



**Summary of SECTION27's submission  
Draft National Policy on HIV and TB**

**14 October 2013**

## **I. INTRODUCTION**

1. The purpose of this summary is to outline some of the detailed submissions compiled by SECTION27 on the National Department of Basic Education's Draft National Policy on HIV and TB dated May 2013 ("**draft policy**"). This summary does not replace those detailed submissions and should be read with them for further clarity and more complete reasoning.

## **II. GOALS AND GUIDING PRINCIPLES**

2. It is crucial that the realisation of the rights to basic education and access to healthcare services in particular are explicitly and clearly placed at the forefront of the policy. This is not only constitutionally required but consistent with the approach of the National Strategic Plan on HIV, STIs and TB 2012-2016 ("**NSP**"). These rights require a policy of this nature to be put in place and implemented effectively and expeditiously. It is our submission that ensuring quality health and educational outcomes is constitutionally required to be the core focus of this policy.

## **III. SCOPE AND APPLICATION**

3. Consistently with the Integrated School Health Policy ("**ISHP**") the draft policy contemplates the extensive use of School Health Teams to deliver a comprehensive package of healthcare services to *learners*. However, it overreaches the area in which the NDBE has a comparative advantage by including educators, administrators, support staff and officials within its ambit. We submit that, consistently with the ISHP, the draft policy's primary target group should be learners alone.

4. The draft policy will rely to a large extent on the availability of adequate infrastructure in schools for the success of its implementation. It will therefore interact significantly with the national uniform minimum norms and standards for public school infrastructure (“**Norms and Standards**”) once these are finalised. These have been published in draft form and SECTION27 has made a submission regarding their contents. We submit that the Norms and Standards must consider the infrastructural requirements for the successful implementation of a policy on HIV, STIs and TB, including for example: physical spaces within which HIV testing and counseling can be privately offered; appropriate sanitation facilities; accessible and discreet locations for condom distribution; and appropriate classroom sizes which do not act as breeding grounds for TB infection.<sup>1</sup> We submit further that the urgent need for the full implementation of the draft policy calls into question the appropriateness and constitutionality of the lengthy timeframes set out in the draft Norms and Standards, which provide for the phasing in of different components of the Norms and Standards in a range of between ten to seventeen years.<sup>2</sup>
5. Finally, we submit that to ensure consistency with NSP and the NDBE Integrated Strategy on HIV, STIs and TB, the draft policy, which for the most part appears to be to a policy on HIV and TB alone, should be explicitly titled and consistently detailed as a policy combatting HIV, STIs and TB.

#### **IV. HOLISTIC AND COMPREHENSIVE HIV, TB AND STI EDUCATION FOR ALL LEARNERS**

6. The draft policy does not provide adequate detail and guidance to its implementers on the content of the various information and awareness measures it contemplates. This is particularly so with regard to sexual orientation which is not explicitly mentioned in the policy at all and sex, gender and sexuality which do not infuse the provisions of the policy with sufficient clarity and regularity. The

---

<sup>1</sup> See SECTION27’s submission on the draft Norms and Standards dated October 2013, accessible at [www.section27.org.za](http://www.section27.org.za).

<sup>2</sup> See Id for a full submission on the inappropriateness of these lengthy timeframes and a discussion of how they conflict with the Department of Basic Education’s constitutional responsibilities.

result is that key provisions of the policy, including those on curriculum development and the provision of sexual and reproductive health services (“SRHS”), seem to perpetuate a mystification of even consensual sexual activity amongst children that is potentially healthy. This feeds into existing stigma on sex-related issues, discourages learners from attempting to seek guidance and leaves too much room for discretion in relation to what educators will be required to teach learners.

7. The NSP requires the roll out of “comprehensive education on sexuality, reproductive health and reproductive rights ... in all schools”. Given the interconnectedness of sex, sexuality, sexual orientation and gender and the direct bearing that each of these concepts has on the transmission of HIV and STIs in particular, it is submitted that the draft policy is required to explicitly adopt a holistic approach to HIV, TB and STI education that includes all of these sex-related issues. Education on sex-related issues must be accessible, holistic and free of value judgments to militate against, in the words of the Constitutional Court, the “awkwardness and embarrassment children often feel when discussing sex with adults”.<sup>3</sup>

## **V. ACCESS TO TREATMENT, CARE, COUNSELLING AND SUPPORT**

8. The ISHP crucially places enormous emphasis on the provision of a comprehensive package of care being made available to learners in schools by School Health Teams and notes that “the package of on-site services will be expanded over time”. We submit that the policy should specify that this comprehensive package include access to HIV, TB and STI treatment, care, counseling and support as well as SRHS. It should further specify that this includes a requirement that School Health Teams are capacitated to deal with incidences of sexual violence, including, at a minimum,

---

<sup>3</sup> *The Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another* (CCT 12/13) [2013] ZACC 35 at para 45.

the provision of post-exposure prophylaxis, morning after pills, any other necessary medical attention and appropriate counseling.

