

Social Justice Coalition

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Submission to the Draft National Sanitation Policy for South Africa



Contact

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¹ Cover photo by David Harrison, (Khayelitsha, 2014).

Introduction

- 1 The Social Justice Coalition (SJC) is a democratic, membership-based social movement, based in Khayelitsha, established on 16 June 2008. The majority of our members live in informal settlements and are spread across 15 branches.
- 2 The SJC has been campaigning for clean and safe sanitation in informal settlements since 2009 and was one of the primary complainants of the O'Regan-Pikoli Commission of Inquiry into policing in Khayelitsha.² We are driven by our vision of advancing the constitutional rights to life, dignity, equality, freedom and safety for all people, but especially those living in informal settlements across South Africa.
- 3 The rights to human dignity, freedom and security of the person – especially safety and psychological integrity, health and privacy – are among the most basic rights and freedoms violated when using toilets in informal settlements. The absence of safe and healthy sanitation has a profound impact on one's daily existence. It affects people's dignity and their right of access to a healthy environment. It makes them more vulnerable to disease and to crime.
- 4 On 12 February 2016, the Minister of Water and Sanitation published the draft national sanitation policy in Government Gazette No. 39688, notice 70 of 2016, calling for comments (hereafter 'draft policy'). The draft policy is an amendment of all previous policies but those sections of the previous policies that have not been amended will remain in place. The main stated objectives of this policy are to support equity in the sanitation sector; to strengthen sanitation institutions and to ensure sustainable sanitation provision in the country.

Norms and standards for sanitation in informal settlements

5. To date there has been no single, substantive policy regulating sanitation provision in South Africa, leaving implementation haphazard and without basic standards. The draft policy commits the Minister to developing norms and standards for sanitation in the country and in informal settlements in particular.³ We welcome this commitment.
6. A lack of basic standards has been one of the biggest obstacles to improving access to basic sanitation in informal settlements. Up to now the policy gap has meant that many municipalities use the minimum standards for sanitation as found in the National Housing

² See "Towards a Safer Khayelitsha: Report of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha" (August 2014) <http://www.khayelitshacommission.org.za/images/towards_khaye_docs/Khayelitsha_Commission_Report_WEB_FULL_TEXT_C.pdf>

³ See Draft Policy at p19.

Programme for Housing Assistance in Emergency Housing Circumstances – commonly referred to as the Emergency Housing Programme (EHP) to determine levels of sanitation provision in non-emergency circumstances and provide temporary services on an ad-hoc, often chaotic, basis. An example of this is the 1:5 (one toilet to five households) ratio provided by the Emergency Housing Programme to be used in the event of an emergency used by the City of Cape Town for informal settlements that are not facing an emergency.⁴

7. Norms and standards for sanitation in informal settlements will be crucial in this regard. However, the commitment to developing norms and standards in the draft national policy does not specify any set timeframes or a process for their development.

Equity policy positions

8. At present the right to sanitation is not being realised in an equitable manner that ensures that all people have access to basic and dignified sanitation. A minority of informal settlement residents in South Africa have access to a decent toilet. While the policy tries to address issues of equality it does not acknowledge several fundamental problems.

Interim and emergency services

9. The SJC acknowledges that there are instances where an emergency service level is necessary and that temporary facilities are suitable intermediate sanitation options in such conditions. However, the use of temporary toilets over extended periods of time in what have become long-term places of residence - coupled with the absence of a plan detailing how and when this service level is to be improved - suggests that the approach falls short of the requirement to progressively realise adequate, basic sanitation to residents living in informal settlements.
10. Sanitation provision in informal settlements in this regard requires a shift away from treating informal settlements as temporary, emergency environments, to dealing with the reality that they are long standing, established communities that require permanent infrastructure and long-term planning..
11. As noted by Judge Erasmus in the case of *Ntombentsha Beja and Others v Premier of the Western Cape and Others*⁵ regardless of whether a municipality builds an individual or community toilet it must make sure that the service ensures the user privacy and that it is compliant to the fundamental rights in the constitution. Therefore, providing temporary

⁴ The City of Cape Town states “We aim to provide the best possible service to residents in informal settlements, and have set our own target of one shared toilet to five households”. See the City of Cape Town’s website for more <<https://www.capetown.gov.za/en/Water/Pages/Informal-settlements.aspx>>

⁵ [2011] ZAWCHC 97.

toilets with no long term plan to deal with the crisis of sanitation is unreasonable, unjust, and unsustainable.

