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To: Director-General, Department of Water and Sanitation
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Deputy Director-General, Water Sector Regulation

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**EQUAL EDUCATION (EE) & EQUAL EDUCATION LAW CENTRE (EELC)
JOINT COMMENT ON THE DRAFT NATIONAL WATER SANITATION POLICY
GN 70 GG 39668 OF 12 FEBRUARY 2016**

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A. Introduction

1. The following submissions are made jointly by Equal Education (EE) and Equal Education Law Centre (EELC) in response to the Minister of Water and Sanitation's call for comment on the 2016 Draft National Water Sanitation Policy (Draft Policy).¹ For the purposes of this submission we will restrict our comments to aspects of the Draft Policy that impact on sanitation in schools.
2. EE is a movement of learners, parents, teachers and community members working for quality and equality in the South African education system through research, analysis and activism. EE has approximately 3220 high school learner members across KwaZulu-Natal, Eastern Cape, Western Cape, Limpopo and Gauteng who are active on a weekly basis.
3. The EELC is a non-profit law centre established in 2012 in order to provide specialised expertise in education law and policy in South Africa. The EELC is dedicated to advancing the right to a basic education through strategic litigation, sustained engagement with government and the provision of legal assistance to communities and community-based organisations, such as EE.
4. The right of access to a basic education is an immediately realisable right. It cannot be gainsaid that a safe, adequate and reliable water sanitation is an intrinsic part of section 29 of the Constitution. Moreover, water sanitation impacts on the right to human dignity in section 10 of the Constitution. Basic water sanitation is part and parcel of the right to water and intimately connected to and impacts on the right to health and life. In the context of basic education in schools each of these rights in turn impact on the rights of children, whose interests are of paramount importance in terms of section 28(2) of the Constitution.
5. Over the course of the last four years, a large portion of EE and EELC's efforts have been directed toward ensuring that all public schools have adequate basic infrastructure, including water, sanitation and adequate class sizes. All of these services and resources have a direct bearing on learner health and well-being and on their right to receive a basic education.
6. In 2013, after extensive surveys and interviews, EE Western Cape learner members identified poor sanitation as one of the most dire infrastructure problem in their schools. In Gauteng, EE mobilised for a broad-based Sanitation Campaign aimed at achieving dignified and safe sanitation for all of the province's schools.² A social audit, one of the largest to be undertaken in the country, was conducted by EE over the course of two years in an effort to provide a complete picture of the sanitation crisis in Gauteng schools. More recently, EE in the Western Cape conducted a social audit of 250 schools in the Western Cape which included an extensive sanitation survey. An issue of particular importance which came to light during these processes was the lack of coordination among departments involved in the provision of sanitation in schools.
7. In early 2014, during the Gauteng Sanitation Campaign, a tragic incident took place in the rural

¹ Draft National Water Sanitation Policy GN 70 GG 39668 of 12 February 2016 (Draft Policy).

² The Gauteng Campaign demands included that the Gauteng Department of Education formulate and adopt a sanitation plan that would outline a basic standard of quality for sanitation and by when this standard should be achieved. EE also demanded that an accountability mechanism be built into the plan.

Chebeng Village in Limpopo. Six year old Michael Komape died when he fell into a dilapidated pit toilet at his school. More recently, a caretaker in the Eastern Cape fell into an unsafe pit latrine toilet. These cases continues to highlight the extreme and fatal threat that poor sanitation infrastructure at schools poses to young learners and school staff.

8. The efforts by EE and EELC to ensure that all schools have basic infrastructure culminated in the publication of the Regulations relating to Minimum Uniform Norms and Standards for School Infrastructure in November 2013 (Infrastructure Norms).³ The Infrastructure Norms sets the bare minimum infrastructure standards which all schools must comply with. This includes standards for an adequate water supply and appropriate sanitation. We have been vocal in our stance that the Department of Basic Education (DBE) timeously comply with the requirements for school infrastructure contained in the Infrastructure Norms. In this regard, the Infrastructure Norms require that schools that have no access to any form of water supply and sanitation must be prioritised and receive these services by 29 November 2016, and by 29 November 2020, all schools must have access to adequate water and sanitation. It is imperative to note, however, that the provision of sanitation envisioned in the Infrastructure Norms can further be brought into line with the Department of Water and Sanitation's (Department) existing policies on sanitation facilities.
9. EE and EELC therefore welcome the introduction of the Draft Policy. However, the Draft Policy leaves many gaps in respect of provision of adequate sanitation in schools. This commentary aims to identify the gaps and provides recommendations as to how they may be filled and how the Draft Policy may be improved.

