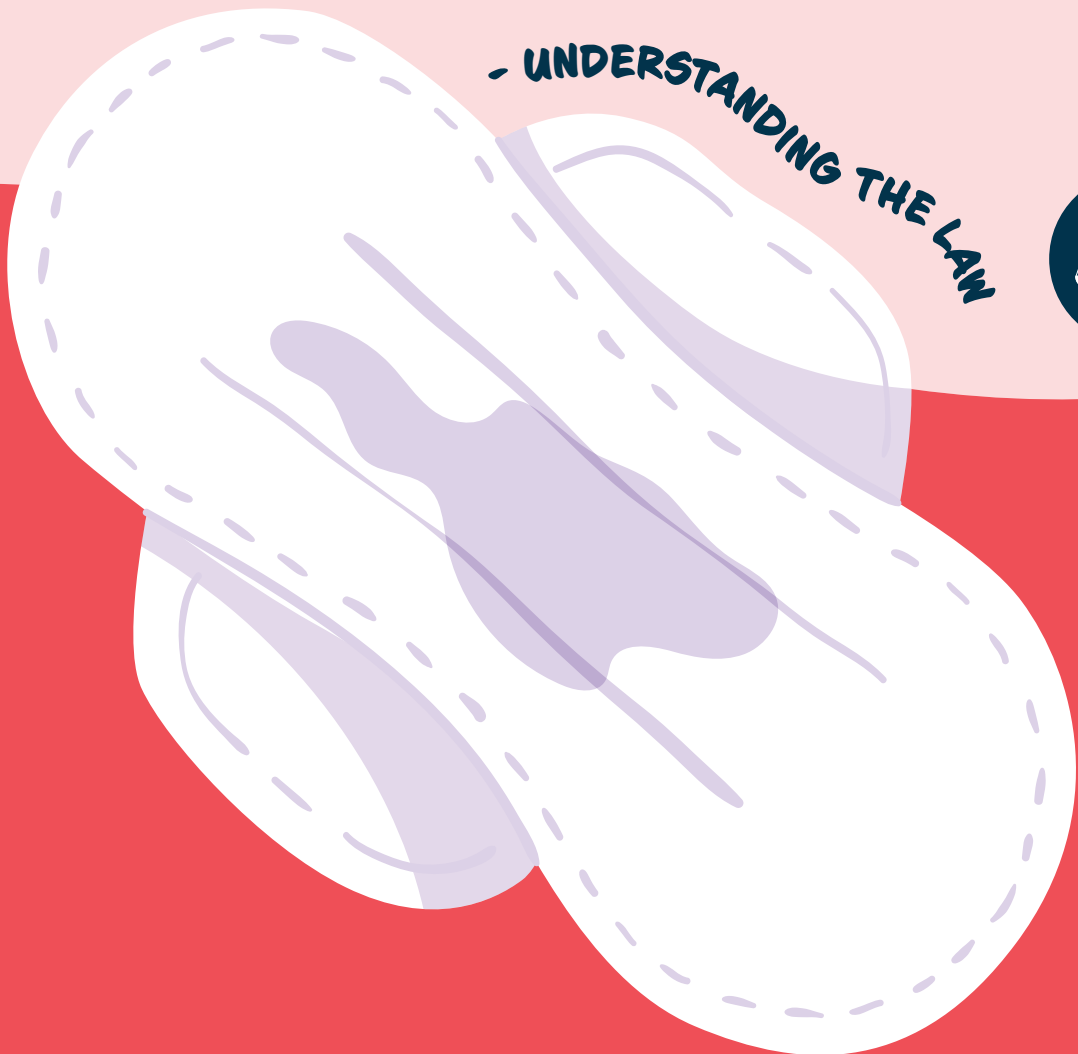


MENSTRUAL HEALTH AND ACCESS TO EDUCATION

- UNDERSTANDING THE LAW



A BOOKLET BY EQUAL EDUCATION
LAW CENTRE AND I_MENSTRUATE
MOVEMENT

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EDUCATION
LAW CENTRE

I_Menstruate

Introduction

What is menstruation?

