

COMMENTS ON THE REGULATIONS RELATING TO MINIMUM UNIFORM NORMS AND STANDARDS FOR PUBLIC SCHOOL INFRASTRUCTURE

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Introduction

1. The Centre for Child Law (CCL) is based in the Law Faculty at the University of Pretoria. The aim of CCL is to promote children's rights in South Africa, more particularly to use the law as an instrument to advance such interests. The CCL has been involved in numerous activities to promote children's right to a basic education, and has participated in cases pertaining to the eradication of mud schools and the provision of adequate school furniture for impoverished schools.
2. The CCL welcomes the publication of the minimum uniform norms and standards for public school infrastructure, and appreciates the opportunity to comment on them.
3. These comments will begin by making some comments of a general nature, and will then move on to a more focused commentary from the perspective of mud schools eradication.

General comments

4. Scope and Application: Types of schools

The regulations apply to all ordinary public schools and for learners with special needs. However, the draft regulations classify schools into only two categories, primary schools (grades R to 7) and secondary schools (grades 8 to 12). Some schools do not fit neatly into these categories, offering only subsets of the grades eg grades R – 3, or grades R – 6 or grades R – 9. It is not clear whether these schools will now have to conform with the two categories – and if so what consequences there might be for schools that do not. Furthermore, full services schools are not expressly included, because they are neither ‘ordinary public schools’ nor are they only ‘public schools for learners with special education needs’

5. The right to a basic education is not subject to progressive realisation

The Constitutional Court has made it clear that the right to a basic education, unlike other socio-economic rights, is not subject to progressive realisation and is, in theory, immediately realisable. Although the CCL accepts that pragmatic realities dictate that school infrastructure cannot be developed overnight for the entire country, there are some concerning features of these regulations, which appear to introduce progressive realisation. One of the ways in which the regulations do this is through the overutilization of ‘qualifying’ language. For example, in regulation 3(1)(b) states that existing schools must, subject to subregulations (3), (4), (5) and (6) and as far as reasonably practicable be phased in. So not only does the Department allow itself 10 and 17 years respectively to complete infrastructure upgrading, but also says that this need only be done as far as is reasonably possible. Furthermore, subregulation (3) adds a further qualifier: the implementation of the norms and standards is subject to the resources and co-operation of other government agencies and entities responsible for infrastructure. Thus the Department has provided itself with belt, braces and if all else fails, a parachute to escape liability. Although the CCL acknowledges that some flexibility must be built into the norms and standards, it is submitted that these multiple layers of qualifiers render them inconsistent with the constitutional promise of section 29(1) of the Constitution.

Comments specific to mud schools eradication

6. Prioritisation of mud schools

Regulation 3 divides schools into two categories – schools not yet in existence (for which planning has not yet started), and schools already in existence which need infrastructure upgrading. CCL is of the view that a prioritization between different types of schools requiring infrastructure upgrading is necessary. It is submitted that mud schools must be prioritised above other types of schools requiring infrastructure upgrading. It is not clear what criteria will be used to prioritise which schools are to receive assistance first.

7. Lack of transparency in the infrastructure planning process

The Department has identified 510 'inappropriate structures' (ASIDI Brief Vol 1, 2013). However, the ASIDI list is not public and therefore it is not possible to assess what method has been used for prioritisation within the list of 510 schools. This lack of transparency is regrettable. It is noted that regulation 3(4) requires the MECs to report to the Minister. This is a positive step, but such plans should be made publically available, so that progress can be monitored, and schools can plan.

8. Current lack of progress reflects doubt on Department's ability to spend

A total of 13 billion over the 2012 medium term expenditure framework of three years and been allocated to deal with infrastructure backlogs by way of a conditional grant. In addition, the provincial departments also have budgets for infrastructure which are being spent, on average, more efficiently than the monies held by the national department.

Unfortunately, according to Abdoll and Barberton (Cornerstone Economics 2013), the national department has underspent the School Infrastructure Backlog grant for two years running. In 2011/2012 spending was a little over 10 % and only at 23 per cent in 2012/2013 at the end of the third quarter. The ASIDI target for the number of schools to be built in 2011/2012 and 2012/2013 was 49. However, only 10 had been completed by the end of the first year.

The Department has identified the following reasons for their failure: Inclement weather, the rural nature of the sites and poor roads, recruitment of contractors has to be done according to rigid procurement procedures, problems with contractors, profiteering and shortages of building materials (ASIDI Brief vol 1 2013).

9. Norms and standards must be matched by enhanced planning, project management and implementation capacity

Abdoll and Barberton find that the reason for the National Department's underspending is poor capacity within the Department to plan and manage an infrastructure programme of this size. The researchers find that if the project were to continue at the current rate it would take until 2034 to complete the infrastructure backlog. At this rate, even the long time frames that the Department is allowing itself will not be sufficient.

However, the CCL hastens to add that the solution to these problems lie not in allowing more time, but in improving to the capacity to spend. Thus the norms of standards and the planning required by regulation 3(4) will be of little practical use if the Department does not dramatically improve its project management and implementation capacity, including in the area of procurement.

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