

# **Period Poverty and The Right to Education in South Africa**

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## ABSTRACT

As more and more research proved that globally, there is a correlation between menstruation and school attendance; pressure has mounted on states to recognize that firstly, period poverty does not only mean the inability of one accessing menstrual products but rather it also includes, the lack of appropriate sanitation, infrastructure and or the lack of knowledge around menstruation. Secondly, the stigma and taboo surrounding menstruation means that one must always be extra careful not to be seen menstruating which leads to emotional and mental stress coupled with physical discomfort and pain. All these factors contribute to menstruators' rights to education and to dignity, as they are unable to fully participate in school and therefore, affecting their personal development in the long run.

It is thus in light of the above, that there is a need to understand the obligations states have towards the eradication of period poverty, particularly in the context of schools. This can only be achieved by examining South Africa's national and international commitments in terms of legislation and the treaties supported by the state. In this research, the focus is on South Africa and its legal obligations in relation to period poverty in the context of education.

## ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Social, Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CDE	Convention against Discrimination in Education
ICESCR	International Covenant on Economic, Social and Cultural Rights
DBE	Department of Basic Education
DWYPD	Department of Women, Youth and Persons with Disabilities
LMICS	Low and middle-income countries
MHM	Menstrual Hygiene Management
MoGE	Ministry of General Education (Zambia)
NDP	National Development Plan
NGO	Non-governmental organization
PMBEJD	Pietermaritzburg Economic Justice & Dignity
SACMHM	South African Coalition on Menstrual Health Management
SAFE	Sanitation Appropriate for Education
SAQA	South African Qualification Authority
SASA	South African Schools Act
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
WASH	Water, sanitation, and hygiene
WHO	World Health Organization

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## Chapter One: Introduction

### 1.1. Background of the Study

Section 29(1) of South Africa's Constitution provides for the right to education. South Africa's position on the right to education must be understood against the background of the past of apartheid. Apartheid, which literally results in "separation" in Afrikaans, took place between 1948 and the early 1990s and was a racial and discriminatory political and economic system.<sup>1</sup> This system made use of laws to uphold segregation against black South Africans in all sectors including education. The Bantu Education Act, enacted in 1953 but effective from January 1954 "...was based on a curriculum that extolled ethnic pride and racial identity, promoted the ideology of 'separateness,' and located the educational experience of Blacks in the rural setting of an emerging Bantustan policy."<sup>2</sup> It was mandated that teachers teach black students only enough English and Afrikaans to carry out instructions. Bantu schools were overcrowded and underfunded because they received funding from their communities.<sup>3</sup> Bantu education created inequalities as the apartheid government spent ten times more on white learners in comparison to black learners.<sup>4</sup>

The new South African Constitution (the Constitution), adopted in December 1996 as a replacement for the provisional Constitution, came into effect in February 1997. One of the aims of the Constitution was to redress the inequalities created by the apartheid government and protect the rights of all South Africans such as the right to education.<sup>5</sup> Section 29 (1) of the Constitution makes provision for the right to education. It guarantees that "everyone has the right to a basic education, including adult basic education and (b) to further education which the state, through reasonable measures, must make progressively available and accessible."<sup>6</sup> This section implies that South Africa as a state, has the positive obligation to secure, promote and make provision for education to be immediately realizable for everyone

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<sup>1</sup> History Extra 'Your guide to apartheid in South Africa' 17 May 2021

<https://www.historyextra.com/period/20th-century/apartheid-facts-history-south-africa-dates-when-start-end-laws-nelson-mandela-affect-impact/> (accessed 04 March 2022).

<sup>2</sup> JD Jansen 'Curriculum as a Political Phenomenon: Historical Reflections on Black South African Education' (1990) 59 *Journal of Negro Education* 195.

<sup>3</sup> GM Quan 'The transformative approach of the South African Constitutional Court in selected cases dealing with access to basic education' Unpublished Master thesis, University of Pretoria, 2017.