B. Lack of Adequate Sanitation in South African Schools

10. It is indisputable that sanitation infrastructure at public schools vary substantially, with the worst conditions mainly affecting black learners, particularly in rural schools.
11. The DBE's own statistics, released in 2014, paints a bleak picture of the state of sanitation in the majority of South African schools.⁴ Of the 23 740 public schools in the country 474 have no sanitation facilities. 4 681 are forced to make do with an unreliable water supply and 604 have no water. A whopping 49% either have no sanitation facilities or are forced to rely on pit latrines or a combination of pit latrines and other facilities. That is just short of half of all public schools.
12. Despite this grim picture, South Africa still lacks an appropriate school sanitation framework. Too many learners' rights to education and human dignity have and continue to be violated as a result of no or sub-standard sanitation facilities at their schools.
13. Based on our work, the EE and EELC have identified a number of challenges faced by learners relating to access to water and adequate sanitation including:

12.1 Some schools have poor sanitation facilities which learners are loathe to use or no

³ Regulations relating to Minimum Uniform Norms and Standards for School Infrastructure GNR 920 GG 37081 of 29 November 2013 (Infrastructure Norms).

⁴ National Education Infrastructure Management System Standard Report 2014.

sanitation facilities at all. This results in learners avoiding going to the toilet which leads to poor concentration in class and health problems;

- 12.2 High learner to toilet ratios in many schools, which result in diminished time for learning as learners are forced to stand in long queues for toilets;
 - 12.3 Learners are often forced to leave school to find more acceptable sanitation facilities, missing learning;
 - 12.4 Learners report being bullied while using toilet facilities which lack privacy;
 - 12.5 Dilapidated sanitation facilities are unsafe and pose a threat to learner's security,
 - 12.6 Learners having to travel long distances to find adequate sanitation are vulnerable to rape and assault;
 - 12.7 Lack of toilet paper and soap leads to learners contracting illnesses from the toilets, resulting in time away from school;
 - 12.8 Female learners face the indignity of not having access to feminine hygiene products and disposal facilities, resulting in them missing school during their menstrual periods;
 - 12.9 Learners in rural areas are unable to access proper nutrition due to lack of or, unreliable water facilities;
 - 12.10 Poor sanitary conditions adversely affecting learners' self-esteem and motivation to learn;
 - 12.11 Prefabricated toilets intended to be used as interim or emergency sanitation facilities remain standing for use as the primary sanitation facility for years on end despite their inappropriateness as a long-term sanitation solution.
14. These challenges underscore the need for and importance of a comprehensive policy framework to tackle the appalling state of school infrastructure in thousands of South African schools.

C. Analysis of the Draft Policy

Section 3

(i) *Definition of "Basic Sanitation"*

15. The definitions of "Basic Sanitation", "Basic sanitation facility", "Basic Sanitation Services", "Free Basic Sanitation", "Hygiene", "Sanitation" and "Sanitation service" do not expressly mention the provision of soap, toilet paper and feminine hygiene products and disposal services – sanitation essentials.
16. While it is arguable that phrases used in each of these definitions may be interpreted widely enough to include these essentials, other phrases also used such as "*lowest cost*" and "*resource constraints*" temper this argument substantially. This is because it introduces the danger that

resource constraints and budgeting difficulties may result in these sanitation essentials being dispensed with.