Menstruation is a natural process that happens as part of puberty, where the body sheds blood and tissue from the uterus through the vagina, usually once a month. It is a normal part of growing up for girls and people who menstruate, and an important part of their reproductive health.



Background

In South Africa it is estimated that there are up to 7 million girls who do not have access to adequate menstrual health products.¹

In addition to lacking menstrual health products, many girls lack knowledge of their sexual and reproductive health, including how to safely and hygienically manage menstruation.² People who menstruate, who are predominantly girls, also face issues of access to appropriate water and sanitation facilities for the safe, hygienic and private use of menstrual health products, as well as a lack of medical care to identify and treat menstrual disorders.³ These combined barriers are referred to as “period poverty”.⁴

Period poverty has numerous impacts, including absenteeism from school during menstruation, **with girls missing up to 25% of their given school year in South Africa.** This violates girls’ right to basic education and also worsens existing inequalities. It is of further concern because women already face barriers in taking up social and economic opportunities and other forms of discrimination. If girls are unable to attend and complete their education, these inequalities are only deepened.

¹“The relationship between menstrual hygiene management, practices, and school absenteeism among adolescent girls in Johannesburg, South Africa” by N Khamisa, N Nanji, N Tshuma, & J Kagura in the South African Journal of Child Health (2022). Available at <https://doi.org/10.7196/SAJCH.2022.v16i1.1803> (accessed 8 May 2025).

² “A turning point for girls’ and women’s menstrual health in Africa” available on the United Nations Population Fund website at <https://www.unfpa.org/news/turning-point-girls-and-womens-menstrual-health-africa> (accessed 7 May 2025). Further, see the the Sanitary Dignity Policy Framework at page 3.

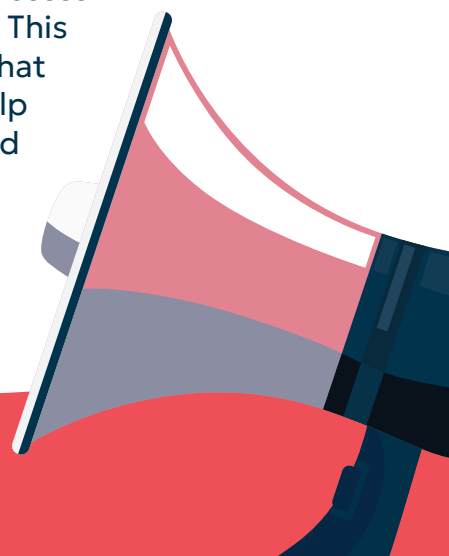
³ “Understanding period poverty: Socio-economic inequalities in menstrual hygiene management in eight low- and middle-income countries” by L Rossouw and H Ross in the Int J Environ Res Public Health (2021). Available at <https://pubmed.ncbi.nlm.nih.gov/33806590/>.

⁴ Ibid.



Who and what is this booklet for?

It is necessary to ensure that girls understand their rights to access education when menstruating so that they can assert these rights! This booklet is designed as a simplified guide to the laws and policies that protect your right to education during menstruation. It aims to help girls to gain that understanding by simplifying laws and policies and making them accessible and easier to understand.



