



**SUMMARY OF SECTION27 SUBMISSION**

**Draft Regulations Relating to Minimum Uniform Norms and Standards For Public School Infrastructure**

**15 October 2013**

## **I INTRODUCTION**

1. The purpose of this summary is to provide an outline of the detailed submissions made by SECTION27 on the Draft Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure (“the draft norms and standards”) published for comment by the National Department of Basic Education (“the DBE”) on 12 September 2013. This summary does not serve to replace the detailed submissions, but rather to provide an overview, and should be read together with them for greater clarity and for more complete reasoning.
2. While SECTION27 welcomes the draft norms and standards and thanks the DBE for the opportunity to comment, we are concerned that the draft norms and standards lack certain essential elements:
  - 2.1. The draft norms and standards do not take account of the nature of the right to basic education, which, in terms of our Constitution, is realisable in full and immediately. This requires the State to deliver all components of the right to basic education immediately, or to produce evidence to establish that this is impossible. The time frames set out in the draft norms and standards for their implementation are not consistent with this obligation;
  - 2.2. The draft norms and standards do not adequately address the needs of learners with special educational needs, particularly learners with physical disabilities; and
  - 2.3. The draft norms and standards do not make provision for budget norms and equalisation norms for school infrastructure.

## **II NATURE OF THE RIGHT TO BASIC EDUCATION AND THE IMPORTANCE OF SCHOOL INFRASTRUCTURE**

3. Section 29 of the Constitution guarantees the right to a basic education, which right has been recognised as an intrinsically important human right, and as a right instrumental redressing the apartheid legacy of poverty and inequality and realising other fundamental rights, including the rights to dignity, equality and health.
4. A crucial component to the realisation of the right to basic education is the provision of an appropriate and sound physical teaching and learning environment, as

recognised in various national plans and policies.<sup>1</sup> Poor learning environments have been found to contribute to students' irregular attendance and dropping out of school, teacher absenteeism and the ability to engage in the teaching and learning process.<sup>2</sup> Factors such as the physical appearance of school buildings, thermal conditions, good acoustics and lighting have all been found to have a significant impact on learners' motivation and ability to concentrate and to learn.

5. Moreover, the built physical environment of schools have an impact on learners' health. For example, unhygienic sanitation facilities expose learners to a greater risk of diarrheal disease, intestinal worms and other infections, and a compromised ability to manage HIV. Inadequate sanitation facilities also lead to increased absenteeism, particularly amongst adolescent girls who have no effective way to manage their periods at school.
6. School infrastructure therefore has a direct and significant impact on learners' education and health. In the light of this, it is necessary for the State to take steps to ensure that infrastructure at public schools is adequate and conducive to the provision of a quality education.
7. The right to basic education guaranteed in section 29(1)(a) of the Constitution, unlike other socio-economic rights, is 'immediately realisable'. *There is no internal limitation requiring that the right be 'progressively realised' within 'available resources' subject to 'reasonable legislative measures'*.<sup>3</sup>
8. The consequences of the absence of any internal limitation are that the right, at least in theory, must be realised in full without delay. This imperative is given further weight by section 7(2) of the Constitution which requires that the State must '*respect, protect, promote and fulfill the rights in the Bill of Rights*' and section 237 of the Constitution, which requires that the State does so '*diligently and without delay*'.
9. SECTION27 recognises, however, that in spite of the immediately realisable nature of the right to basic education, the State cannot practicably fulfill instantaneously its obligations to address the prevailing conditions of disrepair in thousands of schools across the country. It is therefore necessary to balance the immediately realisable nature of the right to basic education and the components thereof, with the practical constraints that preclude this.

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<sup>1</sup> Action Plan 2014, Towards the Realisation of Schooling 2025 ("Action Plan 2014"); National Policy on an Equitable Provision of an Enabling School Physical Teaching and Learning Environment ("National Policy on School Physical Environment").

<sup>2</sup> National Policy on School Physical Environment.

<sup>3</sup> *Juma Masjid Primary School and others v Essay NO and others* 2011 (7) BCLR 651 (CC).

10. It is SECTION27's view that this balance is achieved through the standard of possibility. The State is required to take all possible steps to ensure the immediate and full realisation of all components of the right to basic education, unless and to the extent that it can be demonstrated that this is impossible in the circumstances. In the case of schools that are in dire need of emergency relief, the State can only justify its failure to provide such relief immediately by demonstrating that it is not possible to do so, and that it is also not possible to provide some form of appropriate interim relief to the schools in question pending more permanent improvements to infrastructure.
11. The assertion of possibility would require more from the State than to allege a lack of resources or financial constraints. The State would need to provide details as to the nature and extent of these constraints together with a plan for how these constraints will be overcome.
12. While the threshold of impossibility to be demonstrated is admittedly a high one, SECTION27 submits that this is appropriate given the nature of the right to basic education. The current state of school infrastructure cannot be allowed to continue unless it is impossible to provide immediate relief.

