



## **SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT**

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In the matter between:

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

**OWN INITIATIVE**

And

**EASTERN CAPE DEPARTMENT OF EDUCATION**

**FIRST RESPONDENT**

**NATIONAL DEPARTMENT OF BASIC EDUCATION**

**SECOND RESPONDENT**

### **INVESTIGATIVE REPORT**

#### **EXECUTIVE SUMMARY**

This report examines the systemic failures in school sanitation infrastructure in the Eastern Cape, highlighting persistent violations of learners' rights to safety, dignity, and education. Despite the progress achieved through initiatives like the Sanitation Appropriate for Education (SAFE) programme, the findings reveal that traditional pit toilets remain a grim reality in 427 schools, while Ventilated Improved Pit (VIP) latrines, though a step forward, often fail to meet the safety needs of younger learners. This dual failure continues to put the lives and dignity of South Africa's youngest learners at risk.

The investigation, initiated under the South African Human Rights Commission's (SAHRC) constitutional mandate, focuses on the challenges faced by rural schools, particularly in the Foundation Phase. It draws attention to the preventable deaths of three young learners in the province since 2018, underscoring the life-threatening dangers of unsafe and inappropriate

sanitation facilities. While the SAFE programme has replaced many traditional pit toilets, these replacements are frequently non-compliant with critical design and safety standards outlined in the 2016 Water Research Commission (WRC) guidelines. Features such as smaller pedestals, protective handles, offset pits, and reinforced structures, specifically recommended to ensure the safety of young children, are glaringly absent in many VIP installations. This oversight has resulted in VIPs posing risks similar to the facilities they were meant to replace, eroding public trust in the state's commitment to eradicating unsafe sanitation.

The report identifies systemic issues that exacerbate these failures, including budgetary constraints, poor oversight, and a focus on infrastructure quantity over quality.

The report concludes that the continued reliance on unsafe sanitation facilities constitutes a violation of learners' constitutional rights to dignity, safety, and education. This report serves as a call to action, urging the state to adopt a child-centered approach that prioritizes the safety and well-being of the youngest learners. By implementing the actionable recommendations outlined, the Department of Basic Education can address these systemic failures, uphold its constitutional obligations, and prevent further tragedies. Ensuring safe, hygienic, and age-appropriate sanitation facilities is not merely a policy goal—it is a human rights imperative that demands immediate and decisive action. The lives, dignity, and futures of South Africa's children depend on it.

## **1. Introduction and Mandate**

- 1.1. The Commission is a National Human Rights Institution (NHRI) established under Chapter 9 of the Constitution of the Republic of South Africa 1996 (Constitution) to support and strengthen constitutional democracy. It operates in terms of the Principles Relating to the Status of National Institutions (Paris Principles) adopted by the United Nations General Assembly Resolution 48/134 in 1993. In terms of section 184(1) of the Constitution, the Commission is mandated to promote respect for human rights and a culture of human rights; promote the protection, development, and attainment of human rights; and monitor and assess the observance of human rights in the Republic.
- 1.2. The Commission's constitutional mandate is further explicated in the South African Human Rights Commission Act.<sup>1</sup> The Commission's Act details the powers and functions of the Commission, under Section 13, which include the competencies to make recommendations to all organs of state regarding the fulfilment of human rights; review government policies on human rights and make recommendations accordingly; undertake studies on human rights issues; and monitor the implementation of and compliance with international human rights norms.
- 1.3. The human rights outlined in Section 184(1) and expressed in the Bill of Rights, as they pertain to the subject of this report, are upheld and fulfilled at the school level, with the Department of Education serving as the responsible custodian of those schools and early childhood development centres (ECDs). Schools and ECDs are vested with the fiduciary duty of interacting directly with learners in the delivery of the right to education including the various elements of that right, including infrastructure, basic services such as water and sanitation. These elements are intrinsically necessary for the realisation of basic rights in the Bill of Rights.

## **2. Background**

- 2.1. The legacy of apartheid in South Africa is starkly reflected in the systemic inequalities that persist in the education system, particularly regarding school infrastructure and sanitation. Among the most egregious remnants is the continued reliance on unsafe and inadequate sanitation facilities in rural and peri-urban schools.
- 2.2. Traditional pit toilets, a hallmark of apartheid-era schools designated for Black learners, remain a troubling reality in many areas. These facilities pose severe risks to the health,

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<sup>1</sup> Act 40 of 2013 (SAHRC Act).

safety, and dignity of learners, despite years of democracy and numerous policy and court interventions.

- 2.3. In the Eastern Cape, historically one of the most marginalized and under-resourced regions, the prevalence of inadequate sanitation infrastructure continues to impact schools disproportionately. Media reports have documented tragic incidents where young children have fallen into pit toilets, resulting in injuries or fatalities, underscoring the urgent need for safe and appropriate facilities.<sup>2</sup>
- 2.4. While efforts to eradicate traditional pit toilets have made progress, they have often been replaced with Ventilated Improved Pit (VIP) latrines, which, as this report reveals, bring their own set of challenges. Many VIPs are not designed to accommodate the needs of younger learners, exposing them to significant safety risks.
- 2.5. The investigation undertaken by the Commission, driven by its mandate to protect and promote human rights, seeks to understand these systemic issues and hold relevant authorities accountable. It aims to assess not only the conditions leading to tragic incidents but also the broader socio-economic context that perpetuates inadequate sanitation infrastructure in schools.
- 2.6. Although focused on the Eastern Cape, this report acknowledges that the issue of unsafe and inadequate sanitation extends nationally. Across multiple provinces, the provision of age-appropriate facilities remains a critical gap.
- 2.7. This report examines available data, legal frameworks, and the obligations of the Department of Basic Education. It highlights the failure to ensure that newly constructed sanitation facilities, such as VIPs, meet safety and usability standards for younger learners, particularly in the Foundation Phase (ages 3–7).
- 2.8. Ultimately, the report emphasizes that eradicating unsafe sanitation facilities is not merely an infrastructural improvement but a profound human rights imperative. It presents actionable recommendations for immediate and long-term measures to ensure that all learners have access to safe, hygienic, and age-appropriate sanitation facilities. These measures are crucial for upholding the constitutional rights to education, dignity, and safety

