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TO: The Director General  
Department of Basic Education  
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30 March 2013

Dear Sir

**SUBMISSIONS ON REGULATIONS RELATING TO NORMS AND STANDARDS FOR  
PUBLIC SCHOOL INFRASTRUCTURE IN TERMS OF THE SOUTH AFRICAN  
SCHOOLS ACT 84 OF 1996**

1. CALS is a civil society organization based at the University of the Witwatersrand. CALS is committed to the protection of human rights through the empowerment of individuals and communities and the pursuit of systemic change.
2. We thank you for affording us the opportunity to comment of the draft Regulations relating to the Norms and Standards for public school infrastructure in terms of the South African Schools Act 84 of 1996 ("draft Regulations").



3. In the light of our vision, we have drafted submissions on the draft Regulations. Please find enclosed our submissions.
4. Should you have any queries please contact the writer hereof at 011 717 8607, alternatively by email at [Zeenat.Sujee@wits.ac.za](mailto:Zeenat.Sujee@wits.ac.za).

Yours faithfully,



Zeenat Sujee

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**SUBMISSION TO THE DEPARTMENT OF BASIC EDUCATION:**

***SOUTH AFRICAN SCHOOLS ACT, 1996 ACT NO. 84 OF 1996, REGULATIONS  
RELATING TO MINIMUM NORMS AND STANDARDS FOR PUBLIC SCHOOL  
INFRASTRUCTURE***

**Background to These Submissions**

1. The Centre for Applied Legal Studies ("CALS") is a civil society organisation based at the University of the Witwatersrand. CALS is committed to the protection of human rights through the empowerment of individuals and communities and the pursuit of systemic change.
2. CALS' vision is a country where human rights are respected, protected and fulfilled by the state, corporations, individuals and other repositories of power. CALS is committed to the dismantling of systemic harm and is rigorously dedicated to justice.
3. CALS' mission is:
  - 3.1 to challenge and reform South African systems that perpetuate harm, inequality and human rights violations;
  - 3.2 to provide professional legal representation to victims and survivors of human rights abuses;
  - 3.3 to realise a politically, socially and economically just society;
  - 3.4 to challenge systems of power and act on behalf of the vulnerable through a combination of strategic litigation, advocacy and research; and
  - 3.5 to act with courage against impunity for non-compliance with human rights standards.
4. In line with its vision and mission, CALS has a direct interest in the protection of gender rights. Through its Gender Programme, CALS seeks to interrogate the intersection between gender and socio-economic rights and has worked on projects that aim to heighten awareness of gender issues among lawyers and activists

working within various socio-economic rights sectors. It was on the basis of our direct interest in gender rights that we sought leave to intervene as *amicus curiae* in *Equal Education and Others v Minister of Basic Education and Others* ('Equal Education').<sup>1</sup>

5. CALS and Lawyers Against Abuse ("LvA") intervened as *amici curiae* in the matter. The *amici curiae's* submission focused on the gendered impact of the lack of sanitation on girl learners. The provision of adequate sanitation facilities at schools ensures girl learners' health, safety and security, privacy and dignity. Therefore the lack of adequate facilities, results in an infringement of a woman or girl learner's right to health<sup>2</sup>, safety and security<sup>3</sup>, privacy<sup>4</sup> and dignity<sup>5</sup>.
6. The *amici curiae* are of the view that the failure to implement the norms and standards, through regulations, and, in particular, the lack of adequate sanitation facilities at all schools, is not gender neutral in its adverse impact on the learning experiences of girls (and working conditions of women teachers).
7. In summary, the *amici curiae* identified the following ways in which deficient sanitation impacts girl learners disproportionately and differently:
  - a. The lack of adequate sanitary provisions results in girls avoiding attendance at school during the period of menstruation. This escalates the number of girl learners dropping out of school altogether, as well as the high rates of absenteeism.
  - b. A lack of adequate sanitary facilities available at schools necessitates the use of open facilities, which lack physical privacy and results in girl learners having to effect their ablutions where other learners can see and mock or tease them.