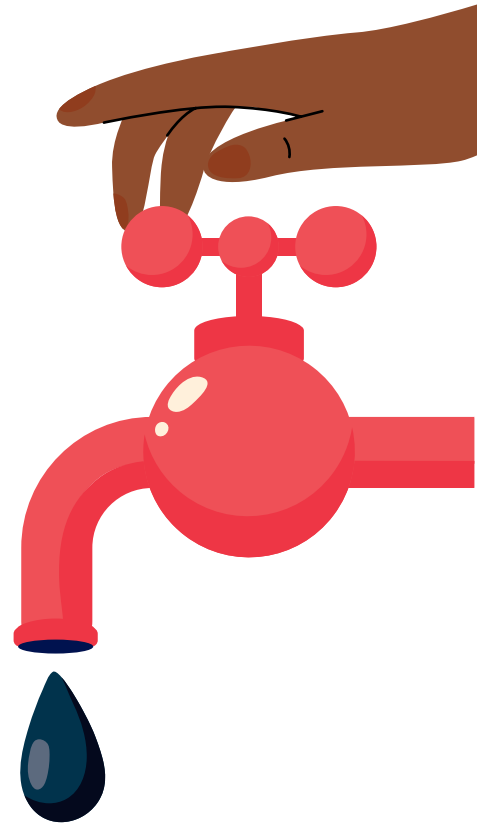
What are girls' rights to access education when menstruating?

International Law

Everyone has the right to adequate water and sanitation under international law –

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) says the Government must take measures to protect an adequate standard of living, which includes your sanitary dignity and health.

But international law goes even further than this and recognises that women and girls are affected the most by a lack of access to water and sanitation. That is why Article 14(h) of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) says that the Government must take steps to ensure that women (and girls) enjoy adequate access to sanitation.



In fact, it also says that if women and girls do not have adequate access to sanitation, this is **gender-based discrimination**.



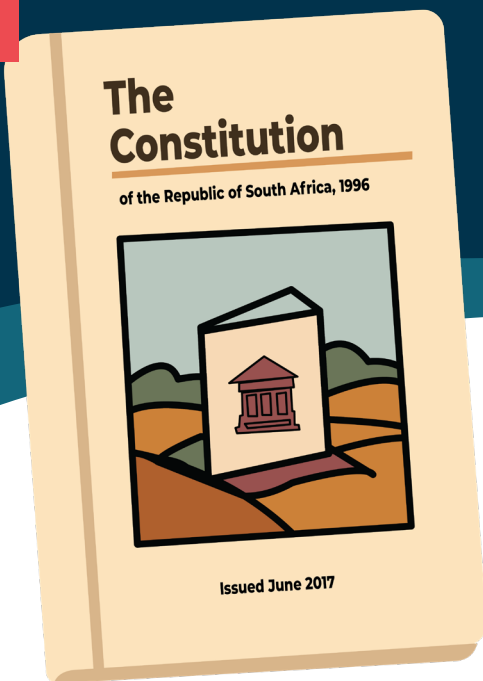
Why is International Law important?

Firstly, the ICESCR and CEDAW are binding treaties. This means that every country which has agreed to the treaties has a legal obligation to follow them, and their citizens can hold them accountable if they do not. South Africa is a State Party (i.e. it has agreed) to both treaties, so our Government **MUST** show that it is taking real steps to protect the rights of all women and girls to sanitary and menstrual health care.

Secondly, the world is watching to make sure governments meet their obligations! The United Nations (UN) Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation (known as ‘WASH’ for short) visits countries around the world to see whether these rights are being protected. The Special Rapporteur’s reports and speeches at the UN state clearly that girls have the right to sanitary dignity, and this includes access to water, sanitation and sanitary products!

*A **treaty** is a formal agreement between countries to follow certain rules.*





The Constitution

The Constitution contains many different rights.

Section 29 of the Constitution is about the right to education. It says that **everyone** has the right to a basic education. This includes girls when they are menstruating!

The Constitution is the supreme law of South Africa. This means that all other laws, policies and conduct must be consistent with it.

Section 9(2) of the Constitution says that “Equality includes the full and equal enjoyment of all rights and freedoms.” Section 9(3) of the Constitution states “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including gender and sex”.

The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) was enacted to protect the right to equality and to prevent unfair discrimination.

Discrimination is defined as “any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly (a) imposes burdens, obligations or **disadvantage** on, or (b) withholds **benefits, opportunities** or **advantages** from any person on one or more of the prohibited grounds”.

The “prohibited grounds” are listed in section 1 of PEPUDA and include gender and sex. Section 8 of PEPUDA provides specific instances of gender-based discrimination, stating that “no person may unfairly discriminate against any person on the ground of gender including... the denial of access to **opportunities**”.