12. The National Sanitation Strategy⁶ stated that emergency sanitation services should only last for a few days or weeks, should not be used in long-term settlements, and that communal facilities and chemical toilets should not be used if the duration of their use extends to more than a month.⁷ The draft policy seems to have abandoned that standpoint and merely states that emergency services are to be used on a short-term basis. We submit that unless specific time-frames are imposed then municipalities will continue to use emergency sanitation services in long-term settlements.
13. The draft policy does not provide sufficient information under which circumstances interim services should be provided and for how long. The position of the draft policy is as follows: “Interim basic water and sanitation services should be provided as appropriate, affordable, and practical in temporary settlements accordance with a progressive plan that addresses both land tenure and basic services.”
14. The draft policy puts forward the Upgrading of Informal Settlements Programme (UISP) as the solution for providing security of tenure and provision of services. It does not clarify how services will be provided to informal settlements that are not a part of the UISP, which in Cape Town for example make up over 95% of all informal settlements.⁸

Disabilities and gender

15. Whereas the policy mentions that the needs of vulnerable people, such as the disabled and children, must be considered in the provision of sanitation it does not stipulate how this will be done or how disabled access is accounted for when implementing sanitation facilities in informal settlements.⁹
16. In 2014 we conducted a social audit on janitorial services for communal flush toilets in informal settlements.¹⁰ Our social audit showed that communal flush toilets were left in an unusable condition over an extensive period of time. More than 30% of the toilets inspected had broken or missing handles. Disabled people are disproportionately affected by toilets with defects. Temporary facilities such as chemical toilets likewise do not allow for disabled

⁶ Department of Water Affairs and Forestry National Sanitation Programme Unit “National Sanitation Strategy: Accelerating sanitation sector Delivery” (August 2005). (National Sanitation Strategy)

⁷ Section 7.6.3 of the National Sanitation Strategy.

⁸ According to the City of Cape Town’s Informal Settlement Development Matrix only 4% of informal settlements, found in category A1, have been approved for full upgrades. See Dustin Kramer “City Chooses not to invest in informal settlements” GroundUp (28 May 2015)

http://www.groundup.org.za/article/city-chooses-not-invest-informal-settlements_2982/

⁹ See draft policy, p 11.

¹⁰ Social Justice Coalition (SJC) “Our Toilets are dirty: Report of the Social Audit into the Janitorial Service for Communal Toilets in Khayelitsha, Cape Town” (14-19 July 2014)

<http://nu.org.za/wp-content/uploads/2014/09/Social-Audit-report-final.pdf> (Janitorial Service Audit)

access. The community of Greenpoint, Khayelitsha conducted a social audit, with our help, and found that Mshengu chemical toilets do not cater for the needs of the disabled - the passages leading to the toilets are usually not tarred nor are there ramps leading to the toilets.¹¹ Furthermore, the size of the toilets makes them inaccessible to disabled people using wheelchairs.

17. The Gender Policy Framework for Local Government calls on local government to promote gender equality in its planning (through the IDP) and provision of services and that local government should improve “access to water and sanitation, electricity and communication services for women”.

18. Communal toilets in informal settlements do not come with sanitary towel bins and this has an adverse effect for women. Women also have to walk long distances to get to a toilet and this makes them targets of violent crimes.¹² In March 2016, another young woman from Khayelitsha, Sinxolo Mafevuka, was found raped and murdered inside a communal flush toilet in SST Section.

Outsourcing, accountability, and technologies

19. The decentralisation of delivery responsibilities from local authorities to private contractors poses a number of challenges. These difficulties relate to consistency and quality in establishing, monitoring and maintaining adequate sanitation services provided by private contractors. When local governments delegate their constitutionally mandated obligation to provide basic sanitation services to private contractors, accountability and remedial action is made more difficult especially when contractors fail to meet service level agreements.