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<sup>1</sup> *Equal Education, Infrastructure Crisis Committee of Mwezeni Senior Primary School and Infrastructure Crisis Committee of Mkanzini Junior Secondary School v Minister for Basic Education, MEC for Education: Eastern Cape, Government of the Eastern Cape Province; Government of the Republic of South Africa, MEC for Education: Free State, MEC for Education: Gauteng; MEC for Education, KwaZulu-Natal; MEC for Education: Limpopo; MEC for Education, Mpumalanga, MEC for Education: Northern Cape, MEC for Education, North West, MEC for Education: Western Cape, Minister of Finance*, case no 81/2012 in the Eastern Cape High Court, Bhisho, Republic of South Africa.

<sup>2</sup> Sections 27 and 28 of Chapter 2 of the Constitution of the Republic of South Africa, 1996 ("Constitution").

<sup>3</sup> Section 12 of the Constitution

<sup>4</sup> Section 14 of the Constitution

<sup>5</sup> Section 10 of the Constitution

- c. When girl learners seek to effect their ablutions privately, this often requires them to walk some distance from the school where others cannot see them. This heightens their vulnerability to sexual violence.
8. In sum, the lack of adequate sanitation results in poorer levels of education among female learners, with devastating consequences for their vocational and overall opportunities to participate fully in social and economic life in South Africa. It can thus be concluded that the lack of adequate sanitation, including unclean and unhygienic toilets, results in substantive gender inequality since girl learners disproportionately forego education due to these circumstances.

### The Submissions

9. We thank the Department of Basic Education for the opportunity to make submissions on the proposed Regulations Relating to Minimum Norms and Standards for Public School Infrastructure ('the Regulations'), that have been promulgated following the *Equal Education* settlement, and wish to express our intention to continue to engage with the Regulations and any processes that may follow.
10. In the light of our *amici curiae* submissions in the High Court, we have chosen to focus on the gendered impacts of the lack of sanitation. However, we support the general submissions regarding the lack of sanitation made by Equal Education ("EE").
11. The Regulations were drafted pursuant to the terms of the Out of Court settlement of '*Equal Education*', in which the Minister of Basic Education agreed to promulgate "regulations which prescribe minimum uniform norms and standards"<sup>6</sup> for public school infrastructure. Pursuant to sections 5A(1)(a) and 5A(2)(a) of the *South African Schools Act* 84 of 1994 ('the Act'), these norms and standards must provide for, but are not limited to, the availability of classrooms, electricity, water, sanitation, a

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<sup>6</sup> Settlement Agreement of Case No 81/2012 Recorded by the Court in the Eastern Cape High Court, Bhisho (Republic of South Africa) in the matter between: *Equal Education; Infrastructure Crisis Committee of Mwezeni Senior Primary School; Infrastructure Crisis Committee of Mkanzini Junior Secondary School v The Minister for Basic Education and Others*, para 1.

library, laboratories for science, technology, mathematics and life sciences, sport and recreational facilities, electronic connectivity at a school, and perimeter security.<sup>7</sup>

12. CALS submits, however, that the Regulations suffer from general and gender-specific deficiencies.

- a. The Regulations misinterpret the fundamental constitutional requirement vis-à-vis basic education. Section 29(1)(a) of the Constitution provides that everyone has the right to a basic education. In contrast, it is only Section 29(1)(b), the right to further education, that is subject to progressive realisation. The proposed Regulations are woefully vague and unenforceable, and rely on the concept of progressive realisation. Such concept has no place within the reading and interpretation of the right to basic education.
- b. The Regulations do not take into consideration the international standards pertaining to the quality of adequate sanitation. These standards, described below, are binding on the South African government by virtue of Sections 231 and 232 of the Constitution.
- c. Finally, absent from the Regulations is any analysis of the gendered-impact of sanitation, or any proposed norms and standards to address this disparate impact of the lack of sanitation on girl learners.