9. Though it makes reference to the ISHP and School Health Teams, the draft policy constantly places too much reliance on referrals to public healthcare institutions for its successful implementation. Although there will be circumstances where it is ethically or practically necessary for School Health Teams to make referrals to clinics and hospitals, the policy should not rely on referrals for the implementation of its core features. To do so will significantly reduce its effectiveness. This is because of the various challenges learners face in accessing these institutions such as: a) time and monetary constraints; b) stigma; c) distance between schools and public healthcare institutions; d) the poor quality of services at some public healthcare institutions and e) the overlap between public healthcare institutions operating hours and the school day.
10. Learners' rights to have access to healthcare services include a right to easy, discreet access to condoms on school premises. Despite the NSP's emphatic support for increased condom distribution in "non-traditional outlets" and its explicit foreshadowing of the roll out of condom distribution in schools between 2012 and 2016, the draft policy disappointingly provides scant information on how this is to take place. It also inappropriately and impractically empowers School Governing Bodies ("SGBs") to create barriers to learner access to condoms. We submit that the policy should specify requirements and guidelines for nationwide condom distribution in schools and make a strong statement about the importance of access to condoms for learners.

## **VI. MANAGEMENT OF POLICY RESPONSE**

11. As a national policy, the draft policy must give the policy's implementers, which will primarily be the nine provincial departments of education in co-ordination with the nine provincial departments of health, SGBs and other "affected units at

national, provincial, district and school levels”, some latitude within which to implement the policy. However, it is important that the policy set out clear responsibilities and chains of accountability and provide sufficient guidance to the implementers of the policy to ensure that the core provisions of the draft policy are uniformly implemented.

12. It is therefore of particular concern that the draft policy appears to inappropriately and impractically empower SGBs to act as the gatekeepers of condom distribution and SRHS in schools, equipping them with the ability to frustrate these key components of the policy.
13. Finally, the draft policy contemplates the formation of both a HEDCOM Sub-Committee tasked with aligning, delivering, coordinating and monitoring the implementation of the policy and a National Basic Education Sector HIV and TB Co-ordination Committee. It is not clear what the need for both of these entities is. Without further clarification it seems that their co-existence will only create an unnecessary layer of bureaucracy and therefore decrease the efficiency and effectiveness with which the policy can be implemented. Furthermore, we submit that though the HEDCOM Sub-Committee should be kept as small as possible, it should include representation from both the South African National AIDS Council and a civil society representative with expertise on the right to basic education and/or healthcare.

## **VII. MONITORING AND EVALUTION AND COSTING**

14. Neither the draft policy, nor the Integrated Strategy on HIV, STIs and TB include a costing exercise of any sort. We submit that without costing there can be no budgeting and without budgeting the reasonable, effective and expeditious implementation of the policy is impossible. At the level of National Department policy, it is a constitutional requirement that that a costing exercise is undertaken to ensure that it can be budgeted for and implemented.

15. Whilst both the Integrated Strategy on HIV, STIs and TB and the NSP contain timeframes and goals, we submit that the policy itself should contain core measurable goals and timeframes to ensure the performance of the policy's implementers can be evaluated and that effective accountability channels can be created.

#### **VIII. SAFE EDUCATIONAL ENVIRONMENT, REASONABLE ACCOMODATION AND HIV, STI AND TB-RELATED LEARNER ABSENCES**

16. Temporary learner absences, particularly in the context of TB infection, are rightly required by the draft policy to be as short as possible in order to maintain a safe, healthy educational environment and prevent excessive interference to learners' access to education. However, the policy should not in its haste to ensure learners' speedy return to school, deviate from ordinary periods of isolation recommended by medical experts. Contrary to the 72 hours to 10 days of isolation provided for by the draft policy, evidence suggests a recommended respiratory isolation which ranges between 7 and 25 days. We submit that the draft policy should be reevaluated in this regard to prevent unnecessary transmission of TB in the learning environment and revisited regularly to ensure that it takes account of advances in research on this issue.

17. Additionally, it is the right of learners who are forced to endure temporary absences for reasons related to maintaining a safe, healthy school environment to be reasonably accommodated so that their education is not disrupted any more than is necessary during their absence. Though the draft policy acknowledges this, it fails to adequately detail the measures that will be taken to ensure the reasonable accommodation of learners enduring temporary absences. We submit that the policy should provide more detail in this regard and suggest that, depending on the length of the absence, reasonable accommodation should include: a) access to regular textbooks and other learning materials; b) access to

tailor-made learning materials for self-teaching; c) a degree of access to a teacher or tutor; and d) a catch-up plan programme upon their return to school.

## **IX. CONCLUSION**

18. We reiterate our support for the NDBE's efforts to develop and implement a national policy on HIV, TB and STIs and congratulate the NDBE on the completion of the draft policy. We thank the NDBE for inviting comment on the draft policy and look forward to working together with the NDBE in finalising and implementing the policy.

**For more information, see SECTION27's full submission available at [section27.org.za](http://section27.org.za) or contact:**

Nikki Stein – [stein@section27.org.za](mailto:stein@section27.org.za)

John Stephens – [stephens@section27.org.za](mailto:stephens@section27.org.za)

Tim Fish Hodgson – [fish@section27.org.za](mailto:fish@section27.org.za)