### **III TIME FRAMES AS SET OUT IN CLAUSE 3(b) OF THE DRAFT NORMS AND STANDARDS**

13. In the light of the importance of the right to basic education, sound school infrastructure as a component thereof, the immediately realisable nature of the right, and the deplorable state in which existing schools find themselves across the country, SECTION27 submits that the implementation time frames set out in clause 3(b) of the draft norms and standards are unreasonable. We further submit that the implementation of the draft norms and standards would not be impossible in a substantially shorter time period.
14. As such, we submit that, in respect of existing schools, the draft norms and standards must be implemented as follows:
  - 14.1. In respect of the draft norms and standards referred to in clause 3(b)(i), these must be phased in over a period of three years from the date of the publication of the finalised norms and standards; and
  - 14.2. In respect of the draft norms and standards referred to in clause 3(b)(ii), these must be phased in over a period of six years from the date of publication of the finalised norms and standards.

15. Should State submit that it cannot meet these time frames, it must be required to provide detailed evidence as to why this is impossible. To this end, the DBE and nine provincial education departments must be required to submit annual reports on their progress in bringing schools in line with the draft norms and standards, including the resources allocated, how they were spent, and, if not spent, reasons for their failure to spend these resources.

#### **IV NEED FOR A THOROUGH AUDIT OF THE CONDITIONS OF SOUTH AFRICAN SCHOOLS**

16. SECTION27 submits that in order to address the existing infrastructure problems at public schools, it is necessary to conduct a thorough initial audit of all public schools in South Africa to determine the state of the infrastructure and the needs of each school. It is only through such an audit that resources can be appropriately allocated so as to ensure that the needs of all schools are met and the right to basic education of all learners is realised.
17. SECTION27 submits further that such an audit should be conducted by an Office of School Infrastructure Standards Compliance similar to the recently-established Office for Health Standards Compliance, to ensure that schools meet the quality standards necessary to comply with the draft norms and standards.

#### **V SCHOOL INFRASTRUCTURE FOR LEARNERS WITH DISABILITIES**

18. Clause 2 of the draft norms and standards indicates that they will apply to all ordinary public schools and to public schools for learners with special educational needs. While SECTION27 fully supports the recognition of the need to accommodate learners with special educational needs, including physical disabilities, we do not believe that the needs of these learners have been adequately taken into account in the draft norms and standards.
19. The infrastructure needs of learners with physical disabilities are not only different from the needs of learners without physical disabilities, but are also not uniform amongst learners with physical disabilities. Moreover, the impact of poor infrastructure on learners with physical disabilities is compounded by their physical disabilities, intensifying the violation of their right to basic education.
20. SECTION27 submits that the needs of learners with physical disabilities have not been sufficiently taken into account in the draft norms and standards. The failure to provide detailed norms and standards to cater for the infrastructural needs of learners with physical disabilities is a violation of their rights to a basic education and

to be free from discrimination on the basis of their disability. The State has an obligation to ensure that the needs of these learners are met.

## **VI MAINTENANCE OF SCHOOL INFRASTRUCTURE**

21. Maintenance of schools' built environment depends in part on the full and timeous payment of the allocation in terms of the National Norms and Standards for School Funding ("norms and standards funds"). Failure by the provincial education departments to make such payments in full and on time prevents schools from conducting minor routine maintenance, cleaning and repairs. Where such maintenance is not effected timeously, minor infrastructural issues may become major infrastructural problems. The timeous payment in full of norms and standards funds is thus essential for maintaining school infrastructure and ensuring that major infrastructural repairs do not need to be carried out frequently and unnecessarily.
22. In addition, SECTION27 submits that the calculation of the norms and standards allocation to each school must be calculated on the basis of the needs of each school, taking into account the state of the school's built environment and other conditions, such as weather patterns.

## **VII CONTENT OF THE DRAFT NORMS AND STANDARDS**

23. As a legal organisation, SECTION27 has confined its submissions on the draft norms and standards to the legal issues and trust that those with the necessary skills and expertise will provide comments on the technical detail of the draft norms and standards. However, in assessing the substance of the draft norms and standards, SECTION27 has compared them to the following:
  - 23.1. the draft norms and standards promulgated by former Minister Naledi Pandor in 2008; and
  - 23.2. the the DBE's Guidelines Relating to Planning for Public School Infrastructure published in 2012.
24. SECTION27 submits that draft norms and standards should not confer any lesser rights on learners than those conferred by the above. The detailed comparison of these documents is contained in our main submission.

## VIII CONCLUSION

25. SECTION27 reiterates its support for the promulgation of regulations relating to uniform minimum norms and standards for infrastructure at public schools, which is necessary for the realisation of the right to basic education. We thank the the DBE for the opportunity to comment on the draft norms and standards and look forward to working with the DBE towards finalising norms and standards that will ensure the realisation of the right to basic education.

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

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