13. Our submission will address the aforementioned inadequacies and present recommendations. The structure of the submissions will be divided as follows:

**I. General Deficiencies of the Draft Regulations:**

- A. Vagueness**
- B. Misuse of Progressive Realization**
- C. Unenforceability**
- D. Failure to adhere to International Law**

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<sup>7</sup> Section 5A(2), *South African Schools Act*, 1996.

## **II. Gender-Specific Deficiencies of the Draft Regulations:**

### **A. Failure to consider gendered impact**

### **B. Violations of the Rights to Health, Dignity, Privacy, Safety and Security**

## **III. Recommendations**

### **I. General problems**

#### **A. Vagueness**

14. The Regulations purport to establish norms and standards pursuant to sections 5A(1)(a) and 5A(2)(a) of the Act<sup>8</sup>. However, the few “minimum standards” that are established in the Regulations are vague and inadequate, while for the most part the Regulations fail to establish any measurable norms or standards whatsoever.
15. For example, sections 4(3) and 4(4) of the Regulations. Section 4(3) states “A school must be provided with adequate sanitation facilities that promote health and hygiene standards and that comply with applicable laws.” Section 4(4) provides “A school must be provided with adequate water supply which complies with all relevant laws.”
16. The above sections are vague as they fail to provide a definition for adequate sanitation. They fail to provide a standard for the quality of toilets and the minimum features a toilet must have to ensure that the rights to health, privacy and safety and security are protected. The aforementioned sections are generic and open-ended, which fail to provide the specific requirements needed to secure a learners’ right to health, safety and security, privacy and dignity.
17. The very purpose of minimum norms and standards is that they explicitly establish a measurable benchmark, so that learners, parents, school governing bodies, teachers and civil society can understand whether the standard has been met and, if not, the standard can be used as a mechanism for holding government accountable. Yet the

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<sup>8</sup> Sections 5A(1)(a) and 5A(2)(a), *South African Schools Act*, 1996.

draft Regulations as they stand simply do not provide at all for this kind of accountability function.

18. The draft Regulations do not differentiate between a norm and standard. A norm relates to what learners, parents, teachers and civil society would expect. In the context of our submissions, we submit that a norm would be to have safe and private toilets. In order to ensure a girl learner's safety to sexual violence, the toilets need to be sex-specific and separate. For example, it would not be suitable to have female and male toilets next to each other, separate toilets protect a girl learner from the possibility of sexual violence. A standard, in contrast, relates to the actual implementation of the norm. An example of a standard would be reasonable ratios of numbers of toilets to the numbers of learners.

19. In a Charter of Children's Basic Education Rights, the South African Human Rights Commission noted that one of the factors that hinder a learner's right to education is the lack of infrastructure and basic services, such as, water, sanitation and electricity.<sup>9</sup> In the context of our submissions, the lack of sanitation impedes the right to education of the girl child in a manner that is linked to, and the result of, her sex and gender. The absence of these facilities therefore has a disproportionate effect on a girl learner's right to health, safety and security, privacy, dignity and equality.

#### **B. Misuse of Progressive Realisation**

20. Most significantly, the Regulations avoid establishing measurable norms and standards by couching many of the ostensible standards in terms of "progressive realisation within available resources." For example, the Object of the Regulations is to provide "measures of ensuring progressive realisation of the provisioning of basic school infrastructure ...within available resources,"<sup>10</sup> and to address infrastructure backlogs "within available resources and over a period of time."<sup>11</sup>

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<sup>9</sup> SAHRC-Charter of Children's Basic Education Rights, 2012 page 9

<sup>10</sup> Section 2(1)b), Draft Regulations Relating To Minimum Norms And Standards For Public School Infrastructure

<sup>11</sup> Section 2(1) (2), Draft Regulations Relating To Minimum Norms And Standards For Public School Infrastructure.