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<sup>2</sup> Of the 3 deaths documented, one death occurred in a traditional pit toilet at Luna Primary School in Bizana and the two other deaths occurred in VIP toilets at Mcwangule Primary School in Vaalbank and Little Champions Daycare in Mdantsane, respectively.

### **3. Parties**

- 3.1. The investigation was initiated under the Commission's mandate as outlined in Section 13(3)(a) of the South African Human Rights Commission Act 40 of 2013. This provision empowers the Commission to investigate human rights violations on its own accord or upon receipt of complaints. Given the recurring reports of learner fatalities in unsafe sanitation facilities, particularly in the Eastern Cape, the Commission exercised this authority to probe the systemic failures contributing to these tragic incidents.
- 3.2. Furthermore, under Section 12(1) of the South African Schools Act 84 of 1996, the Department of Basic Education (DBE), through its Provincial Office, is mandated to ensure the provision of public school infrastructure, including sanitation facilities, through funds appropriated by the provincial legislature. This places the DBE as the primary respondent in the investigation. Section 12(5) emphasizes the obligation to ensure that school facilities are accessible and safe for all learners, a standard currently unmet in many rural and under-resourced schools. The Respondent further has its offices situated at Steve Tshwete Education Complex, Zone 6, Zwelitsha.

### **4. Snapshot Analysis of School Sanitation Facilities**

- 4.1. Public discourse often conflates traditional pit toilets with Ventilated Improved Pit (VIP) latrines, obscuring the critical distinctions between the two and undermining accountability. This conflation perpetuates the misconception that all pit-like facilities are equally hazardous and fails to recognize that VIPs, when properly designed and implemented, represent a significant improvement over traditional pits.
- 4.2. Traditional pit toilets, as recognized by the World Health Organization (WHO), are rudimentary sanitation systems that lack ventilation, structural integrity, or mechanisms to manage odors and disease-carrying pests. These facilities are classified as "unimproved sanitation" and pose substantial risks to health, safety, and the environment. Their continued use in schools, particularly in South Africa's rural areas, constitutes a clear violation of learners' rights to dignity, safety, and a healthy learning environment.
- 4.3. In contrast, VIP latrines are designed to address many of the deficiencies associated with traditional pit toilets. They include ventilation pipes to reduce odors, fly screens to minimize pests, and reinforced construction to ensure greater safety and stability. The

WHO endorses VIP latrines as a viable sanitation solution in low-resource and water-scarce contexts, such as South Africa, due to their ability to operate without water. However, VIP latrines can only meet these public health objectives if designed and implemented in accordance with safety guidelines

4.4. In 2024, the SAHRC conducted a series of inspections at schools across the Eastern Cape to evaluate the state of sanitation facilities and their impact on learner safety, particularly for Foundation Phase learners aged 3–7 years. The inspections revealed systemic challenges related to traditional pit toilets, VIP latrines, and even flush toilets.

4.5. The schools visited and referenced in this report however are by no means exhaustive. The Commission has, over the past several years, conducted numerous visits to schools with inadequate infrastructure and continues to do so as part of its monitoring mandate. The examples highlighted in this report represent recent samples that are indicative of broader systemic concerns.

4.6. Below is thus a detailed narrative of the findings from each sample school, highlighting the challenges faced and the broader implications for school sanitation in the province.

#### 4.7. **Schools with Traditional Pit Toilets**

4.7.1. At Upper Gqumashe Lower Primary School<sup>3</sup> in Alice, the Commission observed that the school relied on unsafe traditional pit toilets. These facilities posed a serious risk to younger learners due to their unsuitable design, including seat sizes that were far too large for small children in the Foundation Phase. Staff expressed concerns about the dangers these toilets presented and emphasized the urgent need for an upgrade to flush toilets or age-appropriate VIP latrines.

4.7.2. Similarly, at Yamala Primary School<sup>4</sup>, also in Alice, the condition of the traditional pit toilets raised alarms. Staff interviewed during the inspection highlighted their concerns about the safety of learners, particularly those in the lower grades. They reiterated that the provision of flush toilets would significantly enhance the safety and dignity of the learners.

4.7.3. At Sondaba Senior Primary School<sup>5</sup> in Mount Fletcher, the situation was equally dire. The school's traditional pit toilets were deemed unsafe and inappropriate, especially for younger learners. The overall condition of the toilets was poor, with visible structural

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<sup>3</sup> Inspection conducted on 19 July 2024

<sup>4</sup> Inspection conducted on 19 July 2024

<sup>5</sup> Inspection conducted on 23 July 2024

weaknesses that compounded the safety risks. School staff underscored the critical need for proper sanitation facilities to prevent potential tragedies.