<sup>4</sup> Quan (n 3) 8.

<sup>5</sup> South African Government 'The Constitution of the Republic of South Africa' 2022 [The Constitution of the Republic of South Africa | South African Government \(www.gov.za\)https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1](https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1) (accessed 15 March 2022).

<sup>6</sup> Sec 29 of the Constitution of the Republic of South Africa, 1996 (the Constitution).

without discrimination, as confirmed by the Constitutional Court in the *Juma Masjid* case.<sup>7</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by South Africa in January 2015, is arguably the most significant international convention which recognizes the right to education for everyone.<sup>8</sup> The United Nations (UN) Committee on Social, Economic and Cultural Rights (hereafter CESCR) which monitors the implementation of the ICESCR in its General Comment No.13 argued that, for states to fulfill their obligations in terms of education; education must be available, accessible, acceptable and adaptable.<sup>9</sup> These demands, often referred to as the four A's of education, were originally formulated by Katarina Tomasevski in her capacity as the UN Special Rapporteur on the Right to Education.<sup>10</sup>

## 1.2. Problem Statement

Period poverty, the prevalent phenomenon of being unable to afford sanitary products to effectively manage menstrual bleeding, negatively impacts on girls' right to education.<sup>11</sup> For the purpose of this research, the focus will be on the availability and the accessibility of education in the context of schools and period poverty. Availability means that functional educational institutions must be available for everyone.<sup>12</sup> These include schools, sanitation within the school premises and teaching materials such as books. However, education cannot only be available, it must be accessible to everyone in the sense that it must "...be affordable, within safe physical reach, and must be granted on a non-discriminative basis."<sup>13</sup> In 2014, the United Nations Educational, Scientific and Cultural Organization (UNESCO) estimated that in Sub-Saharan Africa, 1 in 10 girls miss school during their menstruation because of the lack of sanitary products.<sup>14</sup> Furthermore, the lack of sanitation and water in schools means that girls cannot have their menstruation with dignity. The impact of menstruation on school attendance is more than absenteeism.<sup>15</sup> This can include lower work productivity due to lack

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<sup>7</sup> *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* 2011 8 BCLR 761 (CC).

<sup>8</sup> Hellen Suzman Foundation 'The right to basic education' 25 April 2013 <https://hsf.org.za/publications/hsf-briefs/the-right-to-basic-education> (accessed 26 February 2022).

<sup>9</sup> Hellen Suzman Foundation (n 8).

<sup>10</sup> S.J. Klees & N. Thapliyal 'The Right to Education: The Work of Katarina Tomasevski' (2007) 51 *Comparative Education Review* 497.

<sup>11</sup> School of Public Health 'Changing the Cycle: Period Poverty as a Public Health Crisis' 4 February 2020 <https://sph.umich.edu/pursuit/2020posts/period-poverty.html> (accessed 26 February 2022).

<sup>12</sup> Hellen Suzman Foundation (n 8).

<sup>13</sup> Hellen Suzman Foundation (n 8).

<sup>14</sup> RE Soeiro *et al* 'Period poverty: menstrual health hygiene issues among adolescent and young Venezuelan migrant women at the northwestern border of Brazil' (2021) 18 *Reproductive Health* 238.

<sup>15</sup> AB Tolonen *et al*. 'Sanitary products, absenteeism and psychosocial well-being: Evidence from a three-arm cluster randomized controlled feasibility study in Western Kenya' (2021) 93 *Center for Development Economics and Policy* 1.

of participation and concentration because of the discomfort associated with menstruation “...and lowered psychosocial well-being due to stress and fear.”<sup>16</sup> Therefore, menstruators’ school quality may be affected due to the fear of leakage because of the lack of sanitary products as well as the bullying should they mess on themselves which in turn affects their participation, and concentration and result in their absenteeism. The World Health Organisation (WHO) and United Nations Children’s Fund (UNICEF) concluded that adequate or appropriate Menstrual Hygiene Management (MHM) requires access to necessary resources, facilities, and education about MHM for all genders.<sup>17</sup> As an observation, it is important to note that in the 21<sup>st</sup> century, menstruation does not only affect women but also transgenders and single-father headed households (who have girl child/children) and as such, the term ‘menstruators’ is used in this study.