21. The effect is that, according to the draft Regulations, the government is only obliged to provide infrastructure if there is sufficient resources and upon the passing of an undefined period of time.
22. However, the “right to a basic education” in section 29(1) of the Constitution is one of the few socio-economic rights in the Constitution that is not dependent upon “progressive realisation” and “available resources.” Rather, the Constitution enshrines the right to basic education as an immediately realisable right,<sup>12</sup> placing the state under a duty to immediately act to give full effect to the right. In purporting to establish minimum standards for basic education facilities which are not immediately realisable, the draft Regulations are therefore unconstitutional.
23. The right to education is an absolute right. The manner in which the Regulations are framed suggest that the provision of infrastructure and facilities is an additional positive duty that goes beyond what is required within the right to education. However, the provision of adequate infrastructure and facilities is an integral part of the right to education.
24. The draft Regulations fails to remove the obstacles which entrench the absolute right to education.
25. Further, the Regulations are notably inadequate when considering the gender-related impact of the sanitary conditions at schools. Although the Regulations stipulate that a school “must be provided with adequate sanitation facilities”<sup>13</sup> and “must be provided with basic water supply,”<sup>14</sup> these apparent prescriptions are undermined by the condition that “these facilities shall be progressively realised upon availability of resources.”<sup>15</sup> In effect, the Regulations merely establish that adequate sanitation faculties and a basic water supply must be provided progressively, in the event of resources becoming available. The Regulations thus fail to establish an enforceable minimum standard for sanitation facilities at the present time, although this is vital to support the current needs of girl learners.

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<sup>12</sup> Section 29, 1(a), *Constitution of the Republic of South Africa*, 1996; Juma Masjid Primary School and Another v. O. 2011

<sup>13</sup> Section 4 (3), Draft Regulations Relating To Minimum Norms And Standards For Public School Infrastructure

<sup>14</sup> Section 4(4), Draft Regulations Relating To Minimum Norms And Standards For Public School Infrastructure.

<sup>15</sup> Section 4(8), Draft Regulations Relating To Minimum Norms And Standards For Public School Infrastructure.

### **C. Unenforceability**

26. The draft Regulations delay the creation of minimum norms and standards. Section 5 of the “Provision of facilities to a school” merely establishes that a member of the Executive Council “must develop a plan for providing facilities.” The section thereby fails to establish an actual standard for the facilities, nor an accountability mechanism to ensure that the facilities themselves are provided. Similarly, section 8 delays the immediate creation of an enforceable framework, instead stipulating that the Minister must publish a “framework document” within 18 months of the commencement of the Regulations, which must include “technical information” and “planning norms”.
27. The Regulations fail to include monitoring and implementation mechanisms. Without any such clauses there will be a lack of accountability in the event that the Regulations are not complied with. Monitoring and implementation itself constitutes a norm integral to the Regulations.
28. CALS therefore submits that these purported Regulations, which for the most part delay the creation of minimum norms and standards, and where they do establish immediate norms and standards, make them highly contingent, are woefully in breach of the Minister of Basic Education’s undertaking to immediately promulgate minimum norms and standards.

### **D. Failure to adhere to International Law**

29. Not only do the Regulations fail to adequately establish norms and standards pursuant to the Act, they are also in violation of South Africa’s obligations under international law, particularly in terms of the right to education. The right to education has been formally recognised in international law since the Universal Declaration of Human Rights was adopted in 1948.<sup>16</sup> The right was reaffirmed in Article 13 of the 1966 *International Covenant on Economic, Social and Cultural Rights*

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<sup>16</sup> Universal Declaration of Human Rights, 1948.

(ICESCR), to which South Africa is a party and is in the process of ratifying. In terms of section 231 of the Constitution, South Africa is bound by international agreements, while in terms of section 233, a court must consider international standards when interpreting legislation.

