



SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Ref No: GP/1213/0705

In the matter between:

Nomonde Bozwana

Complainant

and

North West Department of Education

Respondent

REPORT

1. INTRODUCTION

1.1. The South African Human Rights Commission (the Commission) is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa Act, 108 of 1996 (the Constitution).

1.2. The Commission is specifically mandated to:

- 1.2.1 Promote respect for human rights;
 - 1.2.2 Promote the protection, development and attainment of human rights; and
 - 1.2.3 Monitor and assess the observance of human rights in the Republic.
- 1.3 Section 184(2) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country.
- 1.4. The Human Rights Commission Act, 54 of 1994 (the Act), provides the enabling framework for the powers of the Commission. Section 9(6) of the Human Rights Commission Act, 1994 determines the procedure to be followed in conducting an investigation regarding an alleged violation of or threat to a fundamental right.
- 1.5. Article 3(b) of the South African Human Rights Commission's Complaints Handling Procedures (CHP), provides that the Commission has the jurisdiction to conduct or cause to be conducted any investigation on its own accord or upon receipt of a complaint, into any alleged violation of or a threat to a fundamental right.

2. THE PARTIES

- 2.1 The complainant is Nomonde Conny Bozwana, an adult female and chairperson of the National Association of School Governing Bodies (the Complainant).
- 2.2 The Respondent is the North West Department of Education (the Respondent).

3. BACKGROUND TO THE COMPLAINT

- 3.1. On 28 January 2013, the Commission received the following complaint from the Complainant:

- 3.1.1 That on 22 January 2013, the complainant visited Polonia Primary School (the school) situated in Makaw Village in Garankuwa;
- 3.1.2 That upon inspection, she observed that the toilets used by the pupils were in a deplorable condition; and
- 3.1.3 As a result of the above, the pupils at the school were subjected to extremely unhygienic and unsafe conditions on a daily basis.

4. RIGHTS ALLEGEDLY VIOLATED

- 4.1. Section 28 of the Constitution which states the following:

"1. Every child has the right...to be protected from maltreatment, neglect, abuse or degradation" and

"2. A child's best interests are of paramount importance in every matter concerning the child";

- 4.2. Section 29 of the Constitution which states that *"Everyone has the right to a basic education";*

- 4.3. Section 24 of the Constitution which states that *"Everyone has the right to an environment that is not harmful to their health or wellbeing";*

- 4.4. Section 27 which states that *"Everyone has the right to have access to ...sufficient water..." and*

- 4.5. Section 10 of the Constitution which states that *"Everyone has inherent dignity and the right to have their dignity respected and protected."*

5. STEPS TAKEN BY THE COMMISSION

- 5.1. In its preliminary assessment of the complaint, the Commission found a *prima facie* violation of the rights set out in paragraph 4 above.
- 5.2. On that basis, the Commission's confirmed that an investigation of the alleged violations fell within its mandate and jurisdiction and a full investigation was therefore undertaken in terms of the Commission's Complaints Handling Procedures (CHP).

Urgent preliminary steps

- 5.3. Having assessed the complaint, the ongoing nature of the alleged violation and vulnerability of the children, the Commission urgently contacted Mr. Jacobs, an official from the North West Department of Education (the Department) on 6 February 2013. Mr. Jacobs advised the Commission that although there were no funds available for the provision of portable toilets, a certain number of portable toilets would be delivered to the school as an **urgent interim arrangement**. Mr. Jacobs further confirmed that a tender process was already underway for the appointment of a contractor to construct a new septic tank for the school.
- 5.4. On 7 February 2013, Mr. Jacobs advised the Commission that three portable toilets had been delivered to the school and that an additional toilet would be collected by the principal.
- 5.5. On 8 February 2013, the Commission forwarded urgent correspondence to the following government departments requesting a response within 2 (two) days relating to the interim arrangements to be put in place pending a more permanent solution to the ongoing problem at the school:

- Office of the Executive Mayor of Madibeng Municipality
- Office of the Executive Mayor of Tshwane Municipality
- North West Department of Education (the Department)

5.6. In response, the Commission received a brief response from the Department and the Office of the Executive Mayor of Tshwane, the latter confirming that the matter had been transferred to the City Manager, who had in turn transferred the matter to Mr Boy Ngobeni from the Gauteng Department of Education and the Regional Executive Director of Region 1, Mr James Murphy.

Inspection-in-loco

5.7. On 8 February 2013, two representatives from the Commission undertook an *inspection-in-loco* at the school.

5.8. Upon arrival, the Commission noted four portable toilets on the premises, one of which was lying on its side. Three of the portable toilets had been brought to the school the previous day and the fourth toilet (which was unusable as it did not have a bucket) was collected by the principal from another school on the instructions of the Department. The Commission was advised that the portable toilets **had not been cleaned prior to delivery and that the requisite chemicals had not been provided, rendering them unusable for immediate use.** Learners were therefore being **forced to continue using the blocked toilets.** In this respect, Mr Jacobs had allegedly advised the principal that he would be required to purchase the chemicals using school funds and that the school would be reimbursed by the Department in due course.

5.9. The **new toilet block** was locked and practically unused since its construction in 2008, allegedly due to problems with the septic tank. According to the principal, the septic **tank had been constructed without due consideration for the**

high ground water levels which caused the tank to fill up within a very short space of time, rendering the tank useless. The principal further indicated that the size and placement of the septic tank exacerbated the problem.

- 5.10. The Principal confirmed that according to Mr Jacobs, the Department had called for **tenders to construct** a new septic tank, that the tender process would close on 12 February 2013 and that it would take approximately 2 to 3 weeks for the new septic tank to be completed.
- 5.11. The Commission also inspected the old toilet block being used by the learners. The toilets were in a deplorable condition as was the area inside each cubicle. The **air was foul** with the smell of urine and faeces and many toilets were overflowing with **filthy brown water and worms**. Faeces was observed on the floor, which the principal confirmed was because the **children preferred to squat on the floor instead of using the toilets**. The building also appeared to be **unsafe as doors were off their hinges, windows were broken and there were large cracks** in the walls.
- 5.12. The Commission was shown tanks at the back of the ablution facility which, according to the Principal, were known as '*enviro-loos*' which required a certain type of ventilation system. However, the required ventilation fitments had been **stolen** some time ago (the principal confirmed that the **old toilets were approximately 40 years old**).
- 5.13. The principal advised the Commission that the toilets were cleaned on a weekly basis by someone who had not been provided with any training. As such, the toilets were not cleaned properly. The principal further confirmed that the school was responsible for funding the cleaning of the toilets.