Failing to provide menstrual products and appropriate facilities at schools indirectly discriminates against girls on the grounds of sex and gender, perpetuating unequal opportunities between girls and boys.

Menstrual health products are necessary but costly, particularly for vulnerable women and girls. This places a financial burden on women and girls that men and boys do not face. Further, the lack of adequate private sanitation facilities at school, along with a lack of water, soap and the means to dispose of used menstrual health products results in many girls missing school when they menstruate. These things are **disadvantages** that girls bear. Boys do not experience the same disadvantage.

Further, it also **withholds opportunity** for girls as they are unable to attend school, and the opportunity that it offers, when they are menstruating. Again, boys do not experience withholding of opportunity in the same way.

However, even though the Constitution and PEPUA contain these rights, girls widely still find that they do not have access to the products and conditions they need to attend school when menstruating, resulting in them missing school – and breaching their right to education and equality.



There is growing global movement and recognition of “pink tax”. Pink tax is not a real tax, but a theory that women pay more for the same or similar products as men. It is viewed as a form of gender-based discrimination.

In South Africa, VAT on period products was directly labelled as an unfair gender tax by an Independent Panel set up by the Minister of Finance to review the list of VAT zero-rated items.

This shows that gender discrimination in menstrual health rights is being recognised in South Africa!



The Screening, Identification, Assessment and Support (SIAS) Policy

The SIAS Policy applies to schools across the country and requires that learners who experience **barriers to learning** are given the support they need. A **barrier to learning**, according to SIAS, is any difficulty which prevents access to learning and development.

This can be a difficulty:

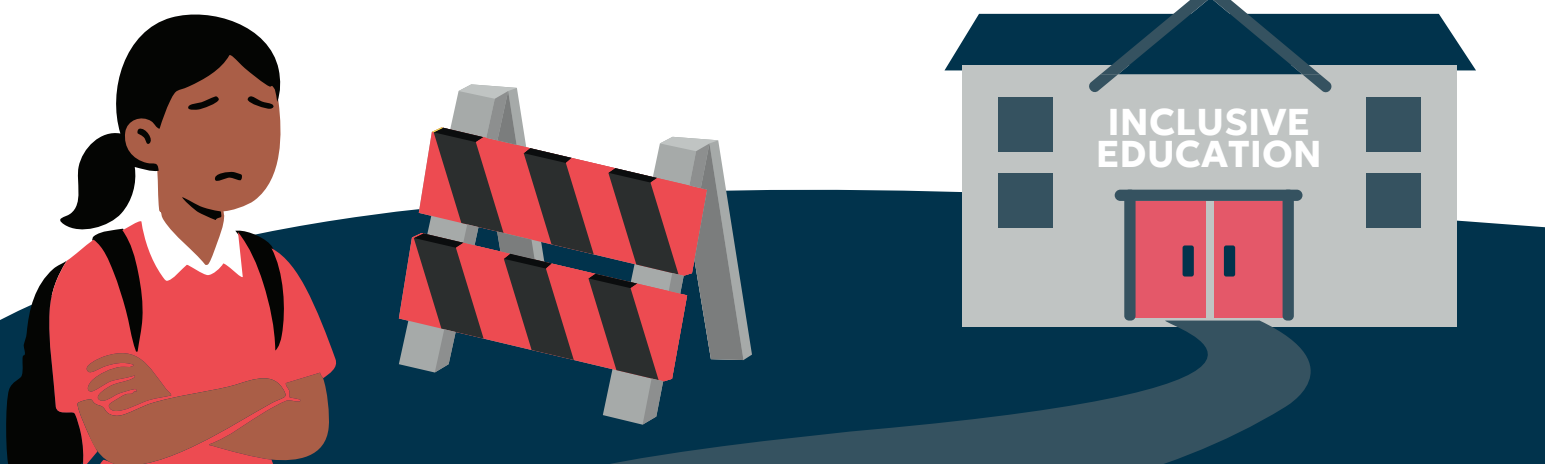
- At school
- At home
- In the education system
- Personal to the learner

In any of these cases, the learner's school, as well as their School District and even their Provincial Education Department if necessary, must give the learner the support they need so that they can participate fully in their education, including extramural and sporting activities.