30. Article 13 relevantly notes that "education given in such institutions [schools] shall conform to such minimum standards as may be laid down by the State."<sup>17</sup> While the ICESCR provides for the progressive realisation of some rights, all countries have immediate obligations in regard to the right to education.<sup>18</sup> Specifically, states are immediately obliged to "to take steps" towards the full realisation of Article 13.<sup>19</sup> The Committee on Economic, Social and Cultural Rights had noted that "such steps must be 'deliberate, concrete and targeted'".<sup>20</sup>

31. While the Minister for Basic Education has purported to draft Regulations that would support the right to education, as argued above, these Regulations are so vague that they fail to establish any "deliberate, concrete and targeted" action. Yet the active formulation of minimum standards is an integral part of the state's obligation to meet its citizen's right to education under international law.

32. In international law, the "essential features" of the right to education are assessed according to availability, accessibility, acceptability, and adaptability (the "4 As framework"). In other words, "education must be available to everyone, accessible to all, acceptable for pupils and parents and adaptable to the needs of learners."<sup>21</sup> Most relevant here is the question of "availability". The Committee on Economic, Social and Cultural Rights has explained that "availability" includes that "all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, [and] safe drinking water....while some

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<sup>17</sup> <http://www2.ohchr.org/english/law/cescr.htm#art13>

Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, part 4

<sup>18</sup> The right to education (Art.13) : 12/08/1999. E/C.12/1999/10. (General Comments), <http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>

<sup>19</sup> (art. 2 (1)), The right to education (Art.13) : 12/08/1999.

E/C.12/1999/10. (General Comments),

<http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>

<sup>20</sup> The right to education (Art.13) : 12/08/1999.

E/C.12/1999/10. (General Comments),

<http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>

<sup>21</sup> Fons Coomans, "Justiciability of the Right to Education", *Erasmus Law Review*, 2009, 2, 427.

will also require facilities such as a library, computer facilities and information technology.”<sup>22</sup>

33. The South African Human Rights Charter on Basic Education provides possible indicators to determine compliance with the “availability” aspect of the international right to education.<sup>23</sup> These indicators include all public ordinary schools in South Africa must comply with the National Policy for the Equitable Provisioning of the Enabling School Physical Teaching and learning Environment (2010) and the Guidelines Relating to Planning for Public School Infrastructure (2012). Compliance with these policies requires schools to eradicate plain bucket and latrines, to promote safe and hygiene sanitation facilities, and to ensure that disabled learners receive accessible sanitation.<sup>24</sup>

34. The Committee on Economic, Social and Cultural Rights further noted that an aspect of the state’s obligation to make education available is “actively developing a system of schools, including building classrooms.”<sup>25</sup> UNESCO has provided further elaboration in official reports, noting that “governments bear the primary responsibility” for the provision of schools and the monitoring of standards.<sup>26</sup> However, the Regulations promulgated by the Minister for Education shun this obligation by entirely failing to establish assessable standards.

35. Accordingly, CALS contends that the Regulations are not only inadequate in terms of the settlement of *Equal Education*, but also constitute a violation of South Africa’s obligations under international law.

## **II. Gender-Specific Deficiencies**

36. CALS is particularly concerned that the Regulations fail to provide adequate minimum standards for sanitation in a manner that will impede girl learner’s right to

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<sup>22</sup> The right to education (Art.13) : . 12/08/1999.

E/C.12/1999/10. (General Comments),

<http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>

<sup>23</sup> Opcit 9, p’s15-30

<sup>24</sup> Opcit 9, p. 20

<sup>25</sup> Ibid.

<sup>26</sup> “A Human Rights-Based Approach to EDUCATION FOR ALL: A framework for the realization of children’s right to education and rights within education” United Nations Education, Scientific and Cultural Organisation, New York, 2007, p.16 . Available from <http://unesdoc.unesco.org/images/0015/001548/154861E.pdf>

health, a clean and healthy environment, privacy, dignity and security.