17. It is imperative that basic sanitation, sanitation services and hygiene clearly and specifically encompass the provision of soap, toilet paper and feminine hygiene products and disposal services and that the provision of these products are not subjected to the resource constraints variable. The right to human dignity demands that these products be provided.⁵
18. It is particularly vital that feminine hygiene products and disposal services be provided for female learners. International literature is rife with evidence that poor sanitation in the schooling context impacts particularly negatively on female learners. The literature reveals, in particular, the link between monthly absenteeism of girl learners and menstruation.⁶ Education expert, Ursula Hoadley, has also recognised that the inadequate sanitation facilities in many of South Africa's schools is likely to have an especially harsh effect on female learners and undermine their right to education in ways that are specific to them.⁷
19. In addition, the DBE's own national policy, titled the National Policy for an Equitable Provision of an Enabling School Physical, Teaching and Learning Environment, acknowledges that inadequate ablution facilities may adversely impact on the attendance levels of female learners and concomitantly their learning outcomes thus violating their constitutional rights.⁸
20. Female learners who do not have access to sanitary bins have to endure the indignity of being unable to change and dispose of sanitary towels and tampons in a safe, sanitary and private manner. The failure to provide feminine hygiene products and disposal services as a basic sanitation service impacts not only on female learners' right to dignity, but also on their right to education and equality.

Recommendations —

- The definition of “*Basic Sanitation*” and “*Basic Sanitation facility*” should be amended to include the provision of soap and toilet paper as well as feminine hygiene products and disposal services in schools.
- The definition of “Hygiene” should be developed to provide non-exclusive examples of what conditions and practices “*maintain health and prevent the spread of disease*”. The examples of practices should necessarily include the use of toilet paper, soap and feminine

⁵ See *S v Makwanyane and Another* [1995] ZACC 3; 1995 (3) SA 391; 1995 (6) BCLR 665 at 328.

⁶ Pillitteri *School menstrual hygiene management in Malawi: More than toilets* (2011) at 14; Water Aid *Is menstrual hygiene and management an issue for Adolescent School Girls? A comparative study of four schools in different settings in Nepal* (2009) at 11-12 available at http://www.sswm.info/sites/default/files/reference_attachments/WATERAID%202009%20Menstrual%20hygiene%20school%20adolescencegirls-nepal.pdf.

⁷ Expert affidavit of Ursula Hoadley in support of the amicus application by the Social Justice Coalition and the Anglican Archbishop of Cape Town in the matter between *Equal Education and others v Minister of Basic Education and Others*, Eastern Cape High Court, Bhisho Case No. 81/2012.

⁸ The National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment GN 515 GG 33283 of 11 June 2010 at 180 and 200.

hygiene products which should be disposed of in a hygienic manner.

- The definition of “Sanitation” should be amended so as to include the use and disposal of feminine hygiene products.

Section 4.1, 4.3, 4.5 and 5.1

(ii) Sanitation at Public Institutions

21. EE and EELC welcome the Draft Policy’s provision for sanitation at schools and agrees with the Draft Policy’s admission that the “*policy position remains weak related to public institutional sanitation*”⁹ This underscores the need for the Draft Policy, as it relates to public institutions, to be improved upon so as to strengthen the regulatory and policy framework in this regard and to ensure that learners are ultimately provide with adequate sanitation.

(a) Norms and Standards for Sanitation Services at Public Institutions

22. While the Draft Policy notes that the Minister, in consultation with public institutions, will provide norms and standards for sanitation services at public institutions, it must be noted that insofar as schools are concerned, the Regulations relating to Minimum Uniform Norms and Standards for Public School Infrastructure, 2013 (Infrastructure Norms) partially provide for norms and standards relating to sanitation at public schools.¹⁰
23. The sanitation standards contained in the Infrastructure Norms have many positive features, however, Annexure G to the Infrastructure Norms which stipulates the minimum number of toilets and urinals relative to the enrolment of girls and boys is not in alignment with the standards set by the Department of Water Affairs and Forestry (DWAFF) recommending 1:25 toilets for girls; and 1:40 urinals for boys. These standards set by the DWAFF reflect the international standards set by UNICEF at 1:25 toilets for girls and 1 toilet plus 1 urinal (or 50cm of urinal wall) per 50 boy learners¹¹ and the World Health Organisation at 1:30 toilets for learners.¹² For girls at large secondary schools where the enrolment is in excess of 600, the Infrastructure Norms only require 1 toilet for every 43 girls. This is far below acceptable international minimum standards. The Infrastructure Norms also fail to account for a proportionate increase of sanitation facilities where enrolment exceeds 1200 learners.
24. Norms pertaining to sanitation in public institutions published by the Minister, as contemplated in the Draft Policy, should improve on the Infrastructure Norms so that they align with DWAFF and international standards. These norms should further ensure adequate access to basic sanitation facilities and services as well as interim and emergency sanitation solutions in relevant circumstances. It is also imperative that these norms are published as a matter of urgency to address the infrastructure crisis in the public schooling system. EE and EELC

⁹ Draft Policy above n 1 at section 5.1.1.