Not having access to adequate water, sanitation or sanitary products is a barrier to learning!

This means that, when schools become aware that there are learners who might be excluded from school because of menstruation, the schools and School Districts must step in to ensure that the learners have access to water and sanitation at school, as well as access to sanitary products. In fact, the SIAS Policy explicitly recognises at Paragraph 22(2) (iii) that inadequate access to water and sanitation is one of the nine major barriers to learning in South Africa.

If schools do not take steps to support learners in overcoming these barriers, they are violating their duty, such as their duty under the SIAS Policy, to provide inclusive education.



The Sanitary Dignity Policy Framework

The Sanitary Dignity Policy Framework (SDPF) is a policy framework published by the Department of Women, Youth and Persons with Disabilities in June 2019. The SDPF aims to promote sanitary dignity and to provide norms and standards regarding the provision of sanitary products to vulnerable⁵ persons. It was approved by the Cabinet in 2019. The National Budget has allocated funds to the provincial equitable share for the implementation of the SDPF. The 2022/23 National Budget was allocated R236 million, which is split between the nine provinces.

Understanding the Sanitary Dignity Policy

Who should benefit from the policy?

The SDPF says who is meant to benefit from it, listing specific groups of women and girls. For this booklet we will list only one group: vulnerable women and girls who have reached puberty and commenced menstruation and who attend quintile 1, 2 and 3 schools, special schools and/or farm hostels.⁶



**What is a policy framework?
Is it a law or a policy or
something else?**

**According to the National
Policy Development Framework
a 'policy framework' is a
document that guides the
implementation of a policy. It
can be thought of as guidelines
that assist Government to
eradicate period poverty.**



**What are quintiles? The quintile system is a funding model that
creates five categories of schools called quintiles.**

**The schools in quintile 1 - 3 schools are no-fee schools and do
not charge school fees. These schools get the majority of the
government's funding.**

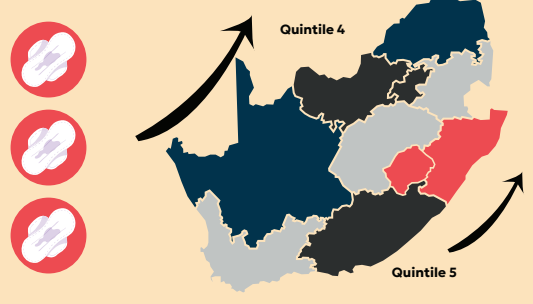
[Basic education handbook; school fees chapter].



⁵ Please note that the SDPF uses the terminology "indigent" and not "vulnerable". However, due to the term's potentially offensive nature, we have used the term vulnerable instead. When we use the term "vulnerable" when speaking about the SPDF, the SPDF uses the term "indigent". The SDPF defines an indigent person as someone who is so poor and needy that he/ she cannot provide the necessities of life (food, clothing, shelter) for themselves.

⁶ Sanitary Dignity Policy Framework (page 18).

EXPANDING SUPPORT



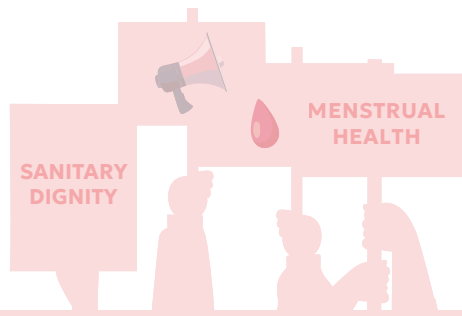
Whilst its great that Government is making an effort to ensure that those most in need are catered to through the SDFP, we think that there should be an obligation on Government to ensure that sanitary products, menstrual health education and hygienic and safe sanitation should be available in all schools regardless of its quintile. One reason for this is because many vulnerable learners attend quintile 4 and 5 schools.