5.14. One of the learner's parents advised the Commission that she had **approached the local ward councilor for assistance**, but that no steps had been taken since that time to address the matter.



PORTABLE TOILETS



ENVIRO LOO SYSTEM USED IN OLD ABLUTION FACILITY



GIRL'S TOILETS IN OLD ABLUTION FACILITY



TOILET IN OLD ABLUTION FACILITY WHICH CHILDREN WERE BEING FORCED TO USE



WORMS IN THE TOILETS



TOILET IN OLD ABLUTION FACILITY



TOILET IN OLD ABLUTION FACILITY



OLD BROKEN DOOR LEFT IN BOY'S
TOILET IN OLD ABLUTION FACILITY



BOY'S TOILETS IN OLD ABLUTION FACILITY



BOY'S TOILETS IN OLD ABLUTION FACILITY

- 5.15. On 20 February 2013, Mr. Jacobs confirmed that the old septic tank had been emptied and that the new toilet facilities could therefore be utilized by the learners. However, the principal confirmed that the **tank was already near full capacity due to a period of heavy rain** and that the facilities were therefore not being used.
- 5.16. On 12 March 2013, Mr. Jacobs confirmed that a contractor was on site and that a new septic tank was being installed. When the Commission enquired with the principal on 14 March 2013 regarding the progress, he advised that construction had commenced but certain additional work was still required. On 15 March 2013, the principal advised the Commission that although he had not received formal confirmation that the work had been completed, the contractor was no longer on site. The principal confirmed that after the school holidays, the new toilets would be used by the children.
- 5.17. At the beginning of the school term in April 2013, some four months from date of receipt of the complaint, the Commission once again contacted the principal to establish whether the new septic tank was fully functional and whether the new toilet facilities were being used. The principal reported that the new toilet facilities had not yet been used as he suspected that there were certain problems with the new septic tank. He confirmed that **the school inspector had been advised of the problem** and that a report would be prepared by him for onward transmission to the relevant officials at the Department.
- 5.18. In light of the above, the learners were still making use of the portable toilets on site, which were being cleaned every three days by a service provider secured by the Principal and paid for using school funds.
- 5.19. Although the **Commission recognized that the Department had put in place interim measures to remedy the problem** and more specifically, had

put in place measures to ensure the appointment of a contractor, in light of allegations of **continuing violations taking place at the school**, on 22 April 2013, the Commission requested the Department to provide it with the following information and supporting documentation:

Construction of new septic tank

- a) A copy of the **engineers report forming the basis of the tender specifications** for the construction of the new septic tank and copies of the tender applications considered by the Department.
- b) Clarification regarding the following:
 - i. Factors relied on to determine the size of the new septic tank
 - ii. Whether underground water levels in the area were taken into account and if so, measures in place to address this problem?
 - iii. In light of the allegations that the **new septic tank was nearly full** after a brief rainy period (as was the problem with the old septic tank), what measures were put in place to prevent a recurrence of the same problems experienced with the old septic tank?
 - iv. Whether the newly appointed contractor was made aware of the problems in the area and if so, whether it was confirmed that he / she **possessed the necessary skills to appropriately address such problems and was he / she specifically directed to do so?**
 - v. What **quality control measures** were put in place to ensure that the service provider complied with required needs?
- c) The procedures that were put in place to ensure that the new septic tank was emptied at the required regular intervals?
- d) The total costs incurred before, during and subsequent to the alleged completion of the abovementioned exercise?
- e) Details of when the Department was first alerted about the serious sanitation problems experienced at the school and what steps were taken by the

Department to address those concerns in light of the danger the problem posed for learners at the school?

Interim arrangements

a) In light of the allegations regarding the inadequacy of the newly installed septic tank, the Commission requested the Department to confirm what **urgent interim arrangements would be put in place to ensure that there were adequate sanitation facilities available for the estimated 450 learners** at the school (based on the Commission's preliminary assessment that the reported number of portable toilets was wholly insufficient). In this respect, the Commission specifically requested a response regarding the following:

- i. How many additional portable toilets would be delivered to the school and by when;
- ii. What measures would be put in place to ensure that a suitably experienced service provider was available to clean and empty the portable toilets at the required regular intervals?
- iii. What processes were in place to ensure that the school was provided with the necessary funds to purchase the chemicals required for the portable toilets or was timeously reimbursed for any expenses incurred in respect thereof?
- iv. Whether the school would be reimbursed for the costs which they had incurred to date in respect of the maintenance, cleaning and emptying of the portable toilets and any other related expenses and if so, by when?

5.20. **No response was received to the above enquiry.** The Commission forwarded further correspondence to the relevant departments on 7 May 2013

requesting a response within 3 (three) days, failing which, the Commission advised that it would be required to avail itself of its powers to subpoena information or to consider other appropriate methods of redress as afforded to it in terms of the Act.

5.21. In response, Mr. Jacobs electronically confirmed on 9 May 2013 that he had forwarded the correspondence to the acting chief director for infrastructure and that he was in the process of preparing a report on the matter.

5.22. On 14 May 2013, Mr. Jacobs forwarded a brief informal report to the Commission by way of email (without prejudice). **The report did not deal with all aspects** raised in the Commission's correspondence and instead dealt with the following selected aspects (which in some instances, constituted an inadequate response):

- The size and type of the septic tank, which according to Mr. Jacobs, was determined based on the number of learners at the school;
- The fact that **underground water levels were not taken into account** in the construction of the new septic tank;
- Details of the tender process including the total cost of the construction of the new septic tank;
- The allocation of maintenance funds to the school based on its section 21 status, which funds were to also be used for the emptying of the septic tank as and when required;
- That the Department was **first made aware of the problems at the school in January 2013** and that it had then immediately implemented certain interventions i.e. delivering portable toilets and putting in place procurement procedures for the construction of a new septic tank; and
- That **after the last site visit, the toilets were found to be in a good working condition and that the Department had not received any**

further complaints regarding the new septic tank since its construction until receipt of correspondence from the Commission.