This study uses the human rights perspective, focusing particularly on the issue of dignity and the right to health; to argue that the South African government is failing to fulfil its national and international obligations to menstruators by not availing appropriate schools and introducing adequate MHM. This in turn affects girls’ rights to fully enjoy their education and to menstruate with dignity.

### 1.3. Research Question

This research’s main objective is to examine the interventions that the South African government has in place to fulfil their national and international obligations as well as the alternatives to ensure that girls have access to menstruation products within schools. In light of the above, the question then becomes ‘Is South Africa meeting its international and national obligations in terms of ‘period poverty in the context of schools?’

### 1.4. Methodology

To answer the above question, one must fully unpack the consequences of lack or limited access to MHM and menstruation products, South African constitutional law and the international treaties that South Africa belongs to and what South Africa has implemented in terms of period poverty in the context of schools. The literature review will focus on available research concerning the right to education and period poverty in schools with a human rights

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<sup>16</sup> Tolonen (n 15) 2.

<sup>17</sup> United Nations Children’s Fund (UNICEF) ‘Water, Sanitation and Hygiene (WASH) in schools: A companion to the Child Friendly Schools manual’, New York: UNICEF.



perspective. Additionally, it will examine international human rights law and South Africa's obligations in terms of period poverty. The researcher will make use of secondary data which will entail academic articles, theses, doctrines, and relevant case studies to fully assess and analyse South Africa's national and international obligations in availing and ensuring access to education in the context of period poverty and MHM. Secondly, the study will analyse the available reports and studies concerning the measures that South Africa has taken thus far to give effect to its obligations. Thirdly, academic articles and theses will be comparatively analysed to answer the question on how Kenya and Zambia have implemented their MHM policies or programmes and its impact on the right to education, especially when one examines school attendance.

Since the promulgation of its new Constitution in 2010, Kenya has shown commitment to redress menstrual challenges. In 2011, the government allocated 240 million Kenyan shillings (+- R 32 561 874.60), annually, to ensure that girls in public government schools are provided with free sanitary pads through the National Sanitary Towel Program.<sup>18</sup> This was in addition to eliminating the import tax on health products in the same year and developing a national guideline on mental health through the Department of Health.<sup>19</sup> Recently, Kenya launched the Menstrual Hygiene Management Policy (2019-2030) which implies the institutionalisation of menstrual hygiene to ensure systematic monitoring of resources and the government accountability.<sup>20</sup>

In comparison Zambia's Ministry of General Education (MoGE) became the first to launch national MHM guidelines in schools in 2015.<sup>21</sup> In that same year, the Ministry of Finance allocated approximately \$ 198 000 for sanitary pads to be distributed in underprivileged areas. In 2019, the government partnered with organisations such as World Vision, to provide reusable sanitary pads in rural areas.<sup>22</sup>

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<sup>18</sup> Kenya Ministry of Education 'Sanitary Towels Programme' 2012  
<http://education.go.ke/index.php/tenders/file/215-supply-and-delivery-of-sanitary-towels-topublic-primary-and-special-primary-and-secondary-school> (accessed 16 May 2022).

<sup>19</sup> C Chirwa 'Menstrual Health Matters: States' Obligations Under International Human Rights Conventions' Unpublished Master thesis, University of the Witwatersrand, 2019.

<sup>20</sup> Amref Health Africa 'What Next after Launching Kenya's First Menstrual Hygiene Management Policy' <https://amref.org/kenya/next-launching-kenyas-first-menstrual-hygiene-management-policy/> (accessed 16 May 2022).