4.7.4. At Ezingonyameni Primary School<sup>6</sup>, also in Mount Fletcher, the inspections revealed similar issues with traditional pit toilets. These toilets, like others in the region, were not designed for young learners and posed significant safety hazards. Staff at the school urgently requested intervention to address these deficiencies.

#### 4.8. **Schools with Ventilated Improved Pit (VIP) Latrines**

4.8.1. At Charlisle Bridge Farm School<sup>7</sup> in Makanda, the Commission found newly built VIP latrines that had not yet been handed over for use. In the meantime, the school continued to rely on old, unsafe traditional pit toilets, exposing learners to unnecessary risks. Younger children required constant supervision when using these facilities due to their hazardous condition.

4.8.2. At Manxeba Junior Secondary School<sup>8</sup> in Herschel, the VIP latrines were designed to accommodate Foundation Phase learners. These facilities were located within the view of educators, reducing safety risks and minimizing the need for constant supervision. The age-appropriate toilet seats were a positive feature, although minor adjustments are still recommended.

4.8.3. In contrast, at Nyaniso Senior Primary School<sup>9</sup>, also in Herschel, the VIP latrines filled up quickly due to shallow trenches, creating maintenance challenges. The seats were not user-friendly for younger learners, necessitating a redesign to ensure their safety and usability.

4.8.4. At Khiba Junior Secondary School<sup>10</sup>, the Commission found VIP latrines that had been built over a decade ago. These latrines were designed with large seats, making them unsuitable for small learners in the Foundation Phase. Staff reported that supervision was required to prevent accidents, particularly for children aged 3–4 years in Grade R.

4.8.5. At Plangeni Junior Secondary School<sup>11</sup> in Bizana, the VIP latrines were appropriately sized for Foundation Phase learners. However, the lack of privacy due to missing doors on the toilets diminished the dignity of the learners and created additional concerns.

4.8.6. At Lindokuhle Primary School<sup>12</sup>, also in Bizana, the newly built VIP latrines had not yet been handed over for use. Consequently, the school continued to use unsafe traditional

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<sup>6</sup> Inspection conducted on 23 July 2024

<sup>7</sup> Inspected on 08 June 2024

<sup>8</sup> Inspected on 03 September 2024

<sup>9</sup> Inspected on 03 September 2024

<sup>10</sup> Inspected on 04 September 2024

<sup>11</sup> Inspected on 23 August 2024

<sup>12</sup> Inspected on 23 August 2024

pit toilets. Furthermore, the new VIP latrines lacked age-appropriate seats, rendering them unsuitable for younger learners.

4.8.7. At Ramohlakoana Senior Primary School<sup>13</sup> in Matatiele, the VIP latrines were nearing completion and included features that made them appropriate for young learners. This demonstrated progress, although the facilities were not yet operational at the time of the inspection.

#### 4.9. **Schools with Flush Toilets**

4.9.1. At St Mary's Senior Primary School in Herschel<sup>14</sup>, the flush toilets were non-functional due to ongoing water supply challenges. Learners were forced to use unsuitable traditional pit toilets or, in some cases, relieve themselves outside. The lack of supervision further exacerbated the risks.

4.9.2. At Ethridge Junior Secondary School<sup>15</sup> in Bizana, the flush toilets functioned but suffered from low water pressure, requiring manual water pouring for flushing. While the infrastructure was functional, the toilet seats were not designed for younger learners, making them inappropriate for Foundation Phase students.

4.9.3. At Ebenezer Junior Secondary School<sup>16</sup>, also in Bizana, the school had a complete flushing system. However, the location of the school in a wetland area raised concerns about potential overflow during heavy rains. The Foundation Phase toilets were appropriately sized, addressing some of the safety concerns.

4.9.4. At Zamokuhle Junior Secondary School<sup>17</sup> in Matatiele, the school had 20 functioning flush toilets with good infrastructure. However, with over 1,300 learners enrolled, the number of toilets was insufficient, creating challenges related to overcrowding and sanitation.

#### 4.10. **General Challenges**

4.10.1. At Moliko Senior Primary School<sup>18</sup> in Matatiele, the Commission observed poor infrastructure overall. The school continued to rely on unsafe traditional pit toilets, highlighting the broader issue of inadequate resources and infrastructure in rural schools.

4.11. The sample inspections revealed several recurring themes. While traditional pit toilets are being phased out, the replacement VIP latrines often fail to meet the safety and accessibility needs of younger learners, particularly those in the Foundation Phase.

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<sup>13</sup> Inspected on 21 August 2024

<sup>14</sup> Inspected on 03 September 2024

<sup>15</sup> Inspected on 20 August 2024

<sup>16</sup> Inspected on 23 August 2024

<sup>17</sup> Inspected on 21 August 2024

<sup>18</sup> Inspected on 21 August 2024



- 4.12. Many schools, even those with new sanitation facilities, lacked age-appropriate features or sufficient privacy, undermining the dignity and safety of learners.
- 4.13. Both VIP and flush toilet systems faced maintenance and operational challenges, including shallow trenches, water supply issues, and overcrowding.
- 4.14. The findings highlight the urgent need for age-appropriate sanitation facilities, particularly in schools catering to younger learners. The SAFE program has made progress, but gaps in implementation and design remain significant obstacles.

## **5. LEGAL FRAMEWORK**

The legal position on the eradication of unsafe sanitation facilities, particularly traditional pit toilets in schools, is well-established and undisputed. South Africa's legislative and policy frameworks, grounded in both domestic and international law, unequivocally mandate the state's responsibility to provide safe, hygienic, and age-appropriate sanitation facilities for all learners. The duties of the government are clear, and the need to eliminate pit toilets and replace them with compliant alternatives has been emphasized repeatedly.