### *Health*

37. Unhygienic sanitation facilities, or the lack of any facilities, adversely affect a girl learner's urinary system, and can result in chronic constipation, infection, possible long-term reproductive and health complications and psychological distress. Related infections can spread and cause further infection to the reproductive organs, including the cervix and the uterus. This can lead to complications and deterioration in reproductive health.
38. Without access to sanitary toilets and other facilities, girls in their pre-adolescent and adolescent years will likely suffer from reproductive health ailments. The complications which can result from a lack of adequate sex-specific sanitation include excessive pain during menstruation, vaginal infections which can cause excessive vaginal discharge, excessive bleeding, and irregular menstrual cycles.
39. Poor menstrual health, and these other related health ailments, have serious and adverse implications on a girl learner's mental health. The inadequate sanitary facilities reduce their self-esteem, psychologically affecting the manner in which a girl learner deals with menstruation, in particular, and her overall physical health, more generally. This, in turn, leads to increased rates of absenteeism from school and the avoidance of active participation in schooling and school-related activities. In this manner, the girl learner is denied both the right to health and the the quality of her education is compromised.

### *Equality and Dignity*

40. Absent norms and standards against which to monitor, evaluate and improve the physical conditions under which girl learners are educated, these learners are more likely to receive poor, or no, education. Unprepared for life and without basic skills such as literacy and numeracy, these girls' opportunities are limited, with further adverse consequences for their physical well-being. In addition, the psychological impact and adverse self-esteem and self-image that result from such difficulties cannot be overstated.

41. Many adolescent girls in South African cannot afford disposal sanitary wear. Many girl learners must wash and dry their sanitary wear and need a private and contained environment to do so.<sup>27</sup>

### *Privacy, Safety and Security*

42. The right of girl learners is impeded by the absence of adequate sex-specific sanitation in schools:

42.1 The risk of gender-based violence can be directly linked to the distance women and girls have to travel for water and sanitation in circumstances such as those relevant to the main application in this matter.

42.2 Where schools do not provide adequate sanitation, girl learners have to walk longer distances in order to find secluded places to effect their ablutions.<sup>28</sup>

42.3 When girl learners are forced to relieve themselves in such vulnerable unsecured locations with no privacy, they face a greater risk of sexual violence.

42.4 As a result, ensuring that each school provided sanitation and water at an acceptable standard would remove the need for girl learners to walk longer distances and thereby become vulnerable to sexual violence.

43. Similarly, the lack of norms and standards mandating the provision of perimeter security at schools results in increased vulnerability to sexual violence.

44. When girl learners are forced to leave the relative safety of their school buildings to attend to their ablutions, their physical safety is compromised. Access control of

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<sup>27</sup> Mengistu, Bethlehem. "Empowering women and girls How water, sanitation and hygiene deliver gender equality" WaterAid February 2010 p's 9-11. <http://www.wateraid.org/~media/Publications/empowering-women-girls-water-sanitation-hygiene-gender-equality.ashx>.

<sup>28</sup> Govender, Pregs. Address to CTPC: Water is Life, Sanitation is Dignity. Human Rights Day, 21 March 2012.

schools ensures that, while present at school, girl learners are more likely to be protected from sexual and other violence. We note, however, that this is not always the case given the notoriously high levels of sexual violence committed at schools.

### III. Recommendations

37. CALS respectfully submits that because the Regulations have been deliberately drafted so as to *avoid* establishing enforceable norms and standards, they ought to be construed as non-compliance with the terms of the Settlement Agreement. The Minister for Education agreed to draft regulations, but what has been submitted for public comment is a document that deliberately avoids establishing minimum benchmarks.

38. CALS submits that the Regulations should be redrafted, so as to explicitly establish minimum standards as required by sections 5A(1)(a) and 5A(2)(a) the Act, and in line with South Africa's obligations under international law.