5.23. On **5 June 2013**, the Commission contacted the principal for an update and was informed that he had submitted a brief report to the inspector regarding the condition of the toilets and that the toilets were working and being used by the children. On 6 June 2013, the principal forwarded correspondence to the Commission confirming the completion of the new septic tank. He however indicated that **water was seeping through the ground, causing an unpleasant odour and causing the surrounding area to become muddy**. He also advised that a local company, Amalooloo, had **donated 20 modified pit toilets** to the school.

5.24. In order to objectively verify the state of sanitation at the school pursuant to the construction of the new septic tank, the Commission undertook a second inspection of the school on 23 July 2013. During the inspection, the Commission noted the following:

- 5.24.1. That the children were using the new toilets, all of which were clean and in a good working condition;
- 5.24.2. That the old ablution facilities were in the process of being broken down (the principal confirmed that the school would be recycling the bricks for alternative uses in the future);
- 5.24.3. That there were four seats and two urinals in the boys' toilets and five seats in the girls' toilets. The principal confirmed that those toilets serviced an average of 440 students, with an estimated equal division between the number of boys and girls;
- 5.24.4. 20 new pit toilets were donated to the school by a local company, although they had not yet been used;
- 5.24.5. In addition to the Commission's own observations, the principal advised that:

- a) There was a problem with the cisterns in the new ablution facilities in that **water continued to flow after flushing:**
- i. The principal confirmed that from the maintenance funds allocated to the school, **a plumber had been called in to inspect and repair the toilets. However, the problem still persisted;**
 - ii. He further indicated that the **continually flowing water caused the septic tank to fill up a lot quicker** than would normally be the case and that a teacher was required to regularly check the cisterns to make the necessary adjustments to stop the flow of water;
 - iii. The Principal was also of the view that the current system was **inadequate in that it was not created for constant usage and / or a high number of constant users.**
- b) Although the specific septic tank which was installed i.e. a French drain, facilitated the evaporation of water through a seepage system filtered into the soil surrounding the septic tank, which the principal acknowledged, he was of the view that **an unacceptably large amount of water was seeping from the septic tank, causing the surrounding area to become muddy and creating an unpleasant odour.** In this respect, the principal conveyed his concerns about the possible negative effect that this may have on the **health of the learners** in due course.
- i. Upon completion of the construction of the new tank, the Department confirmed that the system was working as it should be and that they would undertake an inspection of the septic tank *in a couple of months* to reassess the situation;
 - ii. The principal advised that he had prepared and submitted a report to the inspector regarding the excessive amount of seepage (and constant running water from the cisterns). Although the inspector confirmed that the report had been delivered to the correct

department official during or about May 2013, **the principal had not received any feedback** since that time.

- c) After the new septic tank had been installed, the portable toilets previously supplied by the Department were collected by another needy school on instructions from the Department;
- d) The new septic tank was bigger and the principal was advised by the contractors that the tank would only have to be emptied in approximately 5 (five) years, the costs of which would have to be covered from the maintenance funds allocated to the school;
- e) In order to prevent an **excessive amount of water being used**, the principal indicated that basins of water were put out in front of each of the classrooms for the children to use after they had used the toilets. To this end, the basins in the new toilet building were blocked by large bins to prevent the children from using them.



NEW SEPTIC TANK



MUDDY AREA NEXT TO SEPTIC TANK



CISTERNS FOR NEW ABLUTION FACILITIES BUILT IN 2008



NEW ABLUTION FACILITIES



OLD ABLUTION FACILITIES



DONATED MODIFIED PIT TOILET



20 MODIFIED PIT TOILETS DONATED TO THE SCHOOL

APPLICABLE LEGAL FRAMEWORK

6.1 Key international instruments

Water and sanitation

Although the right to sanitation does not exist as a stand-alone right in the international context, it has been interpreted by United Nations (UN) Human Rights bodies as being part of a number of other social rights e.g. right to housing and health¹. The General Assembly recognises the “*right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights*”² and the Committee on Economic Social & Cultural Rights (CESCR) has confirmed that access to sanitation is “*fundamental for human dignity and privacy*”.³

6.1.1. South Africa is a signatory to the **International Covenant on Economic Social & Cultural Rights (ICESCR)** and must therefore promote the right of everyone to an adequate standard of living, which includes accessibility and availability of adequate housing, food and clothing. The right to water under Article 11 recognises that water is one of the fundamental conditions for survival, an essential component to an adequate standard of living.⁴

6.1.2. **General Comment no.15 (2002) of the CESCR**⁵ recommended that before any action that interferes with the right of access to water is carried out by the State or third party, the relevant authority must ensure that such actions are performed in a manner warranted by law. The General Comment also “*clarifies*

¹ The rights associated with sanitation were also emphasised during the 2002 International Conference on Water and Environment where one of the four guidelines identified confirmed that “*it is vital to recognize the basic right of all human beings to have access to clean water and sanitation...*” The 2002 Johannesburg Declaration, although not expressly stating that there was a right to sanitation, noted the connection between sanitation and human dignity.

² General Assembly Resolution 64/292

³ http://www.escr-net.org/usr_doc/chap56B.pdf

⁴ ICESCR, Article 11

⁵ Committee on Economic, Social and Cultural Rights, General Comment 15, The right to water (Twenty-ninth session, 2003), U.N. Doc. E/C.12/2002/11 (2002), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 105 (2003)

[the] *standards for the right to water and points out the importance of sanitation and hygiene for realising this right*⁶ and gave content to the right to water in the following manner: “*The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for **personal** and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic **hygienic requirements.***”⁷

6.1.3. In March 2008, the United Nations Human Rights Council (UNHRC) established the **Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation.**⁸ The mandate of that independent expert (later referred to as the Special Rapporteur) included the clarification of the nature and content of these obligations. In fulfilling that mandate, the Special Rapporteur has shown that inadequate water and sanitation facilities impacts on and is intrinsically connected to the realisation of other rights such as education, health, work and dignity, amongst others.⁹

Some of the specific aspects dealt with by the Special Rapporteur and relevant to the present matter are:

