Driehoek in Vanderbijlpark, four learners lost their lives and more than 20 others were injured. Alarming, teacher's union, the SAOU, released the results of a national survey where it identified more than 70 public schools with structural defects and where similar collapses may occur in the future. So does our law regulate the standards of such structural designs and provide for the compensation of victims of these tragedies?



Image source: Netcare 911 / Twitter

In commercial building projects, one would consider the relevant commercial building agreements (widely known and referred to as JBCC, FIDIC, NEC or GCC agreements) and professional consultants' agreements (which regulates the performance of professional service providers like engineers) to determine the respective parties' rights and obligations and to determine where liability lies when things go wrong.

In the case of public school infrastructure however, there is an additional dimension to contemplate. The Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure prescribe certain minimum uniform norms and standards that public school infrastructure need to comply with.

Additionally, in the planning and design of all new schools, as well as in respect of additions, alterations and improvements to existing schools, the relevant design must comply with all applicable laws, which include the National Building Regulations and the Occupational Safety Act.

## Accidental overloading

One particular structural design requirement is that "all buildings shall be so designed that, in the event of accidental overloading, the structural system will not suffer disastrous or progressive collapse".

All structural system designs must also be checked by a professional engineer or other approved competent person, and that person must certify that the design complies with the legislative requirements for structural designs.

Certifying designs which do not comply with the relevant legislative framework may lead to professional liability for the certifier.

The National Building Regulations also require the owner of any building to maintain the building in a safe and functional condition and to maintain the structural integrity and general safety of the building. But who must fund the implementation of those norms and standards?

Although the Regulations for Safety Measures at Public Schools require all public schools to “take measures to ensure the safety of learners during any school activity, including ... insuring against accidents, injuries, medical expenses and hospitalisation”, these regulations also state that such obligations on public schools are “dependant on the availability of funds”.

The South African Schools Act also reiterates that the state is responsible to fund all public schools. The governing bodies of public schools must, however, still take all reasonable measures within their means to “supplement” the resources supplied to the schools by the state.

## **State-provided infrastructure**

The state, particularly the Department of Basic Education (DBE), provides infrastructure to public schools through two main programmes, being the Provincial Schools Build Programme and the Accelerated School Infrastructure Delivery Initiative.

Although progress has been made in delivering improved school infrastructure across South Africa, the education sector remains plagued by various infrastructure challenges which require urgent intervention. Due to budgetary constraints, however, public schools may be left without immediate assistance from the state to maintain, alter and add to current infrastructure.

When tragedies like the recent one at Die Hoërskool Driehoek occur, the state is lawfully obliged to step in. In this regard, section 60(1) of the South African Schools Act provides that the state is liable for any delictual or contractual damage or loss caused in connection with any school activity conducted by a public school. Section 60(1)(b) limits the state’s liability in this regard to the extent that the damage or loss was not covered by the in terms of the school’s insurance policies.

The state is therefore obliged to step in financially when damages and/or losses are suffered within public schools – but the lives of learners and teachers are still at risk given the overall defective state of our school infrastructure.

Schools should proactively assess the current state of infrastructure and alert the DBE of required maintenance work where necessary. Where serious defects in school infrastructure are detected, legal and professional advice should be sought to ensure potential damages and losses are mitigated and, hopefully, prevented in future.

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