<sup>21</sup> A Ghnouly *et al* 'Menstrual Health Management and School Attendance in Zambia' School of International and Public Affairs.

<sup>22</sup> J Jere 'Focus on Menstrual Health Keeps Zambian Girls in School' 17 October 2019  
[https://www.voanews.com/a/africa\\_focus-menstrual-health-keeps-zambian-girls-school/6177759.html](https://www.voanews.com/a/africa_focus-menstrual-health-keeps-zambian-girls-school/6177759.html) (accessed 21 June 2022).

## 1.5. Limitations of Study

The human rights framework, with its expansive nature has been criticized for several reasons. Firstly, it is criticized for ignoring women's personal experiences and categorizing them the same.<sup>23</sup> Secondly, feminists argue that it fails to address genuine women issues since its dominated by men.<sup>24</sup> As a result of this, women are not in the forefront of the human rights agenda and feminists want to ensure that women are not only protected within the system but also to ensure that women issues are addressed to eradicate non-discrimination.<sup>25</sup> In conclusion, the feminists have urged human rights to rework its organisational structure and ensure that it is inclusive of women as well as enlisting instances which would constitute as violations of human rights towards women.

Nonetheless, the study employs the human rights framework as a guiding framework to argue that access to adequate MHM in schools is a basic right which affect menstruators' right to education and lack thereof means that they will not be treated with dignity. This framework enables one to examine the experiences of menstruators in schools and requires us to scrutinize the issue of MHM beyond just the availability of menstruation products.

## 1.6. Literature Review

In 2020, it was estimated that globally 2 billion people were of menstruating age of which 300 million would experience menstruation any day.<sup>26</sup> Menstruation, simply expressed as period or vaginal bleeding and usually starts between the ages of 10 to 14 and only ceases when one reaches menopause.<sup>27</sup> This is as a result of the biological changes experienced during puberty because no pregnancy occurred, the blood and tissue lining of the uterus discards through the cervix and out of the vagina. The menstrual cycle is a natural process which varies from person to person, but it is usually occurs between 21 and 35 days.<sup>28</sup> Regardless of its biological reality, menstruation has continuously compromised girls' right to education

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<sup>23</sup> R Boosey & S Wilson 'A Vicious Cycle of Silence: what are the implications of the menstruation taboo for the fulfilment of women and girls' human rights and, to what extent is the menstruation taboo addressed by international human rights law and human rights bodies?' (2014) School of Health and Related Research (SchHARR), University of Sheffield.

<sup>24</sup> E Brems 'Enemies or Allies? feminism and cultural relativism as dissident voices in human rights discourse' (1997) 19 *Human Rights Quarterly* 136.

<sup>25</sup> Brems (n 24) 137.

<sup>26</sup> K Zivi 'Hiding in Public or Going with the Flow: Human Rights, Human Dignity and the Movement for Menstrual Equity' (2020) 42 *Human Rights Quarterly* 1.

<sup>27</sup> Q Nahar & R Ahmed 'Addressing special needs of girls challenges in school' 2006 <https://www.ircwash.org/sites/default/files/Nahar-2006-Addressing.pdf> (accessed 30 May 2022).

<sup>28</sup> Brems (n 24) 18.

and dignity.<sup>29</sup> However, before 2005, MHM was only mentioned in development literature and public discussions, in reference to the challenges that girls in low and middle-income countries encountered in managing menstruation.<sup>30</sup> It was only between 2004 and 2005, that non-governmental organisations (NGOs) began to include MHM in their programming as a way of reducing the gender gap in education.<sup>31</sup> At the same time, there was a rise in menstrual advocates and activists who shed light on the issue of menstruation and how it affects access to education.