Nevertheless, it remains essential to reiterate these obligations to underscore the gravity of the situation and the urgency of compliance. The persistent reliance on unsafe sanitation facilities, including age-inappropriate VIP latrines, constitutes a continuous breach of these legal mandates. Therefore, the legal framework is restated here to highlight the state's obligations and the standards required to safeguard the rights and dignity of learners.

### **5.1. Domestic Legislative Framework**

- 5.1.1. The Constitution is the supreme law of South Africa and binds all branches of government and organs of state. It guarantees the right to dignity (Section 10), life (Section 11), and a healthy environment (Section 24). These rights oblige the state to protect and preserve life and ensure that all citizens, including learners, enjoy a safe and dignified environment.
- 5.1.2. Section 29 enshrines the right to basic education, which includes the provision of safe and appropriate infrastructure. Section 28 prioritizes the best interests of children, ensuring their protection from neglect and maltreatment. Together, these rights form the foundation for the state's duty to provide age-appropriate sanitation in schools.
- 5.2. National Water Services Act emphasizes universal access to basic water supply and sanitation (Section 3). Basic sanitation is defined as the minimum service required to safely and hygienically manage human waste. Section 5 mandates prioritization of basic

sanitation where resources are constrained, reinforcing the obligation to ensure adequate sanitation in schools.

- 5.3. Regulation 2 of the Compulsory National Standards outlines that basic sanitation must include toilets that are safe, reliable, hygienic, environmentally sound, and easy to maintain. Facilities must provide privacy, ventilation, and protection from disease-carrying pests.
- 5.4. South African Schools Act (SASA) places the responsibility on the state to ensure that public schools meet infrastructure standards, including sanitation. Section 5A empowers the Minister of Basic Education to prescribe minimum norms and standards for school infrastructure, with a specific emphasis on safety and adequacy.
- 5.5. Norms and Standards for School Infrastructure (2013) mandate that school sanitation must be safe, accessible, hygienic, and age-appropriate. The regulations prohibit the use of traditional pit toilets and bucket systems, requiring facilities to cater to learner dignity and safety, particularly for younger children.
- 5.6. Basic Education Laws Amendment (BELA) Act now introduces a phased approach to eliminating unsafe sanitation facilities, such as pit latrines, in schools. It emphasizes the construction and maintenance of appropriate alternatives like VIP latrines or flush toilets. The Act prioritizes systematic and sustainable improvements to sanitation, ensuring safety and compliance with infrastructure norms.
- 5.7. National Sanitation Policy (2016) outlines basic sanitation requirements, focusing on safety, affordability, and environmental sustainability. Facilities must cater to user needs, particularly for children, and promote hygiene and accessibility.
- 5.8. National Development Plan (NDP) sets a 2030 target for universal access to clean water and sanitation. It emphasizes infrastructure improvements to support water-dependent sanitation systems while reducing water demand in urban areas.
- 5.9. National Building Regulations and Standards Act Part Q of SANS 10400 provides for non-waterborne sanitary disposal systems, ensuring safety and hygiene where conventional systems are unavailable. These standards are essential for schools relying on VIP latrines or similar facilities.
- 5.10. Accelerated Schools Infrastructure Development Initiative (ASIDI), initiated following a 2010 settlement, allocates funding to replace inadequate school infrastructure, including sanitation. The initiative addresses backlogs in schools lacking access to safe water, sanitation, and electricity, underscoring the DBE's obligation to provide safe facilities.

## **6. International Law**

- 6.1. **International Covenant on Economic, Social, and Cultural Rights (ICESCR)** recognizes sanitation as a fundamental component of human dignity. General Comment 13 emphasizes that educational infrastructure must meet the interrelated standards of

availability, accessibility, acceptability, and adaptability, ensuring safe and hygienic facilities for all learners.

- 6.2. **Convention on the Rights of the Child (CRC)** articles 24, 28, and 29 affirm children's rights to health and education, obligating states to provide safe and accessible sanitation facilities. The CRC underscores the principles of protection, prevention, and provision to safeguard children's basic needs and ensure their participation in safe learning environments.

## 7. **Regional Instruments**

- 7.1. **African Charter on the Rights and Welfare of the Child (ACRWC)** through article 14 guarantees children the right to the highest attainable state of physical and mental health, including access to safe drinking water and sanitation. The Charter compels states to integrate these provisions into national development plans to reduce dropout rates and improve school attendance.

### 7.2. **Additional Resources**

#### 7.2.1. **Water Research Commission Guidelines for School Sanitation 2016<sup>19</sup>**

- 7.2.1.1. The Water Research Commission (WRC) report titled "Guidelines for School Sanitation: Building and Managing School Toilets that Protect Learners' Rights to Safety, Health, and Dignity," published in December 2016, provided crucial insights into the challenges and necessary improvements for school sanitation in South Africa.

- 7.2.1.2. This comprehensive study evaluated existing sanitation infrastructure and proposed guidelines to ensure that the basic rights of learners were upheld. The WRC report primarily focused on the prevalent use of pit toilets in rural schools, highlighting significant safety and health risks associated with these structures.

- 7.2.1.3. It documented instances where collapsing slabs and oversized openings had led to tragic accidents, underscoring the urgent need for structural improvements. Additionally, the unhygienic conditions of these toilets contributed to the spread of diseases, further endangering the health of learners.