- Availability; which refers to there being a **sufficient number of sanitation facilities within the immediate vicinity** and to ensure that waiting times are **not unreasonably long**; and
- Quality; which refers to sanitation facilities that are **hygienically safe** to use.¹⁰

⁶ Catarina de Albuquerque (United Nations Special Rapporteur on the human right to safe drinking water and sanitation) with Virginia Roaf “On the right track: good practices in realising the rights to water and sanitation” 2012 at page 47

⁷ Note 5 above at Article 2

⁸ The Independent Expert (renamed in 2011 to the Special Rapporteur on the human right to safe drinking water and sanitation) proposed the following definition of sanitation (endorsed by the CESCR in 2010): “*a system for the collection, transport, treatment and disposal of re-use of human excreta and associated hygiene...which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.*” (http://www.escr-net.org/usr_doc/chap56B.pdf)

⁹ Catarina de Albuquerque “Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation”, Human Right Council A/HRC/6/3 16 August 2007

¹⁰ http://www.escr-net.org/usr_doc/chap56B.pdf

6.1.4. More recently in 2010, the **United Nations General Assembly** passed a **Resolution Recognizing Access to Clean Water and Sanitation**¹¹ in terms whereof the United Nations called on all states to provide safe, clean, accessible and affordable drinking water and sanitation for all:

*"The human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity. This means that for the UN, **the right to water and sanitation is contained in existing human rights treaties and is therefore legally binding**" [our emphasis] The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable."¹²*

6.1.5. Following that resolution, the CESCR issued a statement in November 2010 confirming that sanitation was an *"indispensable component of the right to adequate standard of living but also integrally related to the rights to health and housing, contributing to greater recognition of sanitation as a distinct right."*¹³

Children and education

6.1.6. The importance of the rights of children has been articulated in various international instruments. This indicates recognition of the vulnerability of children and the need to put in place **special measures** to ensure that the rights of this group are protected.

¹¹ Resolution 64/292

¹² <http://www.ohchr.org/EN/Issues/ESCR/Pages/Water.aspx>

¹³ Albuquerque (note 6 above) 47

6.1.6. **General Comment no. 13 of the Committee on Economic Social & Cultural Rights (CESCR)** calls upon state parties to the ICESCR to ensure the availability, accessibility, acceptability and adaptability of education (the '4-A right to education framework').¹⁴ When explaining the normative content of the right to education, the committee makes the following general remarks:

"6. While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:

*(a) Availability ... functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, **sanitation facilities** for both sexes, safe drinking water...*¹⁵ (own emphasis).

(This framework was confirmed and supported in the **Commission's Charter of Children's Basic Education Rights** launched in 2012).¹⁶

6.1.7. Article 24(1) of the **Convention on the Rights of the Child (CRC)**¹⁷ recognises *"the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health"*, and compels States parties to ensure access to such services and facilities.

¹⁴ <http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>

¹⁵ Ibid

¹⁶ http://www.sahrc.org.za/home/21/files/SAHRC%20Education%20Rights%20Charter_Part1.pdf

¹⁷ 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed 18 June 2013].

6.1.8. Under Article 24 (2) of the CRC, states are obliged to take steps to ensure the realisation of a child's right to health and in particular to take appropriate measures "c) to **combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution**".¹⁸

6.1.9. More generally, Article 27 enshrines "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development". This encompasses the necessary living conditions for the child's development, as well as State support programmes e.g. with regards to housing.

6.2. **Regional instruments**¹⁹

6.2.1. **Article 16 of the African Charter on Human and People's Rights**²⁰, which South Africa has ratified, confirms the right of every individual to the best attainable state of physical and mental health. This article compels states to ensure the protection of one's health. Article 24 recognises the right of all peoples to a general satisfactory environment favourable to their development.

6.2.2. Article 23 of the **South African Development Community Protocol on Health (1999)** states as follows: "State parties shall collaborate, co-operate and assist each other in a cross-sectoral approach in addressing regional environmental health issues and other concerns, including toxic waste, waste

¹⁸ Convention on the Rights of the Child, Article 24(2)(c)
(<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>)

¹⁹ Other global regional comparatives include the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"): (1988) and the Arab Charter on Human Rights (2008)¹⁹

²⁰ 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at:
<http://www.refworld.org/docid/3ae6b3630.html> [accessed 18 June 2013].

management, port health services, pollution of air, land and water, and the degradation of natural resources."

6.2.3. **Article 14 of the African Charter on the Rights and Welfare of the Child (1990)** comprehensively sets out the right of all children to the enjoyment of the best attainable state of physical, mental and spiritual health, which includes the provision of necessary medical assistance and health care; adequate nutrition; safe drinking water; and the integration of basic health service programmes into national development plans.

6.3. **Domestic legal framework**

6.3.1. **Constitution**

The preliminary assessment of the complaint against the foundational values of the Constitution and the constitutional obligations of the State led to a determination by the Gauteng Provincial Office that the rights set out in paragraph 4 above may have been violated.

6.3.2. **National legislation and policy frameworks**

There are various legal frameworks and mechanisms in place at domestic level which affirm the right of access to water. Sector specific frameworks and guidelines have also been developed integrating the right to water and sanitation as a critical component of other human rights.

Water and sanitation

6.3.2.1. Section 3 of the **Water Services Act**²¹ states that:

- (1) *Everyone has a right of access to basic water supply and basic sanitation.*
- (2) *Every water services institution must take reasonable measures to realise these rights.*
- (3) *Every water services authority must, in its water services development plan, provide for measures to realise these rights.*

The Act defines basic sanitation as: *"The prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste water and sewage from households, including informal households."*²²

Section 5 of the same Act states that: *"If the water services provided by a water services institution are unable to meet the requirements of all its existing consumers, it must give preference to the provision of basic water supply and basic sanitation to them."*

6.3.2.2. The White Paper on Water Supply and Sanitation Policy²³ confirms that the *"immediate priority is to provide sanitation services to all which meet basic health and functional requirements"*. In this respect, the policy acknowledges that due to cost implications, the Ventilated Improved Pit (VIP) provides an appropriate and adequate basic level of sanitation.²⁴

²¹ 108 of 1997

²² In *Johnson Matotoba Nokotyana and Others v Ekurhuleni Metropolitan Municipality & Others [2009] ZACC 33*, the applicants relied on Section 27 of the Constitution and the provisions of the Water Services Act (and the Constitutional Court case of *Mazibuko*²²) to enforce their right to sanitation.