The SDFP says that the option of expanding to quintile 4 and 5 schools “will be based on the results of a needs assessment and availability of resources”. The SDFP also says that it will be implemented in a progressive and incremental manner as it seeks to address the needs of the most vulnerable first but that it does not prohibit any other efforts to promote and protect the sanitary dignity of girls and women not highlighted in the SDFP.

It encourages civil society organisations, schools, businesses, and communities to complement the government’s efforts by providing additional support where needed.

What does sanitary dignity mean and what does it include?

Underlying the SDFP is the principle of ‘sanitary dignity’. The SDFP explains that this means all girls would have:



Menstrual information and knowledge



Menstrual products



A safe, hygienic, private space to carry out menstrual health practices



The availability of a clean and reliable water supply



Access to materials to hygienically clean themselves



Access to hygienically dispose of used products⁷



What is menarche?

Menarche is the first menstrual period in a female adolescent.

What should menstrual information and knowledge consist of:



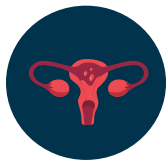
Preparation for menarche (first period)



Proper menstrual health management, including:



Understanding physical and emotional changes during puberty



Knowing the biology around menstruation



Acceptable hygiene practices



Choice and use of menstrual health products



Safety, storage and disposal of sanitary products



Clarifying taboos, myths and practices surrounding menstruation



Information on dealing with pain, nutrition and other health aspects

The SDPF says that this education must not only be for girls, but should be extended to include educators, men and boys, families, communities, community leaders and civil society.

Creating a community-wide understanding reduces stigma and ensures that girls are supported both inside and outside the school environment.

Access to sanitary products:

The SDPF says that sanitary products must be made available on school premises and that they should be accessible at all times as menstruation cycles can take place at any time of the month.⁸



⁷ Sanitary Dignity Policy Framework (page 9).

⁸ Sanitary Dignity Policy Framework (page 19).

Water supply, sanitation and hygiene (WASH):

The SDPF says that in order to implement the SDPF successfully, certain “enablers” are needed. These are:



Safe and hygienic water supply



Toilet paper (or other cleansing materials)



Safe, hygienic and sex-segregated private sanitation facilities



Safe and hygienic disposal system within the toilet facility, as well as an environmentally safe and hygienic system of disposal of the sanitary waste once removed from the sanitation facility



Hand-washing facility and soap



Facilities for people with disabilities



It is important to note that trans girls and non-binary adolescents and young adults should not be excluded from using these toilets. If they do not feel safe using these, they should be given access to teacher's restrooms.

Responsibility for sanitary dignity under the SDPF

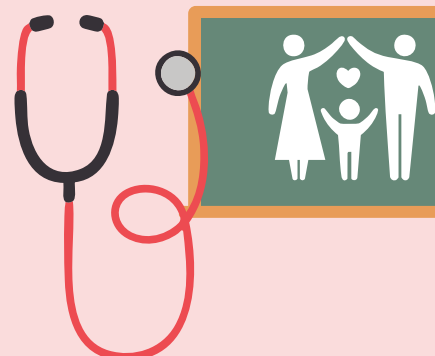
As mentioned before, different provinces have different departments that lead the implementation of the SDPF and the Sanitary Dignity Programme.

In addition, the SDPF establishes committees that will accept responsibility for sanitary dignity at schools. This includes:

Inter-Ministerial Committee (IMC)

- The IMC must improve coordination amongst Ministries such as the Departments of Social Development, Health and Basic Education and harmonise policies and implementation strategies.

These are not its only functions.



National Sanitary Dignity Oversight Committee (NSDOC)

- The NSDOC must promote compliance with the SDFP. It is overseen by the Department of Women, Youth and Persons with Disabilities alongside other ministries but most importantly the Department of Basic Education and Treasury.
- It must also:
 - Promote compliance with the SDFP amongst all role-players.
 - Conduct sanitary dignity awareness campaigns.
 - Operate a hotline where advice on sanitary dignity can be provided or where a contravention of the SDFP can be reported.