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<sup>19</sup> Report no. TT 698/16

- 7.2.1.4. Specifically for purposes of the Commission’s report, this report also examined VIPs toilets, which, despite being an improvement over traditional pit latrines, still presented safety challenges. The design of VIP toilets needed enhancements to eliminate the risk of children falling into the pit.
- 7.2.1.5. Recommendations included the use of smaller pedestals for younger children, reinforcing the structural integrity of slabs, and ensuring that pit access hatches were securely covered. These measures were essential to protect the physical safety of learners. In terms of hygiene, the WRC report emphasised the necessity of equipping VIP toilets with handwashing facilities, soap, and toilet paper.
- 7.2.1.6. It called for a rigorous cleaning regimen, including the disinfection of all contact points such as toilet seats, handles, and taps. Regular maintenance and timely emptying of pits were critical to prevent the accumulation of waste, which posed severe health hazards. The implementation of these hygiene measures was vital to curb the spread of infectious diseases within the school environment.
- 7.2.1.7. The WRC guidelines further stressed the importance of privacy and dignity in school sanitation. Toilets needed to be located in safe, accessible areas, ensuring adequate lighting, ventilation, and security. The design had to accommodate the needs of all learners, including those with physical disabilities, and provide age-appropriate facilities for younger children. By ensuring these elements, schools could create an environment where learners felt respected and secure.
- 7.2.1.8. Effective management and maintenance of sanitation facilities were also highlighted as key components of the WRC recommendations. Schools needed to establish a sanitation management team responsible for regular inspections, maintenance, and hygiene education.
- 7.2.1.9. Providing training and support to school staff was crucial for the successful implementation of these practices. The active involvement of the school community, including learners, in maintaining sanitation standards was encouraged to foster a culture of cleanliness and responsibility.

### **7.3. Reflections on Provincial Public Hearings: 9 June-11 June 2023 Eastern Cape Province**

- 7.3.1. The public hearings on the BELA Bill held in the Eastern Cape from June 9 to June 11, 2023, demonstrated strong public sentiment in favour of urgently eradicating pit toilets in

schools. Participants from various municipalities expressed unanimous support for phasing out these hazardous sanitation facilities and replacing them with safe, hygienic alternatives.

- 7.3.2. Concerns were raised about the implementation timelines and the Department of Basic Education's capacity to meet these deadlines, emphasising the need for clear, achievable targets and accountability.
- 7.3.3. Stakeholders highlighted the importance of providing dignified and secure sanitation facilities, sharing personal experiences that underscored the dangers of pit latrines. The hearings also called for the inclusion of stringent regulations in the BELA Bill to mandate the phasing out of pit latrines and ensure timely delivery of modern facilities. The feedback from these public hearings shows the continued need for improved school sanitation infrastructure, reflecting a strong community consensus on this issue.

## **8. APPLICABLE CASE LAW:**

### **8.1. *Governing Body of the Juma Masjid Primary School v Essay N.O***

- 8.1.1. In this case, the Constitutional Court affirmed the immediate realisability of the right to a basic education, and stated that:

*“It is important, for the purpose of this judgment, to understand the nature of the right to “a basic education” under section 29(1)(a). Unlike some of the other socio-economic rights,<sup>36</sup> this right is immediately realisable. There is no internal limitation requiring that the right be “progressively realised” within “available resources” subject to “reasonable legislative measures”. The right to a basic education in section 29(1)(a) may be limited only in terms of a law of general application which is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”. This right is therefore distinct from the right to “further education” provided for in section 29(1)(b).”*

- 8.1.2. Given that the right to a basic education includes access to safe and dignified sanitation facilities in schools, the Juma Masjid judgment is instructive to the issues under investigation by the Commission herein.

### **8.2. *Equal Education and Another v Minister of Basic Education and Others***

- 8.2.1. This landmark case addressed the critical deficiencies in school infrastructure, including sanitation, and reaffirmed the state's duty to provide safe and adequate facilities as part of the right to basic education. The court held that the provision of infrastructure is not

ancillary but an integral component of this right. It explicitly stated that “basic school infrastructure plays a significantly high role in the delivery of basic education” and emphasized that “[the right to basic education] is multi-faceted; it includes the provision of proper facilities.”

8.2.2. The court further confirmed that the **Minimum Norms and Standards for School Infrastructure** are legally binding and impose enforceable duties on the government. It underscored the obligation to comply with these standards within the stipulated timelines, thereby holding the state accountable for failures to meet infrastructure requirements.

### 8.3. *Komape and Others v Minister of Basic Education and Others*

8.3.1. This case brought to light the devastating consequences of inadequate sanitation in schools, particularly the tragic death of a learner due to unsafe facilities. The court emphasized that the right to basic education includes access to safe and dignified sanitation facilities. It held that the state’s failure to provide such facilities constitutes a violation of the rights to dignity, life, and education.

8.3.2. The judgment stressed the urgent need for government action to rectify unsafe and degrading conditions in schools. It highlighted the importance of ensuring that sanitation infrastructure not only meets legal standards but also protects the lives and dignity of learners, calling for immediate steps to address these failures comprehensively.

## 9. LEGAL AND FACTUAL ANALYSIS

### 9.1. Introduction

9.1.1. The issue of school sanitation in South Africa has long been acknowledged as a critical and urgent concern. The legislative framework is clear, and the constitutional principles are trite: no child should be subjected to unsafe, undignified, or inadequate sanitation facilities in their place of learning.

