

TO: The Honourable Chairperson of the Portfolio Committee on Forestry, Fisheries and the Environment

Ms. Azwihangwisi Faith Muthambi

Email: [faith.muthambi@yahoo.com](mailto:faith.muthambi@yahoo.com)

TO: The Honourable Member of the Portfolio Committee on Forestry, Fisheries and the Environment

Mr. David William Bryant

Email: [dbryant@parliament.gov.za](mailto:dbryant@parliament.gov.za)

AND TO: The Committee Secretariat

Tyhileka Madubela

Email: [tmadubela@parliament.gov.za](mailto:tmadubela@parliament.gov.za)

12 December 2022

**RE: SECTION27 FURTHER SUBMISSIONS ON THE CLIMATE CHANGE BILL FOLLOWING ORAL SUBMISSIONS**

1. On 28 October 2022, SECTION27 made oral submissions to the Portfolio Committee on Environment, Forestry and Fisheries. We welcome the indulgence afforded to us to make further submissions on two issues that arose during the question-and-answer session with the Honourable members of the Committee.
2. These submissions will firstly address the question by Honourable Faith Muthambi on SECTION27's general assessment as to why it is necessary to strengthen governance structures, whereas the country has enacted the Intergovernmental Relations Framework Act 13 of 2005 and has introduced the District Development Model. The second part of these submissions seek to

provide Honourable David Bryant a more detailed response to the question on what an adaptation plan for Basic Education would look like.

### **Strengthening governance structures for policy alignment, institutional arrangements, and coordination**

3. Chapter 4 (from page 24) of our initial submissions, which can be accessed [here](#), extensively outlines the need for strengthening governance structures for policy alignment, institutional arrangement, and coordination.

### **A gap in the Intergovernmental Relations Framework Act and its non-implementation**

4. Both the Constitution (sections 40 and 41) and the Intergovernmental Relations Framework Act make provision for intergovernmental relations<sup>1</sup> but are silent on how to regulate co-operation between provincial departments within any given province. This is understood as horizontal *intra*-governmental relations.<sup>2</sup> This gap in the Act is critical to be aware of because provincial departments within the same sphere of government are regularly required to co-operate with each other to discharge their functions.
5. The silence from both the Constitution and the Act is likely a product of the unavoidable consequences of how provincial power is allocated.<sup>3</sup> According to section 125 of the Constitution, the authority over provincial departments, agencies, and organs of state rest within the Premier, and where there are disputes, they must be resolved by the Premier or other members of the Executive Council. Put differently, the constitutional powers of the Premier determine the entire landscape for the resolution of provincial horizontal intra-governmental disputes. This is a different position from the mechanisms of dispute resolution provisioned for in the Act for

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<sup>1</sup> S1(g) of the Intergovernmental Relations Framework Act defines intergovernmental relations as “relationships that arise between different governments or between organs of state from different governments in the conduct of their affairs”.

<sup>2</sup> Woolman (2009) “[Why provincial intra-governmental disputes in South Africa remain ungoverned by the final Constitution and the Intergovernmental Relations Framework Act- and how we best resolve them](#)” 66.

<sup>3</sup> Ibid 67.

intergovernmental relations, where courts may be ultimately asked to resolve conflicts between organs of state within different spheres of government.