From 2006, there was research evidence on the challenges schoolgirls were experiencing when menstruating. This came just as it was discovered that the high increase of school dropout when girls reached puberty, could be related to menstruation.<sup>32</sup> Moreover, studies conducted in the East and Southern African region confirmed the correlation between menstruation and educational outcomes.<sup>33</sup> Pillitteri found that in Malawi, at least 90% of the girls missed school due to menstruation while a study in Zimbabwe confirmed a strong link between inadequate MHM and poor school performance and absenteeism.<sup>34</sup> Therefore, the lack of water, sanitation and hygiene (WASH) facilities which basically entails water, sanitation and proper hygiene in schools means that girls fail to manage their menstruation in a dignified manner implying that menstruators blood stain their clothes, thus causing embarrassment and stress. In Kenya, the schoolgirls found themselves absent-minded during school due to fear of marginalization, while on their menstruation.<sup>35</sup> Another study on Kenya found that menstruation caused social stress amongst girls; thus, causing less concentration and lowered self-esteem in schools.<sup>36</sup>

In South Africa, it was estimated that a third of its female population cannot afford menstrual products and are forced to use unhygienic alternatives to manage their menstruation.<sup>37</sup> Moreover, it was estimated that one-third of South Africa's female school goers cannot afford

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<sup>29</sup> T Crankshaw *et al* 'Menstrual health management and schooling experience amongst female learners in Gauteng, South Africa: a mixed method study' (2020) 17 *Reproductive Health* 1.

<sup>30</sup> Ghnouly *et al* (n 21) 3.

<sup>31</sup> Ghnouly (n 21) 3.

<sup>32</sup> Ghnouly (n 21) 4.

<sup>33</sup> Wilson *et al.* 2012; Tamiru *et al.* 2015; Elledge *et al.* 2018 in C Chirwa 'Menstrual Health Matters: States' Obligations Under International Human Rights Conventions' Unpublished Master thesis, University of the Witwatersrand, 2019.

<sup>34</sup> E Ndlovu & E Bhala 'Menstrual hygiene – A salient hazard in rural schools: A case of Masvingo district of Zimbabwe' (2016) 8 *Disaster Risk Studies* 2 doi. org/10.4102/jamba.v8i2.204.

<sup>35</sup> SA McMahon *et al.* 'The girl with her period is the one to hang her head' Reflections on menstrual management among schoolgirls in rural Kenya' (2011) 11 *BMC International Health And Human Rights* 1 doi:10.1186/1472-698x-11-7.

<sup>36</sup> L Mason 'Adolescent schoolgirls' 69 experiences of menstrual cups and pads in rural Western Kenya: a qualitative study' (2015) 34 *Waterlines* 15.

<sup>37</sup> D Ramathumba 'Menstrual knowledge and practices of female adolescents in Vhembe district, Limpopo province, South Africa: original research' (2015) 38 *Curationis* 1.

sanitary products and as such, they absent themselves from school while menstruating.<sup>38</sup> This is further exacerbated by the fact that many schools do not have appropriate and functional sanitation facilities.<sup>39</sup> A research study conducted in the North West province of South Africa with the objective of exploring menstrual health practices and knowledge of girls in rural schools found that inadequate toilet facilities and knowledge deficit on MHM contributed to school absenteeism.<sup>40</sup> While another study with the same objective in the Thulamela municipality of Limpopo province found that 73% of its participants mentioned experiencing fear and anxiety at the thought of their first menstruation and that they might not be able to maintain hygienic practices because of the lack of privacy and sanitary towels.<sup>41</sup> A cross-sectional survey conducted in 2 districts of the Eastern Cape emphasised the importance of recognizing social and structural features when discussing gendered barriers to education on menstruation.<sup>42</sup>

During a conference organized by the Columbia University, UNICEF and Emory University, girls listed pain, shame and teasing because of menstrual leaks and odor as well as misunderstanding of menstruation and the failure to manage menstruation effectively as the challenges of dealing with menstruation.<sup>43</sup> In Zambia, the MoGE attributed the decline in school attendance amongst girls to poor MHM, since girls encountered challenges in effectively managing their menstruation while in school due to insufficient water and sanitation as well as lack of access to menstrual products.<sup>44</sup>