9.1.2. Despite this clarity, children continue to die, and many more are exposed to daily risks due to unsafe sanitation. This Commission must interrogate why this is the case. It is not sufficient to merely state that pit toilets must go; the state has recognized this obligation and taken steps toward compliance.

9.1.3. The deeper and more pressing question is why children continue to die even when traditional pit toilets are replaced by VIP latrines. This analysis examines these systemic

failures, focusing on the inadequacies of VIP latrines and their inability to address the specific needs of younger learners.

## 9.2. **Traditional Pit Toilets: A Persistent Threat**

9.2.1. The continued existence of traditional pit toilets in South African schools is a glaring indictment of the state's failure to meet its constitutional obligations.

9.2.2. Data submitted by the Eastern Cape Department of Education (ECDOE) in 2018 revealed that 1,598 schools across the province were still reliant on pit latrines. This figure, submitted to the Presidency and the Department of Basic Education (DBE), spurred the establishment of the Sanitation Appropriate for Education (SAFE) programme.

9.2.3. Despite this initiative, 427 schools in the Eastern Cape alone continue to rely on unsafe and degrading pit toilets.

9.2.4. The legal principles governing this issue are well-established. Section 10 of the Constitution guarantees the right to dignity, while Section 24 provides for an environment that is not harmful to health or well-being. The continued existence of pit toilets contravenes both these provisions. Moreover, Section 28(2) of the Constitution mandates that the best interests of the child must be paramount in all matters concerning them. The presence of unsafe pit toilets in schools flagrantly violates this principle, exposing children to unacceptable risks.

9.2.5. The Komape judgment is furthermore instructive. The court in this case held that the state's failure to provide safe sanitation facilities violated the rights to dignity, life, and education. This judgment explicitly linked inadequate sanitation to constitutional violations, underscoring the state's immediate obligation to rectify these conditions.

## 9.3. **VIP Latrines: A Potentially Flawed Solution**

9.3.1. In 2016, the Water Research Commission (WRC) issued clear and specific design recommendations aimed at ensuring that sanitation facilities, particularly Ventilated Improved Pit (VIP) latrines, cater to the needs of all learners, with a focus on younger children in the Foundation Phase (ages 3–7).

9.3.2. The guidelines emphasized several critical features: smaller pedestals tailored to the physical dimensions of young children to prevent falls; protective handles to aid balance; offset pits to reduce direct exposure to hazardous openings; and reinforced structural

elements to prevent collapse or instability. These design elements are essential to safeguarding the youngest and most vulnerable learners from the dangers posed by inadequately designed facilities.

- 9.3.3. Despite these recommendations, the implementation of VIP latrines under the SAFE programme has fallen short. While 1,373 of 1,451 projects were completed by 2024/25 at a cost of over R1.82 billion, the facilities often lacked the WRC-prescribed safety features.
- 9.3.4. For example, at Lindokuhle Primary School in Bizana, newly constructed VIPs were found to lack age-appropriate features such as smaller seats or protective barriers, rendering them unsafe for younger learners. Similarly, at Khiba Junior Secondary School in Herschel, VIPs built more than a decade ago had large, adult-sized seats that posed significant hazards for children in the Foundation Phase.
- 9.3.5. This failure to design VIPs with younger children in mind undermines the very purpose of replacing traditional pit toilets.
- 9.3.6. The Department of Education's discount for the WRC's guidelines, despite their widespread dissemination and demonstrated necessity, constitutes a breach of its constitutional obligations under Section 29 of the Constitution. The Minimum Uniform Norms and Standards for School Infrastructure further emphasize the requirement for safe, secure, and age-appropriate facilities. The absence of adherence to these standards transforms the so-called "improvements" into yet another iteration of unsafe infrastructure, perpetuating the risks these replacements were meant to mitigate.
- 9.3.7. Therefore fatalities of young children as a result of using VIP latrines points to the need to address this issue. Unless the Department ensures that all newly constructed or retrofitted VIP latrines comply with the WRC's guidelines, these facilities remain inherently unsafe.
- 9.3.8. The replacement of traditional pit toilets thus cannot be considered a true advancement if the replacements fail to eliminate the hazards that have already led to preventable deaths.
- 9.3.9. The Department's failure to adopt these recommendations is not just an oversight but an ongoing violation of the rights to education, safety, and dignity.

#### 9.4. **The Role of Negligence and Oversight**

- 9.4.1. It is important to recognize that the incidents involving learner deaths cannot be attributed solely to the form of sanitation provided.



9.4.2. Negligence and a lack of adequate supervision have also played a role. For instance, in the Mdantsane case, the toilets were locked and intended for adult use, raising questions about the adequacy of care and oversight at the facility. However, it is equally clear that the availability of age-appropriate toilets could have prevented these tragedies.

9.4.3. Regulation 12 of the Norms and Standards requires that all school sanitation facilities be accessible, secure, and health-promoting. The failure to comply with these standards exacerbates the risks associated with inadequate supervision.

## 9.5. **Budgetary and Administrative Failures**

9.5.1. The state's obligation to provide safe and adequate school sanitation is not subject to progressive realization but is an immediate duty.

9.5.2. This distinction is important.

9.5.3. While programs like SAFE and ASIDI have made progress, the persistence of unsafe sanitation facilities reveals systemic failures in budgeting, planning, and execution.

9.5.4. A 2014 assessment, refined in 2018, identified 1,598 schools using pit latrines, 323 schools with insufficient sanitation, and 2,810 schools lacking age-appropriate ablutions for Grade R learners.

9.5.5. The projected cost of addressing these deficiencies was R2.59 billion, yet the implementation has been uneven, and critical design flaws remain unaddressed.