²³ Department of Water Affairs and Forestry (1994)

²⁴ White Paper on Water and Sanitation Policy (1994)

A number of VIP's were donated to Polonia Primary School by a local company once they were made aware of the poor sanitation conditions facing the children.

6.3.2.3. In establishing state supported standards for sanitation, the **Strategic Framework for Water Services**²⁵ defines basic sanitation facilities as follows: *"The infrastructure necessary to provide a sanitation facility which is safe, reliable, private, protected from the weather and ventilated, keeps smells to the minimum, is easy to keep clean, **minimises the risk of the spread of sanitation related diseases** by facilitating the appropriate control of disease carrying flies and pests, and enables safe and appropriate treatment and/or removal of human waste and waste water in an environmentally sound manner"* (own emphasis).²⁶

It further defines a basic sanitation service as *"The provision of a basic sanitation service facility which is easily accessible to a household, the sustainable operation of the facility, including the **safe removal of human waste and wastewater from the premises** where this is appropriate and necessary, and the **communication of good sanitation**, hygiene and related practices."*²⁷

6.3.2.4. Reaffirmation of the abovementioned standards are to be found in **Regulation 2 of the Compulsory National Standard**²⁸ which states that the minimum standard for basic sanitation services is –

*"(a) the provision of appropriate sanitation
(b) a toilet which is safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against weather, well ventilated, keeps smells to a minimum and prevents entry and exit of flies and other disease carrying pests."*

²⁵ Department of Water Affairs and Forestry (2003)

²⁶ Ibid

²⁷ The National Sanitation Policy defines sanitation as *"the principles and practices relating to the collection, removal or disposal of human excreta, refuse and waste water as they impact on users, operators and the environment."*

²⁸ General Notice 22355 of 8 June 2001

6.3.2.5. Over and above recognising the need for certain minimum standards in the provision of sanitation, the state has reaffirmed the importance of sanitation through strategies such as the **Free Basic Sanitation Implementation Strategy**.²⁹ According to the policy, municipalities are required to ensure that every household has access to basic sanitation, as per the Constitution, Water Services Act and the Municipal Systems Act. In the context of the present matter, the strategy acknowledges that there is a "*right of access to a basic level of sanitation service*" enshrined in the Constitution.

Children and education

The legislation, policies and frameworks currently in place specifically relating to sanitation in school settings makes clear not only the importance of ensuring that adequate sanitation facilities must be provided in schools, but also enumerates the various obligations placed on different levels of government in fulfilling this obligation.

6.3.2.6. In terms of Section 5A of the **South African Schools Act 84 of 1996**, the Minister "*may*" prescribe national minimum uniform norms and standards for school infrastructure addressing various issues, including sanitation. There is therefore an understanding that **uniform norms and standards** governing school infrastructure are needed to guide government in the fulfillment of its duties. The Commission is aware that the Department of Education is in the process of finalizing these norms and standards.

6.3.2.7. According to the Department of Water Affairs' (DWA) 2002 **Framework for a National Sanitation Strategy**³⁰, the Department of Education **developed a plan to clear the backlog of sanitation facilities** at schools (which Provincial Departments of Education would be responsible for

²⁹ Department of Water Affairs and Forestry (April 2009)

³⁰ http://www.dwaf.gov.za/dir_ws/content/lids/PDF/Strategy.pdf

funding and implementation). One of the aspects of this plan was a joint strategy with DWAF to align plans and accelerate the delivery of sanitation and water provision to schools.³¹ During 2007, Cabinet approved a budget to address backlogs in water and sanitation in schools. The objective of the programme³² was to eradicate water and sanitation backlogs in schools, which included schools with water and/or sanitation services that are partially functional or non-functional and which required more than 50 percent refurbishment or replacement works to be performed to allow the proper functioning of the water service facilities and all sanitation facilities that are considered to be hazardous and unsafe.

6.3.2.8. **The National Policy on an Equitable Provision of an Enabling School Physical Teaching and Learning Environment (2010)** was published in terms of section 3(4) of the National Education Policy Act, 1996 (Act No 27 of 1996). The objective of the policy is to regulate and formalise the provision of school infrastructure and to provide guidelines towards an equitable provision of an enabling physical teaching and learning environment for all learners in South Africa, to indicate clear roles and responsibilities of all role players and to unify accountability in the provision of school infrastructure.³³

6.3.2.9. Emanating from this National Policy are the draft **Guidelines Relating to Planning for Public School Infrastructure (2012)** which aims to create a set of non-binding norms and standards for school infrastructure.³⁴ The draft guidelines state the following in respect of basic services and sanitation:

³¹ http://www.mvula.co.za/images/uploads/Schools_and_clinics_WATSAN.pdf

³² In order to implement the project, programme management structures at both national and regional levels were created which had the responsibility of co-ordinating, guiding and monitoring the Programme.

The target date for the eradication of all water and sanitation backlogs in schools was set for December 2010. In January 2009, Cabinet changed the scope for the Schools Water and Sanitation Programme for that year to focus primarily on schools without water and sanitation services

(http://www.mvula.co.za/images/uploads/Schools_and_clinics_WATSAN.pdf)

³³ <http://www.info.gov.za/speeches/2010/10061515551003.htm>

³⁴ These Guidelines are yet to be finalised (the Commission has made submissions in respect of the Draft Guidelines).

"4 (3) A school must be provided with adequate sanitation facilities that promote health and hygiene standards and comply with all applicable laws..."
(own emphasis)³⁵

In respect of the provision of facilities to a school, the draft document states:

"5(1) In order to progressively realise regulations, the member of executive council must develop a plan for providing the facilities to schools in his or her province.

(2) the plan must take into account the following-

(a) learner numbers in a school

(b) access and availability of such facilities within the community a school is located; and

*(c) any other relevant factor including availability of resources and curriculum choices."*³⁶

It is quite apparent therefore that while a number of policy and strategy commitments have been developed, none speak specifically to the need for interim measures, nor do they recognise the adverse consequences which result when aging infrastructure fails to serve its purpose.