20. According to the Local Government Municipal Systems Act¹³ (MSA), municipal government is legally bound to monitor and ensure such services are implemented adequately. In the case of *Allpay [2014]*¹⁴ the Constitutional Court held that “government cannot be released from its human rights and rule of law obligation simply because it employs the strategy of delegating its function to another entity” and that private companies taking on the public functions, can likewise be held accountable like the state.

¹¹ See also Mary-Anne Gontsana “Poor Chemistry between City and Community over sanitation contract” (25 August 2015)
<http://www.groundup.org.za/article/poor-chemistry-between-city-and-community-over-sanitation-contract_3238/>

¹² Social Justice Coalition (SJC) “Report of the Khayelitsha ‘Mshengu’ toilet Social Audit” (10 May 2013) 6
<<http://www.internationalbudget.org/wp-content/uploads/Social-Justice-Coalition-Report-of-the-Khayelitsha-Mshengu-Toilet-Social-Audit.pdf>>

¹³ 32 of 2000.

¹⁴ *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others 2014 (4) SA 179 (CC)*.

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21. In municipalities across the country, toilet technologies provided to informal settlements are often temporary services which are outsourced and are very expensive. Private contractors are by and large not monitored or penalized for the services they provide.
 22. Although prospective and appointed service providers have legal duties to the contracting municipality, the local government “remains responsible for ensuring that the service provided is in the best interest of the local community” in terms of the MSA.¹⁵ In our social audits on Mshengu chemical toilets as well as the janitorial services in informal settlements we found that contracted services were not regularly monitored and as such toilets become unusable due to issues such as lack of servicing (cleaning and waste removal) and severe damage (broken doors, missing ventilation pipes, and broken seat covers).¹⁶
 23. The vast majority of informal settlement residents are forced to use temporary, undignified facilities such as chemical toilets, container toilets, porta-potties, buckets, and inadequate, unsafe communal toilets far from their homes. “[M]illions of people in both rural and urban areas are still forced daily to use wholly inadequate means of sanitation.”¹⁷ Temporary toilets such as chemical toilets and porta-potties are also extremely expensive per unit, as compared to long term, more permanent, infrastructure and there is seldom proper community participation in their implementation.¹⁸

Institutional policy positions

Access to information

24. A lack of access to information is one of the key factors that prevents poor and working class communities from being able to participate in policy decisions and associated governance processes. It also prevents communities from being able to monitor services and hold government officials accountable. Together this reduces the substance of democracy in South Africa and the effectiveness of local government.
25. Information is central to democracy, accountability, and effective service delivery. The specific objects and duties of local government are set out in Chapter 7 of the Constitution. The objectives of local government include “to provide democratic and accountable government for local communities” and “to encourage the involvement of communities and community organisations in the matter of local government”. The Constitution sets out the

¹⁵ Section 81 of the MSA.

¹⁶ Janitorial Service Social Audit, p 30-44.

¹⁷ Socio-Economic Rights Institute (SERI) “Basic Sanitation in South Africa: A Guide to Legislation, Policy and Practice” (July 2011) 14.

¹⁸ See: ‘An Unfair Budget: Dignity, Equality, and the Right to Sanitation. Joint Submission on the 2015/16 Draft Budget’ (30 April 2015). <<http://nu.org.za/wp-content/uploads/2015/08/Budget-Submission-Final.pdf>>

democratic values and principles that must govern public administration. Section 195 of the Constitution requires that public administration “must be development oriented” and that people’s “needs must be responded to, and the public encouraged to participate in policy-making”.

26. The SJC has always experienced major challenges in getting information regarding the provision of sanitation and related services in informal settlements. This includes information that by law should be publicly available. At times we were forced to apply for that information in terms of the Promotion of Access to Information Act 2 of 2000 and we did so.
27. Service Delivery Agreements for example, are required to be published and publicly available on the City’s website and in public libraries. These documents explain how sanitation services work and what the responsibilities of contractors are. They therefore provide communities with the required information to hold local government accountable for that service and to participate in policy and planning decisions. Without access to these documents, there can be no participation or accountability. At present the majority of SDAs in use in Cape Town for example in regard to informal settlements services are still not available publicly.