9.5.6. Section 195 of the Constitution demands accountable and efficient public administration. The failure to prioritize the specific needs of younger learners, despite the availability of WRC guidelines, represents a breach of this principle. The SAFE programme's further apparent, and perhaps indirect focus on infrastructure quantity rather than quality has perpetuated risks for the smallest learners.

## 10. **FINDINGS**

10.1. The state's continued framing of school sanitation as an incremental and resource-dependent objective constitutes a de facto progressive realisation approach, which is unconstitutional in the context of Section 29. This failure is further highlighted by the neglect to adequately address systemic inefficiencies, reliance on costly implementing

agents, and the diversion of critical funds. As stated above, while the SAFE programme and similar initiatives represent steps forward, they fall short of the constitutional standard required to ensure the immediate and unconditional fulfilment of learners' rights.

- 10.2. This report calls for a recalibration of the state's approach to school sanitation, emphasizing that unsafe conditions in schools are not simply an issue of inadequate resources but a systemic failure to prioritize the safety, dignity, and education of learners. Addressing these failures requires immediate, targeted, and well-coordinated action to bridge the gap between policy intent and practical outcomes.
- 10.3. The continued reliance on unsafe sanitation facilities in schools—both traditional pit toilets and poorly designed Ventilated Improved Pit (VIP) latrines—constitutes a systemic violation of learners' constitutional rights. These violations persist despite clear legislative and judicial directives, policy frameworks, and expert recommendations.

#### **Violations from Traditional Pit Toilets**

- 10.4. The use of traditional pit toilets in 427 schools across the Eastern Cape is a direct affront to learners' rights. These facilities are inherently unsafe and degrading, exposing children to significant risks to their dignity, safety, and education. The persistence of such facilities violates:
- 10.5. The Right to Dignity (Section 10): Traditional pit toilets force children into degrading conditions that undermine their self-worth and privacy.
- 10.6. The Right to a Safe Environment (Section 24): These facilities pose severe health and safety risks, exposing children to disease and physical harm.
- 10.7. The Right to Education (Section 29): Unsafe sanitation disrupts learning environments, deterring attendance and affecting academic performance.
- 10.8. The Best Interests of the Child (Section 28(2)): The tragic deaths at Luna Primary School and the ECD centre in Mdantsane highlight the failure to prioritize children's safety and well-being.

#### **Violations from Unsafe VIP Latrines**

- 10.9. The replacement of traditional pit toilets with VIP latrines under the SAFE programme was intended to improve school sanitation. However, the failure to design VIPs in line with Water Research Commission (WRC) guidelines has resulted in facilities that are unsafe for young learners, particularly those aged 3–7 years. These failures include:

- 10.10. The Right to Safety and Life (Sections 10 and 11): VIP latrines with large, adult-sized openings pose life-threatening hazards to younger children, as evidenced by deaths at Mcwangele Primary School in Vaalbank and other schools.
- 10.11. The Right to Dignity and Privacy (Sections 10 and 24): The absence of critical design features, such as smaller pedestals and protective barriers, denies learners the privacy and dignity guaranteed by the Constitution.
- 10.12. The Right to Education (Section 29): Fear and insecurity created by non-compliant VIPs hinder young learners' ability to engage fully in their education.
- 10.13. Equality (Section 9): The inconsistent implementation of WRC guidelines disproportionately affects rural and under-resourced schools, perpetuating inequality and apartheid-era infrastructure disparities.

### **Systemic and Repeated Failures**

- 10.14. The inadequacy of both traditional pit toilets and unsafe VIP latrines is not a new issue. Cases like *Komape v Minister of Basic Education* have already highlighted the link between inadequate sanitation and the violation of rights to dignity, life, and education. The SAFE programme itself was an acknowledgment of these systemic failures. However, uneven progress and critical design flaws in VIP latrines demonstrate that the lessons of past tragedies have not been fully absorbed.
- 10.15. The 2016 WRC guidelines provided a clear roadmap for designing age-appropriate VIPs to protect the youngest learners, yet these recommendations remain inconsistently implemented. This neglect of expert advice further reflects a failure to prioritize the safety and well-being of learners.
- 10.16. The state's efforts to improve school sanitation must be recalibrated to address these failures holistically, ensuring that all facilities are safe, age-appropriate, and compliant with constitutional and legislative standards. The lives and dignity of South Africa's youngest learners demand nothing less.

## **11. RECOMMENDATIONS**

- 11.1. In accordance with the South African Human Rights Commission (SAHRC) Act, the Commission is empowered to issue recommendations to promote and protect human rights as enshrined in the Constitution. The preamble of the Act emphasizes the SAHRC's mandate to foster respect for human rights, ensure their protection and development, and monitor their observance across South Africa.

11.2. Section 13(1)(a)(i) grants the Commission authority to issue recommendations to organs of state at all levels of government whenever necessary to advance human rights. Section 13(3)(a) further underscores the Commission's role in securing redress for individuals affected by human rights violations.

11.3. In addition, Section 18(2) requires the Commission to submit serious findings to the National Assembly, while Section 18(4) mandates that relevant state organs respond in writing within 60 days, specifying the steps taken to address the Commission's findings and recommendations.