6. An example of how intra-governmental relations failed is the response to the devastating fire at Charlotte Maxeke Johannesburg Academic Hospital (CMJAH). In April 2021, a fire broke out at CMJAH, which caused structural damage to a section of the hospital. Around 800 patients were relocated to surrounding hospitals. As a result of the fire, the City of Johannesburg conducted an Occupational Health and Safety Regulations compliance assessment to determine the hospital's compliance. This assessment found that CMJAH had many compliance issues and even sections of the hospital that were not structurally damaged could not be re-opened. Thus, the entire hospital was shut down. The former Premier of Gauteng, David Makhura, sought to get the hospital open as soon as possible. The Premier's Office, the Gauteng Department of Infrastructure and Development and the Municipality failed to find a solution among themselves to resolve the issues due to the Municipality's requirements for fire safety and corruption in the Gauteng Department of Infrastructure and Development. After prolonged delays, pressure from civil society and catastrophic consequences<sup>4</sup> for health service provision in the province, the task to re-open CMJAH was transferred to the National Department of Health. CMJAH is now mostly reopened but significant backlogs in service provision continue. Conversations that we had with the former Premier revealed a significant blockage in the ability of the province to secure the reopening of a facility that was required by the province to meet its constitutional obligations to its residents – the lack of any real collaboration between the Departments of Health and Infrastructural Development.
7. We note also that the CMJAH fire response is also an example of the shortcomings of the Intergovernmental Relations Framework Act. The province and the City of Johannesburg were at odds and yet the potential mechanisms in the Act were not used. We submit that this may be because the trigger for use of these mechanisms is possible litigation between spheres of government or organs of state. And if no such litigation is envisaged, for political or other reasons, the Act is not used.

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<sup>4</sup> M. Banda "Fix and reopen all wards urgently at Charlotte Maxeke hospital – Defend Our Democracy campaign", *Daily Maverick* (21 February 2022) last accessed on 12 December 2022 at <https://www.dailymaverick.co.za/article/2022-02-21-fix-and-reopen-all-wards-urgently-at-charlotte-maxeke-hospital-defend-our-democracy-campaign/>.

8. Outside of issues with dispute resolution, we have witnessed how the lack of communication between provincial departments has been a barrier to accessing healthcare services.
9. For instance, the failure to communicate between the Department of Home Affairs, the Department of Health and hospitals. The Department of Home Affairs Refugee Reception Offices (RROs) were closed for a period of two years, due to the COVID pandemic leading to the national lockdown in terms of the Disaster Management Act 57 of 2002. Over this period, all asylum and refugee permits were extended through a Ministerial Directive. The Directive clearly stated that no person could be penalised for the expiry of their documents during this period. In effect, some asylum seekers and refugees (including pregnant women and children under the age of 6) then had expired documents, which led to them being classified as private patients in Gauteng hospitals because they did not have valid documents. The hospitals considered the situation beyond their control; and to make matters worse, the Department of Home Affairs failed to communicate the Ministerial Directive to hospitals.<sup>5</sup>
10. Similarly, in 2022, SECTION27 has been facilitating meetings and cooperation between the Gauteng Department of Health, Gauteng Department of Treasury, National Department of Health and National Treasury about radiation oncology in Gauteng. As a result of various factors, there is a long waiting list of patients requiring radiation oncology in the province. While the obligation to provide such services falls squarely within the mandate of the Gauteng Department of Health, doing so on an urgent basis (while awaiting delivery of machinery that has been procured) would require possibly expensive alternative service provision mechanisms. The Gauteng Department of Health has maintained that it does not have the budget to fund such mechanisms but has made no proposal for providing this life saving treatment to thousands of its residents.
11. It has taken the intervention of Cancer Alliance and SECTION27, both civil society organisations, to contact the National Department of Health, National Treasury and Gauteng Provincial Treasury and get the different spheres of government around the table. Through this intervention, a model for outsourcing services has been presented by the National Department of Health and funding

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<sup>5</sup> SECTION27 (2022) '[Free services in South Africa: A case for all mothers and children](#)' 14.

options have been explored by National Treasury and Gauteng Provincial Treasury. We have an in-principle agreement from the four state parties to outsource some radiation oncology care for an interim period and await the detailed and costed plan. Despite the clear constitutional obligations on the various state parties involved, it has taken the intervention of civil society to get parties to meet with each other and formulate a plan. The inability or unwillingness of the state parties to do this independently is a concern and highlights the deficiencies in the models available for collaboration between spheres or organs of state.

12. These recent examples demonstrate, we submit, shortcomings in cooperative governance. If we know there is a problem with cooperative governance, the Climate Change Bill should not simply rely on mechanisms proven not to be effective. It is necessary that appropriate and effective mechanisms be implemented to protect the objectives of the Climate Change Bill from the shortcomings that we have already seen, particularly in the health sector in recent years.