³⁵ <http://equalizermagazine.files.wordpress.com/2013/01/minimum-n-and-s.pdf>

³⁶ <http://equalizermagazine.files.wordpress.com/2013/01/minimum-n-and-s.pdf>

The Commission has made a number of submissions relating to the draft norms including the lack of definition of "adequate sanitation facilities" and lack of clarity regarding the manner in which the various factors listed in Section 5(2) will impact on the plan to be developed in that *"almost all of the substantive content of the Norms and Standards will actually be contained in a separate document."* Also, the Commission's submissions confirms that the plan referred to in Section 5 is "non-specific" with no clear guidelines or timeframes for the development thereof set out in the Norms and Standards.

Health and environment

The right to health and adequate sanitation are inextricably linked. The Commission's Charter of Basic Education Rights emphasizes this linkage in its reference to the '4-A right to education framework' (see above) and confirms the need for a "*safe and enabling learning and teaching environment*"³⁷ i.e. the need to ensure that the schooling environment which children occupy is healthy and does not pose health risks to them. A UNICEF report entitled "School sanitation and hygiene" supports this call for a more holistic approach to the rights of children and education. The report confirms that in many parts of the world "*there exists a high prevalence of water and sanitation related diseases, causing ... children in particular, to fall ill or even die*" and further notes that "*[i]f school sanitation and hygiene facilities are absent, or are badly maintained and used, schools become risky places where diseases are transmitted*"³⁸

6.3.2.10. Domestic legislation such as the **National Health Act 61 of 2003 (May 2005) (NHA)** and **National Environmental Management Act 107 of 1998 (NEMA)** strengthen this notion. **NHA** talks to the constitutional right to health. One of the aims of this Act is to protect, respect and fulfil the rights of the people of South Africa to progressively realize their constitutional right to health. **NEMA** confirms that the interpretation of any law concerned with protecting and managing the environment must be guided by certain principles, including that of sustainable development. Consequently, organs of state must evaluate the social, economic and environmental impact of activities that may significantly affect the environment.

6.3.2.11. Government documents such as the **White Paper on the Transformation of the Health System**³⁹ deals with key policy issues in respect of health. Some of these issues include the promotion of health, strengthening disease

³⁷ http://www.sahrc.org.za/home/21/files/SAHRC%20Education%20Rights%20Charter_Part1.pdf (pg 20)

³⁸ http://www.unicef.org/wash/files/Sch_e.pdf (pg 1 - 2)

³⁹ White Paper on the Transformation of the Health System, 1997.

prevention and giving special attention to health services for people most in need of such services, including children.

It is therefore quite clear in law at international, regional and domestic levels that there is an implicit and unequivocal acceptance that access to water and sanitation is a critical factor to realizing the rights of the child, education; and health and environment. This **interrelated nature of the particular rights is given further authority through judicial precedent**, including those presented below.

6.4. Case Law

Regional case law

6.4.1. ***Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001) – The rights to health and an environment***

In dealing with an alleged violation of the rights to health and environment contained in the African Charter, the African Commission on Human and Peoples Rights held that "*These rights recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual . . . The right to a general satisfactory environment, as guaranteed under article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the state to take reasonable and other measures... Article 12 of the ICESCR . . . requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in article 16(1) of the African Charter and the right to a generally satisfactory environment favourable to development*

(article [24]) already noted, obligate governments to desist from directly threatening the health and environment of their citizens."⁴⁰

6.4.2. ***Purohit and Another v The Gambia* (2003) AHRLR 96 (ACHPR 2003) – The right to health and health care**

In this decision, the African Commission gave content to the right to health in the following manner "*Enjoyment of the human right to health as it is widely known is vital to all aspects of a person's life and well-being, and is crucial to the realisation of all the other fundamental human rights and freedoms. This right includes the right to health facilities, access to goods and services to be guaranteed to all without discrimination of any kind.*"⁴¹

The African Commission applied this right in the broader context of African states, and accordingly made the following qualification "*The African Commission would however like to state that it is aware that millions of people in Africa are not enjoying the right to health maximally because African countries are generally faced with the problem of poverty which renders them incapable to provide the necessary amenities, infrastructure and resources that facilitate the full enjoyment of this right. Therefore, having due regard to this depressing but real state of affairs, the African Commission would like to read into article 16 [of the African Charter] the obligation on part of states party to the African Charter to take concrete and targeted steps, while taking full advantage of its available resources, to ensure that the right to health is fully realised in all its aspects without discrimination of any kind.*"⁴²

⁴⁰ Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001), para 52

⁴¹ Purohit and Another v The Gambia (2003) AHRLR 96 (ACHPR 2003), 80.

⁴² Ibid 84.

Domestic case law

6.4.3. The Commission has consistently placed reliance on the Constitutional Court case of **Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 (CC)** as a **guiding authority** insofar as considerations of the progressive realisation of rights and standards of reasonableness apply to the interpretation of socio-economic rights.

In this case, it was held that section 26 requires the government to "*establish a coherent public housing program directed towards the progressive realisation of the right of access to adequate housing within the State's available means*".⁴³ In addition, legislative measures adopted by the government must be supported by **policies and programmes that are reasonable "both in their conception and implementation"**.⁴⁴ The Court held that reasonable measures are those that take into account the **degree and extent of the denial of the right** they endeavour to realise and do not ignore people whose needs are the most urgent and whose ability to enjoy all the rights therefore is most in peril.⁴⁵

While limitation of resources has been recognized and acknowledged on the continent and domestically, the Grootboom case nonetheless reconfirms the importance of "*taking full advantage of available resources*" with a view to implementing policies which are reasonable in their conception and implementation. In the matter at hand, a consideration of these basic conditions of reasonableness in conception and implementation are viewed in the context of the provision of interim relief as a necessary measure and the response of relevant authorities in this regard.

⁴³ Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 (CC), 41

⁴⁴ Ibid 42

⁴⁵ Ibid 44

6.4.4. In paragraph 147 of the High Court case of **Beja and others v Premier of the Western Cape and others. Case no. 21332/2010**, the Court stated that *"Any housing development which does not provide for toilets with adequate privacy and safety would be inconsistent with s 26 of the Constitution and would be in violation of the constitutional rights to privacy and dignity"*.