¹⁰ Infrastructure Norms above n 3 at regulation 12.

¹¹ Adams et al *WHO/UNICEF Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings* (2009) 32.

¹² Southern and Eastern Africa Consortium for Managing Educational Quality (SAQMEQ) Policy Brief Number 6 (September 2011) Progress in Gender available at <http://www.education.gov.za/LinkClick.aspx?fileticket=ekxOq9DOYCE=&>.

therefore recommend that the Draft Policy should set a timeframe for the Minister to publish the norms and standards for sanitation services.

25. The norms and standards for sanitation in public institutions should include safety norms. The need for safety norms in the context of sanitation in schools is very pronounced. During the course of EE and EELC's work we have encountered learners who report being afraid to use sanitation facilities which are located quite a distance from educator supervision. Learners have also complained about feeling unsafe due to a lack of lockable doors. Some learners report being bullied while using the toilet in infrastructure which lacks privacy. Learners also report being raped in facilities which are far removed from educator supervision. Of course, most recently, the country was shaken by the tragic story of a 6 year old boy, Michael Komape, who fell into a pit latrine and drowned at his school in rural Limpopo.
26. The norms and standards should also clearly delineate the operation and maintenance responsibilities and costs and should provide for training and materials for the adequate maintenance of sanitation facilities in public schools.

(b) Public Schools on Privately Owned Land and Human and Informal Settlements

27. The Draft Policy states that *"the policy and strategy does not currently address sanitation in public institutions such as privately owned land, institutions such as creches and day-care centres; churches and old age homes."*¹³
28. The Draft Policy therefore fails to accommodate the sanitation needs of public schools located on privately owned land. This is an abdication of the State's responsibility both under the Constitution and the Infrastructure Norms to ensure that all learners are able to access adequate sanitation facilities.
29. EELC's experience working in the Western Cape has demonstrated that there are a number of delicate land ownership related factors at play when schools are located on privately owned land.¹⁴ Nonetheless, the right to dignity and basic education prevails and accordingly, learners in schools on privately owned land have a right to basic sanitation infrastructure and services. The Draft Policy should make provision for the State to fulfill its obligations to learners attending public institutions located on private land.
30. Furthermore, it is recognised that the Draft Policy envisions that sanitation provisions will need to be made in informal settlements. Whilst EE and EELC understands that this extends to schools located in informal settlements, it would be beneficial to state this clearly.

Recommendations —

- EE and EELC recommend that the Draft Policy should set a timeframe for the Minister to publish the norms and standards for sanitation services. The Draft Policy should also make

¹³ Draft Policy above n 1 at section 5.1.1.

¹⁴ See for example *Jacobus De Plessis Botha N.O. v MEC for Education, Western Cape* in Western Cape High Court, Cape Town, Case No. 24611/11 (*Grootkraal*). See also *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* [2011] ZACC 13; 2011 (8) BCLR 761 (CC).

clear that the norms and standards once published must comply with national and international standards regarding sanitation in schools.

- The Draft Policy should require that these norms and standards once published, should include safety norms.
- The norms and standards should also clearly delineate the operation and maintenance responsibilities and costs and should provide for training and materials for the adequate maintenance of sanitation facilities in public schools.
- The Draft Policy should require that these norms and standards once published, apply to public schools on private property.
- The Draft Policy must adequately accommodate the sanitation needs of public schools located on privately owned land and informal settlements.