#### Lessons from the implementation of the District Development Model

13. Honourable Muthambi made reference to the District Development Model. While SECTION27 has no direct experience in the implementation of the District Development Model, we note the Report<sup>6</sup> on lessons learned in the piloting of the District Development Model.
14. The report demonstrates, as we highlighted in our submission, the need for clearly defined roles and responsibilities for each role-player. Where such roles and responsibilities were defined, the implementation of the District Development Model was more successful. But the model itself does not ensure the definition of roles and responsibilities.
15. We therefore maintain that our submission that the Bill needs to ensure clarity on the roles, responsibilities and mandate of different forums and actors in charge of implementing plans is important. While the District Development Model will likely go a long way to improving cooperation and coordination, it does not itself respond to the need to define mandates and in the climate change context, specific attention to this aspect is required.

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<sup>6</sup> [DDM Lessons learnt report.pdf \(edse.org.za\)](https://www.edse.org.za/Portals/0/Reports/2017/201706-DDM-Lessons-learnt-report.pdf)

## An adaptation plan for Basic Education

16. Section 18 of the Bill makes provision for the management and coordination of a response to climate change through a *National Adaptation Strategy and Plan*. This National Strategy and Plan aims to reduce the vulnerability of society, the economy, and the environment to climate change and to enhance the resilience and adaptive capacity of our society, the environment and economy to climate change. According to section 18, this National Adaptation Strategy and Plan must be developed by the Minister of the DFFE in consultation with several other Ministers which are listed in Schedule 2.<sup>7</sup>
17. Section 19 of the Bill further requires that within a year of the publication of the National Adaptation Strategy and Plan, the same Ministers (listed in Schedule 2) must conduct an assessment of the functions under the Ministers' operational control which — (i) identifies and spatially maps risks and vulnerabilities, areas, ecosystems and communities that will arise and that are vulnerable to the impacts of climate change; and (ii) determines measures and mechanisms to manage and implement the required adaptation response. Each Minister is then required to formulate and implement a *Sector Adaptation Strategy and Plan* which is informed by the identified risks and vulnerabilities. These Ministers must report on the progress made in the implementation of the plan every five years.
18. We refer to Chapter 1 of our [full written submissions](#) which highlights the vulnerabilities of the education sector and makes a case for the inclusion of the basic education sector as a key stakeholder (see page 8 – 13). Our submissions also underscore the importance of the basic education sector which services at least 13.4 million learners<sup>8</sup> - over 20% of the South African population.

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<sup>7</sup> These are the Ministers responsible for the following national departments - Agriculture; Forestry; Fisheries; Disaster Risk Reduction; Energy; Environment; Health; Human Settlements; Manufacturing; Public Enterprises; Rural Development; Land Reform; Science; Technology; Transport; Water Affairs; and Sanitation.

<sup>8</sup> Department of Basic Education "2021 School Realities Report" (2022) available at <https://www.education.gov.za/Portals/0/Documents/Reports/School%20Realities%202021.pdf?ver=2022-02-07-094832-243> accessed 30 November 2022.

19. We reiterate that the April 2022 floods showed us that the basic education system is vulnerable to extreme weather events brought about by climate change. As we highlighted during our oral submissions, a report from the Auditor General revealed that 630 schools were affected by the floods with 124 of these schools suffering extensive damage. The total cost of this damage is estimated to cost over R296 million.<sup>9</sup> Extreme weather events, like the April floods, are but one threat to the basic education system. The slow onset climate change events such as increasing temperatures and droughts pose another incredibly significant risk to the basic education system. These risks must be clearly identified, mapped, and require an adaptation response.
20. A report from the Zimbabwe Education Cluster partners following the devastating Cyclone Idai that hit the south-eastern region of Zimbabwe in April 2019 reveals how far reaching the impact of an extreme weather event can be on basic education.<sup>10</sup> Besides the repairing of damaged school infrastructure, psychosocial support to teachers and learners was needed.<sup>11</sup> The establishment of temporary spaces for learning, the replacement of Learning and Teaching Support Materials (LTSM) such as textbooks and workbooks and the resumption of school feeding programs were other urgent needs.<sup>12</sup> These are issues and necessities that our basic education sector would need to deal with in the wake of an extreme weather event. We need to be able to anticipate these disasters, their potential impact, and have plans in place to respond timeously.
21. The inclusion of basic education in a country's adaptation plan and strategy is not unheard of. The United States Department of Education has a Climate Adaptation Plan<sup>13</sup> which came into operation in September 2021. The plan *inter alia* identifies the climate change risks to the mission of the education department,<sup>14</sup> identifies the role-players mandated to ensuring implementation of the plan and identifies "priority adaptation actions".<sup>15</sup> The risks identified include the climate-