In this case, Erasmus J held that there was a violation of rights in terms of sections 10 (human dignity), 12 (freedom and security of person), 14 (privacy), 24 (environment), 26 (housing) and 27 (healthcare) of the Constitution, reaffirming the interconnectedness of rights.

7. ANALYSIS

The Commission has had cause to consider a number of complaints relating to access to water and sanitation over recent months⁴⁶. In each of these complaints the Commission has invariably found violations of the rights of complainants in so far as their dignity, right to health, access to water and sanitation and right to environment is concerned. Many complaints arose from basic neglect to provide adequate services in terms of law and policy.

The present complaint is distinguishable from previous decisions of the Commission relating to access to water and sanitation on the basis **that neglect or outright failure by a public body is not the primary consideration**. What is in issue is whether an inadequate interim measure constitutes a violation of the rights listed in paragraph 4 above? This enquiry involves assessing the interim measures put in place by the Respondent as against the standards of reasonableness (as set out in the Grootboom case) which implores government to ensure that their policies adequately meets the needs of the most vulnerable, bearing in mind limitations in respect of resources.

⁴⁶ The Commission has made findings against various Free State municipalities including Dihlabeng, Setsotso, Metsimaholo, Masilonyana local municipalities and the Mangaung metropolitan municipality

As a primary basis of analysis, the Gauteng Provincial Office reviewed the information gathered from the investigation to ascertain the following:

- The nature and scope of human rights violations;
- The reasonableness and/or adequacy of the steps taken by the Department to address the problem of sanitation at the school.

In respect of the above, the Commission was mindful of the harsh socio-economic conditions to which many South African children are subject and that a great amount of their formative and developmental years unfold in their school environment. In this regard, it must be borne in mind that most parents whose children attend the public school system in rural and peri-urban areas have little choice in the school their child will attend. The Commission is also mindful of the increased vulnerability caused by poverty in most rural communities. The compounded vulnerability of children, especially from these environments, is a major consideration in the Commission's analysis of the present matter.

Against this background, even violations of a temporary nature are violations which have a major impact, both immediate and direct and those that are only felt indirectly in a yet to be determined future e.g. future health consequences suffered as a result of daily exposure to unhygienic sanitation facilities.

The Commission has taken cognisance of the burdens placed on municipalities and the state departments (such as the Respondent). However, in the present matter, the extreme vulnerability of those most adversely affected by the violation i.e. children, the steps that could have been taken before the matter escalated to the degree to which it did and the direct and the indirect unknown future impact of the violation; were recognised as being important factors in the Commission's overall consideration of the complaint (as opposed to the actual duration of the violation).

Nature and scope of human rights violations

- 7.1. Section 39 of the Constitution provides that, when interpreting the Bill of Rights, a court, tribunal or forum –
- (a) Must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;*
 - (b) Must consider international law; and*
 - (c) May consider foreign law.*
- 7.2. Section 39(2) of the Constitution makes it clear that the Act must be interpreted in light of the "*spirit, purport and objects of the Bill of Rights.*"
- 7.4. The Respondent is alleged to have violated the rights mentioned above by failing to ensure that sanitation facilities of adequate standards were available to the learners.
- 7.5. Against the background of Section 39 of the Constitution, the Commission's investigation of the school confirmed that violations of the abovementioned rights had taken place, none of which can be deemed to have been justifiable in terms of Section 36 the Constitution.

The reasonableness and/or adequacy of the steps taken by the Respondent

- 7.6. The National Department of Education (together with the provincial departments) is responsible for ensuring that all schools are provided with

adequate water and sanitation facilities, that these are operated sustainably and that they are adequately maintained.⁴⁷

7.7. In terms of the “**National Sanitation Strategy: Accelerating Sanitation Sector Delivery**”, the National Department of Education is responsible for the “[d]evelopment of norms and standards for school infrastructure” and the National Department of Public Works is responsible for the “provision of sanitation infrastructure in clinics and schools”. On a provincial level, the Department of Education is responsible for the planning and implementation of a school sanitation programme to address the school sanitation backlogs and implementing health and hygiene education in schools.⁴⁸

7.8. Having considered the national policies and frameworks and the various sanitation related strategies as against the respondent’s obligations and its response, the Commission is of the view that although the Respondent took steps to address the situation, these **steps fell short of being adequate** given the following factors:

7.8.1. The period of time that the children were exposed to the conditions associated with inadequate sanitation facilities. During this time, **the learners had no other option but to use the facilities that were available** to them. Furthermore there was **no alternative sanitation point in the vicinity** which the children could access.

7.8.2. Those who suffered the most prejudice through the lack of adequate sanitation facilities were primary school learners who have **immature immune systems and as such, extreme vulnerability** which inevitably results in an increased negative impact on health (there being a direct relationship between poor sanitation, health and an unsafe environment);

⁴⁷ Strategic Framework for water services, September 2003, Department of Water Affairs and Forestry, Department of Provincial and Local Government and National Treasury, page 22

⁴⁸ National Sanitation Strategy: Accelerating Sanitation Sector Delivery (August 2005), Page 25

- 7.8.3. As the learners faced these difficulties in a school setting, the possible **negative impact on education** through increased sick days for illnesses associated with poor hygiene, is of grave concern;
- 7.8.4. The lack of adequate quality control over the work of its contractors;
- 7.8.5. In respect of the **interim measures** put in place by the Respondent, the Commission notes the following:
- 7.8.5.1. The **inadequate number of portable toilets provided** to the school;
 - 7.8.5.2. The **poor condition of the portable toilets** delivered to the school, rendering them unusable for a certain period of time; and
 - 7.8.5.3. The Respondent's failure to provide the school with the chemicals required for the portable toilets and placing the obligation for purchasing such chemicals on the school.

It is therefore apparent that the **interim measures put in place were reactive and ad hoc in nature** on the basis that **no clear, comprehensive contingency plans** appear to have been in place to adequately and appropriately deal with a situation such as that faced by the school.