Section 4.6

(iii) Interim and Emergency Basic Water and Sanitation Facilities

31. EELC welcomes the provision of emergency sanitation services in appropriate circumstances. Whilst it is not explicitly stated, the EE and EELC understand that the scope of section 4.6 must be intended to extend to sanitation emergencies arising at public schools. However, there remain a few ambiguities affecting the efficacy of the provisions.
32. It is unclear in what circumstances an emergency sanitation intervention will be appropriate. The definition of “*emergency*” provided in the Water Services Act, 1997 - “*a situation declared as such in terms of law and which is likely to cause injury or loss of life*” – is insufficient. Any definition of “*emergency*” provided in the norms and standards and regulations contemplated in the Draft Policy must make provision for situations which constitute health and safety hazards and impair the dignity of prospective users, including learners in schools.
33. While it is indeed imperative that the Minister determine acceptable timeframes for short, temporary interventions in the regulations contemplated in the Draft Policy or by other means, the Minister must also provide for plans to alleviate the emergency situation and the type and standard of infrastructure to be used as emergency sanitation. This is particularly important in the education context where prefabricated toilets have been used as interim or emergency sanitation facilities intended for the short term but are left standing as the primary sanitation facility for years on end despite their inappropriateness as a long-term sanitation solution.

Recommendations —

- The Draft Policy should expressly mention that the regulations for emergency sanitation will move away from the narrow definition of “*emergency*” provided in the Water Services Act and will envision situations which constitute health and safety hazards and impair the dignity of prospective users.
- The Draft Policy should note that the Minister will be required to provide for plans to

alleviate emergency sanitation situation and the type and standard of infrastructure to be used as emergency sanitation.

Section 5.4

(iv) Establishment of the National Water and Sanitation Advisory Committee

34. The Draft Policy notes that the National Sanitation Task Team (NSTT) has been re-established and will guide and support the sanitation sector in the future. However, the Draft Policy also notes that the Minister will establish a National Water and Sanitation Advisory Committee (Advisory Committee) to provide policy advice, ensure equity is achieved and feed into sanitation strategies and update national sanitation norms and standards.
35. A clear outline of the role of each of these committees and an explanation of how their work will complement each other to the benefit of the sector is required.

Recommendations —

- The Draft Policy must outline the roles of the NSTT and Advisory Committee and how the work of each committee will complement each other to the benefit of the sector.
- The membership base of the NSTT and Advisory Committee must also be provided.
- An explanation as to how it will be ensured that no duplication of conflict of work will occur is required.

Section 6.5

(v) Operation and Maintenance

36. EE and EELC notes the Draft Policy's provision of operation and maintenance considerations. The subsidisation of ongoing operating and maintenance costs and a transparent mechanism by which the funds will be managed is important.
37. However, operation and maintenance is not merely a costs issue. In the education context, schools lack the skills and materials to adequately maintain and operate their sanitation infrastructure. There is further a lack of transparency surrounding maintenance and operating costs responsibilities – i.e. whether the school, Department, Department of Public Works and/or the DBE is responsible for the costs associated with maintaining and operating a school's sanitation infrastructure.
38. Accordingly, regulations or norms and standards are required clearly delineating the operation and maintenance responsibilities and costs and also providing for training and materials for the adequate maintenance of sanitation facilities. Over and above the assigning of sanitation maintenance roles and responsibilities the Minister, in conjunction with the Ministers of relevant Departments, must set standards/guidelines for the maintenance of sanitation facilities.

Recommendations —

- The Draft Policy must contemplate the promulgation of regulations or norms and standards are required clearly delineating the operation and maintenance responsibilities and costs and also providing for training and materials for the adequate maintenance of sanitation facilities.
- The Minister, in conjunction with the Ministers of relevant Departments, must set standards/guidelines for the maintenance of sanitation facilities.

D. General Observations

(i) Link between Sanitation and Nutrition

39. While the Draft Policy places some emphasis on hygiene education and end-user education,¹⁵ no mention has been made of the link between good sanitation, hygiene education end-user education and nutrition.
40. Each year diarrhea alone causes the death of 760,000 children under 5 (11% of all child mortality).¹⁶ Diarrhea is also a leading cause of undernutrition in this age group and one-third to one-half of all child mortality cases are linked to undernutrition.¹⁷ UNICEF estimates that more than 90% of deaths from diarrheal illnesses in young children can be attributed to unsafe or inadequate water, sanitation, and hygiene practices.¹⁸ If mothers and other caregivers used basic hygiene practices and had better access to safe water and adequate sanitation this could greatly reduce deaths and improve child nutrition.¹⁹
41. Given the prevalence of poverty and food scarcity in South Africa, and the importance of school feeding schemes in alleviating these problems, it is prudent that the link between sanitation and nutrition be highlighted in the Draft Policy.