These are not its only functions.



Provincial Sanitary Dignity Committees (PSDC)

- The PSDC must oversee the implementation of the SDFP in the province.
- It must also:
 - Consider applications from the implementing department for assistance for provision of sanitary products and other requirements to achieve sanitary dignity in schools.
 - Conduct sanitary dignity awareness campaigns within the province.
 - Develop educational and communication/awareness materials on the use and disposal of sanitary products and other requirements to achieve sanitary dignity.
 - Each province must choose one MEC and HOD to lead it in their province.



Indigent Sanitary Management Committees (ISMC)

- Schools should establish these if vulnerable persons attend that school.
- The ISMC is responsible for:
 - The overall management of sanitary dignity within that school.
 - Applying to the PSDC for the provision of sanitary products.
 - Keeping a list of all vulnerable persons who qualify to receive sanitary products under the SDFP.
 - The distribution of sanitary products to vulnerable persons.
 - The regular inspection of toilets in school to ensure they are clean and hygienic.
 - Arranging for vulnerable persons to be educated on menstrual health management.



What are girls' rights to adequate sanitation at school so that they can safely USE and DISPOSE of menstrual health products?

The SPDF says that certain “enablers” are needed to implement it successfully. For the purposes of this booklet, two important enablers are:

ONE

access to a safe, hygienic, private space to manage menstruation; and

TWO

the availability of a clean and reliable water supply.

Without these enablers, many girls could miss school, meaning that a lack of or inadequate sanitation facilities could also constitute unfair discrimination, as indicated above. It is also important to mention that sanitation facilities should be accessible to learners with disabilities or there should be a facility available that is accessible for learners with disabilities.

So what rights do girls have to these enablers, over and above what the SPDF says? The Norms and Standards for School Infrastructure state what rights learners have to water and sanitation at school.

Regulation 11(1) states that all schools must have a sufficient water supply which is available at all times for personal hygiene. Regulation 11(2) states that schools must have sufficient water collection points and water-use facilities to allow convenient access to, and use of, water for personal hygiene.

As mentioned above, the SDPF states that the ISMC is responsible for the regular inspection of toilets in school to ensure they are clean and hygienic.



What are girls' rights to access free sanitary products?

Since 2019 sanitary pads have been VAT zero-rated in South Africa. This means that if you are purchasing sanitary pads, you will not pay any VAT. However, this is only the case for sanitary pads. Tampons, menstrual cups, period panties and other menstrual products are not VAT zero-rated. Whilst the VAT zero-rating of sanitary pads is a positive step, on its own, it has not made sanitary pads either more affordable or more accessible, with many poor women and girls remaining unable to afford purchasing them.

VAT stands for Value-Added Tax. It is a tax added to most goods and services. When something is zero-rated, it means no VAT is added to the price, making it a bit cheaper compared to other goods.

The SDPF intends to ensure that every vulnerable girl and woman has reasonable and easy access to free basic sanitary products. The SDPF does make provision that these products must be accessible at schools attended by vulnerable persons. The ISMC must apply

to the PSDC for the provision of sanitary products, must keep a list of vulnerable persons who qualify to receive sanitary products in terms of the SDPF and must distribute the products to the qualifying girls.



What is VAT and what is VAT zero-rating?

VAT (Value-Added Tax) is a 15% tax added to most goods and services in South Africa. Zero-rated items are taxed at 0%, making them more affordable - like sanitary pads, which were zero-rated in 2019 to promote access and dignity.



I_Menstruate

I_Menstruate Movement is working to eradicate period poverty in South Africa through movement building, awareness raising, education, advocacy and direct service provision.



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The Equal Education Law Centre (EELC) uses legal advocacy, research, and litigation to advance the struggle for equal and quality education in South Africa.



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