8. FINDINGS

- 8.1. The **Commission's report on the Right to Access Water and Sanitation** (2012/2013) specifically records the increased vulnerability faced by already vulnerable groups, like girl children, when basic access to water and sanitation is impeded: "*[A]ccess to safe drinking water and sanitation is fundamental to the enjoyment of other rights such as the right to education, health and an environment that is not harmful to one's health or wellbeing. A lack of access to water and sanitation not only impedes access to other rights, but heightens the*

vulnerability of certain groups of people such as women, girls and people with disabilities".⁴⁹

- 8.2. In the same report, the Commission refers to UN Development Programme (UNDP) statistics that **approximately 443 million school days are lost each year due to illness caused by a lack of access to water or access to a poor water source. The link to diseases is also made by referring to the high number of deaths associated with poor sanitation, poor hygiene and contaminated water.**⁵⁰ In addition, the negative impact on girls is compounded, particularly during their menstrual cycle.⁵¹
- 8.3. The lack of adequate sanitation has both direct and indirect adverse impacts, not limited to particular groups directly affected but **extending beyond to their families and communities.**
- 8.4. At **a national level, the impact on health, the environment and the economy are becoming increasingly apparent.** For example, diarrhoea is the leading killer of South African children under five, and poor sanitation is a major cause of diarrhoea. In turn, poor health can have a negative impact on the **economy** as ill health keeps families in a cycle of poverty and lost income. Also, inadequate sanitation leads to **environmental degradation**, and in particular, the pollution of water sources. This in turn increases the cost of downstream water treatment, as well as the risk of disease for people who use untreated water.⁵²
- 8.5. Based on the investigation conducted by the Commission, applicable legal and policy frameworks and case law, the Commission finds that:

⁴⁹ South African Human Rights Commission "The Right to Access Water and Sanitation – Report on the Right to Access Water and Sanitation" (based on provincial and national hearings on the right to water and sanitation", 2012-2013, page 24

⁵⁰ Ibid

⁵¹ Note 49 above, 26

⁵² Water Services Act Interpretative Guide for Sanitation: Discussion Document (http://www.dwaf.gov.za/Documents/Policies/WSA_Sanitation_Interpretative.pdf)

- 8.5.1. The Respondent did not take **reasonable steps** to ensure that the sanitation facilities at the school were of an **acceptable standard**. In this respect, the Respondent **failed to adequately monitor the condition of the toilets on a regular basis** with a view to ensuring that an acceptable standard of sanitation was adhered to and by so doing, failed to comply with its Constitutional obligations;
- 8.5.2. Upon receipt of a complaint firstly, from the Complainant and thereafter, from the Commission, the Respondent took steps (albeit, inadequate in some respects) to remedy the alleged violation by *inter alia*, emptying the old septic tank, delivering portable toilets to the school and implementing a process for the appointment of a contractor for the construction of a new septic tank;
- 8.5.3. However, in **failing to ensure the delivery of an adequate number of portable toilets pending the construction** of a new septic tank and failing to ensure that the portable toilets could immediately be used for their intended purpose, the Respondent continued to violate the rights of the learners and **continued to expose them to potential negative health risks**; further
- 8.5.4. The Respondent also **failed to adequately respond to the Commission's request for a formal report**. In this respect, the Commission received informal, brief and in some respects, inadequate responses from the Respondent notwithstanding the urgency of the matter and the severe prejudice suffered by a vulnerable group of society i.e. children;
- 8.6. Consequently, the Commission's finding in this matter is that the **Respondent violated the following human rights of the learners** (and in some instances, the educators) at the school:

- Section 10 - Dignity
- Section 24 – Environment
- Section 27 – (Water) and sanitation
- Section 28 – Best interests of the child
- Section 29 – Education

9. RECOMMENDATIONS

9.1. In terms of the Human Rights Commission Act, the Commission may "*make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution*".

9.2. Based on the above, the Commission recommends that:

9.2.1. The Respondent visits the school **within (one) month** from date of receipt of the report to:

- re-assess the condition of the septic tank,
- in particular, establish whether the amount of water seeping out of the septic tank is of an acceptable standard; and will remain acceptable despite seasonal changes,
- assess the impact that such seepage will have on the environment and learners,
- assess and implement measures to ensure that the affected area is cordoned off to prevent access by children,
- re-assess the **number of available toilets** in the new toilet facilities **taking into account the number of children at the school**, and
- **assess the cistern system** currently installed in the new toilet facilities to ascertain whether such system is appropriate for the constant use of toilets attendant with the number of learners at the school.

9.2.2. The Respondent provide the Commission with a report setting out its findings **within 6 (six) weeks** from the date of the visit to the school and that such report indicates any shortcomings which may have become evident and the measures to be put in place to address same, together with applicable time frames;

9.2.3. **Within 2 (two) months** from date of completion of the report referred to in 9.2.2. above, the Respondent to provide the Commission with a **plan** for the:

- Identification of all schools in the area which currently use the septic tank system,
- Measures to be put in place to ensure that **emergency alternative interim** assistance is provided to learners at such schools when needed,
- Monitoring of such schools **within 6 (six) months** from date of receipt of the report,
- Development of specific criteria to be considered in the engagement of contractors who are contracted or appointed by the Respondent to assist with sanitation in such schools, and
- Utilisation of the findings of the audit to develop a monitoring system and suitable contingency plans to ensure that effective interim measures are implemented in a proactive as opposed to a reactive, manner.

9.2.4. **With immediate effect**, the principal allows the children to use the basins in the toilet facilities to ensure that they wash their hands immediately after using the toilet facilities;

9.2.5. That the Respondent ensures the **general health of the learners** is monitored over the **short term**, in **collaboration with local health care facilities** and

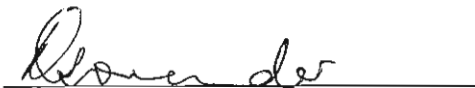
that confirmation thereof is provided to the Commission within **2 (two) months** from date of receipt of the report.

10. APPEAL

You have the right to lodge an appeal against this decision. Should you wish to lodge such an appeal, you are hereby advised that you must do so in writing within 45 days of the date of receipt of this finding, by writing to:

**The Chairperson, Adv M.L. Mushwana
South African Human Rights Commission
Private Bag X2700
Houghton
2041**

SIGNED ON THIS THE 18th DAY OF December 2013.



**Commissioner Adv M.L. Mushwana
Chairperson
South African Human Rights Commission**