

20 September 2021

Joint media statement: A victory for the rights of learners, as Polokwane High Court orders government to develop better plans to get rid of pit toilets in Limpopo schools

#FixOurSchools

Equal Education (EE) and the Equal Education Law Centre (EELC) welcome the judgment of the Polokwane High Court in the case of *Komape v Minister of Basic Education*! The court ruled that the plan of the Minister of Basic Education (DBE) and the Limpopo Department of Education (LDoE), to take 14 years to get rid of pit toilets in Limpopo schools, is unconstitutional and fails to meet the requirements of the structural order* that was granted by the court in 2018.

In the judgment handed down on Friday 17 September, Judge GC Muller stated that the DBE and LDoE's plan ignores the rights of learners, who are in constant danger when they are forced to use unsafe toilets, which also offer no privacy.

EE was a friend of the court in this case, represented by EELC. We told the court that the LDoE's 2031 deadline to get rid of pit toilets is unconstitutional because:

- 14 years is an excessively long time;
- It fails to meet the requirements of the court's 2018 order; and
- It completely disregards the legally binding Minimum Uniform Norms and Standards for Public School Infrastructure, which clearly bans the use of plain pit toilets in schools.

The court supported these arguments in its judgment.

It is unacceptable that the LDoE continues to use a tight budget as a reason for failing to provide enough safe toilets for learners, especially because the department has a history of not properly spending its infrastructure budget, which then leads to slow infrastructure delivery. The court said that, while financial constraints are the reality facing South Africa at the moment, the department still has a duty to ensure that there is enough money for building school toilets.

We proposed to the court that it consider appointing a Special Master – an independent person who is appointed by and reports to the court, to assist the court by making sure that what it orders is actually implemented. While our request for a Special Master was not granted in the judgment - because the court saw an intervention like this as a last resort - it is encouraging that Judge Muller has ordered the DBE and LDoE to file a new plan within 90 days from now. The DBE and LDoE must also submit detailed progress reports to the court every six months until the plan is fully implemented.

The judgment ordered that the new plan includes:

- A list of all the schools with plain pit toilets in Limpopo (including schools with **only** plain pit toilets, schools with plain pit toilets as well as other forms of sanitation, and schools with unused plain pit toilets (that are not yet demolished);
- A new deadline (and detailed justification for this deadline) for getting rid of plain pit toilets in all Limpopo schools; and
- A detailed budget for the implementation of this plan (including steps taken to secure more money).

We expect the LDoE's new plan to meet the requirements of Friday's judgment, and that it will clearly outline how the department will address the very urgent school toilets crisis. We also hope that the progress reports will help in holding the department accountable and will also help the department to collect more accurate data and measure its progress.

We salute our Comrades at SECTION27 for leading this case.

Read the full judgment [here](#).

*A structural order: When the court continues to have oversight over how its order is carried out (implemented), so it can ensure that its order is properly carried out (is complied with).

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Note to editors: If quoting directly from this statement, please quote Equal Education and the Equal Education Law Centre.

To arrange a media interview, contact:

Jay-Dee Cyster (Equal Education Communications Officer) jay-dee@equaleducation.org.za or 082 924 1352

Chandre Stuurman (EELC Senior Attorney) 021 461 1421 or chandre@eelawcentre.org.za