39. While CALS does not wish to suggest what would be appropriate for all the minimum norms and standards, we propose that the World Health Organization's (WHO) guidelines should inform the development for water and sanitation supply.<sup>29</sup>

40. Specifically, the WHO's relevant minimum standards are as follows:

- a. "Sufficient water is available at all times for drinking, personal hygiene, food preparation, cleaning and laundry;"<sup>30</sup>
- b. "Sufficient water-collection points and water-use facilities are available in the school to allow convenient access to, and use of, water for drinking, personal hygiene, food preparation, cleaning and laundry;"<sup>31</sup>
- c. "Sufficient, accessible, private, secure, clean and culturally appropriate toilets are provided for schoolchildren and staff;"<sup>32</sup>

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<sup>29</sup> John Adams, Jamie Bartram, Yves Chartier, Jackie Sims (eds). *Water, Sanitation and Hygiene Standards for Schools in Low-cost Settings* World Health Organization. 2009. Available from [www.who.int/water\\_sanitation\\_health/.../wash\\_standards\\_school.pdf](http://www.who.int/water_sanitation_health/.../wash_standards_school.pdf)

<sup>30</sup> Ibid, p. 18.

<sup>31</sup> Ibid, p. 19.

<sup>32</sup> Ibid, p. 22.

- d. "The school environment is kept clean and safe."<sup>33</sup>
41. The guidelines set out the basic quantities of water required and additional quantities of water. It states that a basic 5 litres per person per day is required for day schools.<sup>34</sup> The additional quantity of water is required for sanitation purposes. It requires at least 10-20 litres per person per day for flushing of toilets and depending on the hours that learners spend at schools.<sup>35</sup>
42. The guidelines further provide that there should be one toilet for 25 girls and one for female staff.<sup>36</sup> The toilets should be carefully located as to ensure privacy and security in order to reduce acts of sexual violence.<sup>37</sup> In particular, male and female toilets should be placed at different locations to ensure that boy learners and educators do not have access to female toilets.
43. The toilets should be appropriate and accessible to children with disability and who suffer from chronic diseases.<sup>38</sup> The guideline reiterates the importance of hygiene and that the toilets should be near hand washing points to ensure hygiene. The intention of the guideline is to ensure that toilets are not the means for transmitting diseases.<sup>39</sup> The guidelines go further stating that cleaning and maintenance operations must be put in place to ensure a clean environment.<sup>40</sup>
44. In the light of the guidelines, section 4(3) of the draft Regulations does not specify the standards for toilets. The section is inadequate in that it fails to address the health and safety of learners. It further fails to take into account the health and safety of girl learners.
45. Section 4(4) of the Regulations too, are inadequate as it fails to stipulate the quantities of water required and any assurance that learners should receive adequate water to maintain hygiene and cleanliness.

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<sup>33</sup> Ibid, p. 26.

<sup>34</sup> Ibid, p. 18.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid, p. 22.

<sup>37</sup> Ibid, p. 23.

<sup>38</sup> Ibid, p. 21

<sup>39</sup> Ibid, p. 24

<sup>40</sup> Ibid.



46. In the light thereof, CALS respectfully submits that the regional and international standards discussed above, should be considered and included as enforceable minimum standards for sanitation in public schools, as a step towards guaranteeing girl learner's right to health, a clean and healthy environment, privacy, dignity and security. We therefore respectfully submit that the draft Regulations be redrafted to incorporate both regional and international law standards.
47. Since the draft Regulations pertain to ordinary public schools only, we assume that further Regulations will be drafted for special schools. Girl learners in special schools require the same standard to that of ordinary school but special care would be required. In the event such Regulations are promulgated, CALS respectfully requests the opportunity to provide gender specific submissions.

## **Conclusion**

48. In conclusion, as a result of draft Regulations being vague, the misusing of progressive realisation, the lack of enforceability, the lack of adhering to International Law and the failure to consider the gender specific submissions, the Regulations fails to comply with the Settlement Agreement and therefore should be redrafted. As a research centre based at the University of the Witwatersrand, CALS would be happy to assist with the development of gender-appropriate and responsive norms and standards.