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<sup>9</sup> Unpublished report can be shared on request.

<sup>10</sup> Zimbabwe Education Cluster "Report on Post Cyclone Idai Assessment" (2019) available at <https://www.humanitarianresponse.info/en/operations/zimbabwe/assessment/post-cyclone-idai-assessment-november-2019>, accessed 20 November 2022.

<sup>11</sup> Ibid at page 5.

<sup>12</sup> Ibid.

<sup>13</sup> United States Department of Education "Climate Adaptation Plan" (2021) available at <https://www2.ed.gov/about/reports/strat/sustainability/climate-adaptation-plan-2021.pdf>, accessed 30 November 2022.

<sup>14</sup> Ibid at pages 6-7.

<sup>15</sup> Ibid at pages 8-14. The priority adaptation actions are Leadership and Public Engagement, Policy Guidance and Programs, and Technical Assistance.

related events that the country has already faced,<sup>16</sup> what their impact on education have been, and what the projected impacts of these worsening events will be on education. Each of the identified priority adaptation actions details amongst other things, how each action will be implemented, the stakeholders that are necessary, and resource considerations.

22. Closer to home, the Kenya National Adaptation Plan<sup>17</sup> also contemplates sectoral adaptation actions. The education and training sector is listed as one of the sectors which is mandated to “mainstream climate change adaptation in education (formal, nonformal and informal) and training”<sup>18</sup>. The plan identifies short-, medium- and long-term actions towards mainstreaming climate change adaptation in education, lists the relevant stakeholders, and provides for the budget necessary for implementation. These are a few examples of what the Basic Education Adaptation Plan could look like.<sup>19</sup>

23. Sections 18 and 19 of the South African Climate Change Bill recognise that specific sectors are central to our adaptation response and that this response must be coordinated and systematic. For the reasons above, we submit that it is shortsighted to not include the basic education sector amongst the sectors listed in Schedule 2 of the Bill. It is especially important that the basic education sector is included because the National Department of Education has made little, if any, headway in planning for climate change adaptation in its policy and strategy objectives. The National Department of Basic Education’s inclusion would thus be beneficial to it and the millions of learners it provides a basic education to.

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<sup>16</sup> Ibid at pages 6-8. The climate related events include flooding, hurricanes, tornadoes, extreme heat, extreme cold, wildfires, and drought.

<sup>17</sup> Republic of Kenya, Ministry of Environment and Natural Resources “Kenya National Adaptation Plan 2015 -2030, Enhanced climate resilience towards the attainment of Vision 2030 and beyond” available at <http://extwprlegs1.fao.org/docs/pdf/ken186980.pdf> accessed 30 November 2022.

<sup>18</sup> Ibid at page 29.

<sup>19</sup> For more on the relevant key education system components the adaptation plan could deal with, see the tool developed by the United Nations Regional Office for South Asia in Kagawa, F. “Towards Climate Resilient Education Systems. A Tool for Reflection, Dialogue and Progress Assessment for Ministries of Education and its Partners”, Kathmandu: UNICEF Regional Office for South Asia. (2022)



## **Conclusion**

24. We trust that this written response to some of the questions of the Honourable members has been helpful and we are available to answer any further questions that the committee may have.
  
25. Should you have any further questions, please contact Motheo Brodie and Mbali Baduza via email through the following email addresses, [brodie@section27.org.za](mailto:brodie@section27.org.za) and [baduza@section27.org.za](mailto:baduza@section27.org.za) .