Recommendations —

- The link between sanitation, hygiene and end-user education and nutrition must be highlighted in the Draft Policy.

(ii) Poor-performing contractors

42. Our work in schools across the country has revealed a disquieting trend of poorly executed infrastructure projects. Once contractors are awarded a contract to complete infrastructure projects in a school, they commence and complete the project in record time and receive their cheque, only to leave the school with a poorly built piece of infrastructure which falls apart, also in record time. EE and EELC would thus like to see clear principles on the approach to dodgy

contractors who install substandard sanitation infrastructure.

43. We advocate in particular for a blacklisting mechanism and penalties to ensure that dodgy contractors are not used by various departments during sanitation integrated development programmes.

Recommendations —

- The Draft Policy should explicitly provide for a framework whereby contractors who install substandard sanitation infrastructure will be blacklisted and otherwise held to account.

(iii) Integrated Development and Intergovernmental Cooperation

44. EE and EELC appreciates the Draft Policy's recognition that "*sanitation regulatory responsibilities have been unclear . . . shifting between departments*" and that the "[p]rovision of sanitation in South Africa is particularly fragmented and uncoordinated largely due to the vast array of institutions involved in the provision of [the] service".
45. As noted above, EE and EELC's experience confirms that an issue of particular importance impacting on effective service delivery is the lack of coordination among departments involved in the provision of sanitation in schools.
46. The Draft Policy's position of adopting an integrated approach to the provision of sanitation and the utilisation of the integrated development planning processes (IDP) set out in the Municipal Systems Act is noted. However, the proposed IDP processes envision cooperation at a municipal level, leaving processes at a provincial and national level unestablished. It is critical that processes are coordinated at these two executive levels of government.

Recommendations —

- The Draft Policy should clearly prescribe a mechanism for an integrated approach to provision of sanitation in schools between and among departments at the provincial and national levels of government.

E. Recommendations – Summary

- The definition of "*Basic Sanitation*" and "*Basic Sanitation facility*" should be amended to include the provision of soap and toilet paper as well as feminine hygiene products and disposal services in schools. The definition of "*Hygiene*" should be developed to provide non-exclusive examples of what conditions and practices "*maintain health and prevent the spread of disease*". The examples of practices should necessarily include the use of toilet paper, soap and feminine hygiene products which should be disposed of in a hygienic manner. The definition of "*Sanitation*" should be amended so as to include the use and disposal of feminine hygiene products.
- The Draft Policy should set a timeframe for the Minister to publish the norms and standards for sanitation services in public institutions. The Draft Policy should also make clear that these norms and standards once published should include safety norms and must comply with national

and international standards regarding sanitation in schools.

- These norms and standards should also clearly delineate the operation and maintenance responsibilities and costs and should provide for training and materials for the adequate maintenance of sanitation facilities in public schools. The Minister, in conjunction with the Ministers of relevant Departments, must set standards/guidelines for the maintenance of sanitation facilities.
- The Draft Policy must adequately accommodate the sanitation needs of public schools located on privately owned land and informal settlements.
- The Draft Policy should note that the Minister will be required to provide for plans to alleviate emergency sanitation situation and the type and standard of infrastructure to be used as emergency sanitation.
- The Draft Policy must outline the roles of the NSTT and Advisory Committee and how the work of each committee will complement each other to the benefit of the sector. The membership base of the NSTT and Advisory Committee must also be provided. An explanation as to how it will be ensured that no duplication of conflict of work will occur is required.
- The Draft Policy should explicitly provide for a framework whereby contractors who install substandard sanitation infrastructure will be blacklisted, penalised and otherwise held to account.
- The link between sanitation, hygiene and end-user education and nutrition must be highlighted in the Draft Policy.
- The Draft Policy should clearly prescribe a mechanism for an integrated approach to provision of sanitation in schools between and among departments at the provincial and national levels of government.

F. Conclusion

1. The provision of safe, adequate and reliable water sanitation is an absolute necessity to ensure that a child's basic right to education and dignity is realised.
2. The Draft Policy is correct in adopting an integrated approach to water sanitation policy, however, a number of amendments need to be made to the policy to ensure that the rights of learners in schools are adequately provided for.