Costing and funding

28. The draft policy is unclear as to the funding mechanisms for sanitation provision in informal settlements and under what circumstances mechanisms such as the Urban Settlement Development Grant will be used. This is of particular importance in regard to funding sanitation in informal settlements outside of the UISP. As noted above, currently the majority of informal settlements fall outside of the UISP. Therefore, the funding of sanitation in these informal settlements is of crucial importance. It is a serious omission in the policy to not address how provision of services in the majority of informal settlements will be funded.

Recommendations

Norms and standards for sanitation in informal settlements

29. Given the urgent need for minimum norms and standards for sanitation in informal settlements to be developed, the SJC calls for their speedy publication, within a reasonable timeframe. *The timeframe for the norms and standards must be clearly stipulated before the final policy is adopted.*
30. The norms and standards for sanitation in informal settlements should be developed through a process of participation, including sufficient consultation and time for public

comments on draft norms and standards. *The process for the development of the norms and standards must be outlined clearly before the final policy is adopted.*

Equity policy positions: informal settlements; emergency sanitation

Regarding interim and emergency services the policy should:

31. Provide specific timeframes for the use of emergency sanitation services in informal settlements.
32. Clarify that temporary, emergency sanitation services should not be provided to informal settlements over any long-term period (as per the National Sanitation Strategy) and that the EHP is therefore not the appropriate policy mechanism in dealing with sanitation provision in informal settlements.
33. Explicitly indicate that municipalities must deliver interim and/or permanent sanitation services and infrastructure to informal settlements that are not part of the UISP (currently the majority of informal settlements).
34. Indicate that every municipality should develop a long term sanitation plan for informal settlements within its municipality. This must include plans for all informal settlements regardless of whether or not the intention is for those settlements to be part of the UISP or other housing programmes, but should be linked to plans for upgrading of informal settlements where applicable. The existence of formal upgrading plans should not, in any way, preclude the sanitation plans as this would result in temporary services being implemented over long term periods in most informal settlements.

Regarding the needs of disabled people and women the policy should:

35. State how the needs of disabled people will be catered for in the provision of sanitation in informal settlements, particularly in regard to accessibility, equity, and appropriate technologies.
36. The policy should indicate how it will cater to the needs of women in informal settlements including sanitary needs and safety needs in regard to access to municipal lighting installed and the placement of sanitation delivery points in particular.

Regarding outsourced services the policy should:

37. Stipulate the monitoring mechanisms that should be in place to ensure an adequate service by private contractors and that the contracted company provides all services stipulated in the contract agreement.
38. Provide guidance as to when private contractors are appropriate for the delivery of sanitation services.

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39. Establish the roles and responsibilities in regard to participation of community members during the conclusion of a service agreement between the municipality and a private contractor as well as who will be tasked with communicating with the community during the duration of the contract.

Regarding technologies the policy should:

40. Indicate that appropriate technologies will be those technologies that protect the end-user's right to human dignity, freedom and security of the person – especially safety and psychological integrity, health and privacy.
41. Indicate that cost per unit should be taken into account when assessing technologies; and consequently expensive, temporary and inferior outsourced services should be replaced with improved long term infrastructure, which is in fact also more cost effective over the long term.
42. Indicate that new technologies for sanitation in informal settlements should only be introduced through adequate participation of affected communities.

Institutional policy positions: integrated planning

Regarding access to information the policy should:

43. Outline the responsibilities of the relevant spheres of government in making required information, such as Service Delivery Agreements, accessible and public as per compliance with the applicable legislation. National Treasury and the Department of Planning, Monitoring and Evaluation in the Presidency are of particular importance in regard to ensuring compliance of municipalities with respect to access to information and improving community participation in policy development, budgeting, and implementation.

Regarding costing and funding the policy should:

44. Provide clear guidance as to the mechanisms through which sanitation provision in informal settlements will be funded, in particular funding for provision in informal settlements falling outside of the UISP, which currently make up the majority of informal settlements.