11.4. In light of the findings in this report, the SAHRC makes the following recommendations:

**11.4.1. Immediate Compliance with Minimum Norms and Standards**

11.4.1.1. The Department of Basic Education (DBE) must take urgent steps to ensure that all school sanitation facilities comply with the Minimum Uniform Norms and Standards for School Infrastructure, particularly regarding:

11.4.1.1.1. The eradication of traditional pit toilets in the remaining 427 schools in the Eastern Cape.

11.4.1.1.2. Ensuring all newly constructed facilities meet safety, hygiene, and accessibility requirements.

11.4.1.1.3. Progress under the SAFE programme must be expedited, and measures must be implemented to avoid further delays.

**11.4.1.2. Adoption and Implementation of Water Research Commission Guidelines**

11.4.1.2.1. The Department of Basic Education must immediately adopt and enforce the 2016 Water Research Commission (WRC) guidelines for age-appropriate sanitation facilities. These guidelines outline critical safety features that must be incorporated into Ventilated Improved Pit (VIP) latrines to address the specific needs of younger learners, particularly those in the Foundation Phase (ages 3–7). The WRC's recommendations include:

- **Smaller Pedestals:** Toilet openings must be reduced in size to accommodate younger learners, preventing accidental falls.
- **Protective Handles:** Handles must be installed to assist young children in maintaining balance, ensuring stability and safety while using the facilities.
- **Offset Pits:** The latrine openings must not directly expose users to the pit below, reducing the risk of falls and improving safety.

- Reinforced Structural Elements: All facilities must be constructed to withstand environmental pressures and heavy usage, ensuring long-term stability and safety.
- Privacy Features: Each latrine must provide sufficient privacy for users, upholding the dignity of learners.
- Proper Ventilation: VIPs must be designed to ensure adequate airflow, minimizing odours and improving hygiene.

The failure to implement these guidelines has already contributed to preventable tragedies, including the deaths of young learners. The DBE must ensure that all VIP latrines are retrofitted or redesigned to meet these standards without delay.

#### 11.4.1.3. Issuance of an Urgent Circular

The DBE must immediately issue an urgent circular to all service providers, implementing agents, and contractors involved in school sanitation projects. The circular must:

- Mandate strict compliance with the WRC's age-appropriate design guidelines for all future construction, retrofitting, and maintenance of VIP latrines.
- Require that implementing agents submit certification of compliance with WRC standards for every project.
- Emphasize that non-compliance will result in penalties, including the termination of contracts and disqualification from future projects.

This circular must also highlight the constitutional and legal obligations under the Minimum Norms and Standards for School Infrastructure, ensuring that service providers understand the gravity of their role in safeguarding learners' rights.

In accordance with Section 18(4) of the SAHRC Act, the DBE must submit a written response to these recommendations within 60 days, detailing:

- Specific steps taken to eradicate traditional pit toilets.
- Measures implemented to ensure that all sanitation facilities comply with the WRC guidelines.
- Timelines for addressing the identified gaps in sanitation infrastructure.

## **12. CONCLUSION**

This report lays bare the persistent and systemic failures in addressing the critical issue of school sanitation in the Eastern Cape. Despite decades of legislative, judicial, and policy directives, unsafe sanitation facilities remain a stark reality for thousands of learners. Traditional pit toilets continue to plague 427 schools, while Ventilated Improved Pit (VIP) latrines, though intended as an improvement, frequently fail to meet the safety and usability needs of younger learners due to poor design and implementation. These are not new revelations. The courts, the legislature, and society at large have long acknowledged that pit toilets are dangerous and degrading. Yet, the state's response has often been piecemeal, focused on achieving quantitative progress without ensuring that facilities genuinely meet constitutional standards. Replacing one unsafe system with another that is equally hazardous for the youngest learners is not progress—it is a failure to address the issue holistically.

The tragedy of preventable deaths, including the loss of young lives in schools across the province, underscores the human cost of these shortcomings. These children were not failed by abstract systemic challenges; they were failed by inaction, poor oversight, and a lack of commitment to ensuring that sanitation solutions are truly safe and effective. This is not just a violation of rights—it is a moral and societal failure. This report makes it clear that the continued use of both traditional pit toilets and unsafe VIP latrines constitutes an ongoing breach of learners' rights to safety, dignity, and education. The violations are preventable, well-documented, and unacceptable in a society committed to upholding human rights. The time for complacency has long passed. The SAHRC urges the state to act with urgency and decisiveness, adopting the recommendations in this report to ensure that all school sanitation facilities are safe, hygienic, and age-appropriate. This is not simply a matter of compliance but a reflection of our shared humanity and commitment to the well-being of the country's youngest and most vulnerable citizens.

## **13. APPEAL**

Should you not be satisfied with this decision, you may lodge an internal appeal in writing within 45 days of receipt of this communication. A copy of the appeal form is available at any office of the Commission. The appeal should be lodged with the Head Office of the Commission, the contact details of which are as follows:


Physical Address:

Sentinel House, Sunnyside Office Park,  
32 Princess of Wales Terrace,  
Parktown,  
Johannesburg, South Africa, 2001

Telephone: 011 877 3600

E-mail: [emkonyama@sahrc.org.za](mailto:emkonyama@sahrc.org.za); [nlubelwana@sahrc.org.za](mailto:nlubelwana@sahrc.org.za), copying [odithejane@sahrc.org.za](mailto:odithejane@sahrc.org.za),  
[bmabusela@sahrc.org.za](mailto:bmabusela@sahrc.org.za) and [ecarter@sahrc.org.za](mailto:ecarter@sahrc.org.za)

Signed at East London on this 4 day of February **2025**



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**Dr E. I. Carter**

**Provincial Manager**

**Eastern Cape Provincial Office**

**South African Human Rights Commission**