Most studies have provided evidence of menstrual related absenteeism and poor school performance although empirical data in relation to menstruation and its impact on girls' education is limited and it's based on small sample.<sup>45</sup> Wilson found that 50.2% of schoolgirls in Kenya reported missing school at least once during their menstruation.<sup>46</sup> Pillitteri's study,

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<sup>38</sup> L Mills and C Howe 'That time of the month: discrimination against girl children who cannot afford sanitary health care' Stellenbosch University, 2019.

<sup>39</sup> The South African Human Rights Commission 'Report on the Right to access sufficient water and decent sanitation in South Africa: 2014' 2014  
[https://www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%204%20March%20-%20Water%20%20Sanitation%20low%20res%20\(2\).pdf](https://www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%204%20March%20-%20Water%20%20Sanitation%20low%20res%20(2).pdf) (accessed 30 May 2022).

<sup>40</sup> BC Chikulo 'An Exploratory Study into Menstrual Hygiene Management amongst Rural High School for Girls in the Northwest Province, South Africa' (2015) 29 (2) *African Population Studies* 1971.

<sup>41</sup> Ramathumba (n 37) 1.

<sup>42</sup> CI Maacleod *et al* 'Social and structural barriers related to menstruation across diverse schools in the Eastern Cape' (2020) 40 *South African Journal of Education* 3.

<sup>43</sup> Chirwa (n 19) 39.

<sup>44</sup> Ghnouly (n 21).

<sup>45</sup> R Boosey and E Wilson 'The Menstrual Hygiene Management and The International Human Rights System: A Vicious Cycle of Silence' [https://consultations.worldbank.org/sites/default/files/consultation-template/update-world-bank-group-gender-strategy-consultations/submissions/a\\_vicious\\_cycle\\_of\\_silence\\_final\\_version\\_of\\_paper\\_0.pdf](https://consultations.worldbank.org/sites/default/files/consultation-template/update-world-bank-group-gender-strategy-consultations/submissions/a_vicious_cycle_of_silence_final_version_of_paper_0.pdf) (accessed 30 May 2022).

<sup>46</sup> Boosey & Wilson (n 45) 4.

conducted in Malawi, provides detailed breakdown of girls menstrual related absenteeism.<sup>47</sup> The above-mentioned researcher found that at least 57% of girls reported missing schools during menstruation for 1-2 hours; 11% over 3-5 hours; 14% for 1-2 days and 15% for more than 3 days.<sup>48</sup> The absence of girls from school due to their menstruation implies that their education is affected since they will miss part of the syllabus which will be a challenge to catch up without academic support.<sup>49</sup> In addition, even when girls attend school while menstruating, the inadequate MHM in schools makes it difficult for them to reach their full potential as they struggle to concentrate and participate in class in fear of messing on themselves and the humiliation from their class mates when they observe menstrual blood stains on their clothes.

It is, therefore, fundamentally important to recognize and acknowledge that the lack of adequate WASH facilities in schools, the fear of staining because of the lack of proper menstrual products as well as the lack of access to medication for period pains are factors that deter females from schools during their menstruation and which ultimately, impacts on the girls child's education.<sup>50</sup> Furthermore, the lack of knowledge about menstruation can also be a barrier for girls to attend school as they become overwhelmed about their bodies, influenced mostly by negative cultural and social norms coupled with misconceptions about menstruation. Sumpter and Torondel highlighted the perceptions and general knowledge of menstruation amongst teenagers in low- and middle-income countries (LMICS).<sup>51</sup> There are communities that believe that once a girl reaches puberty and starts menstruating, they are ready for sexual activity and marriage which leads to early school termination.<sup>52</sup> Teachers also play a role as they cannot address MHM in schools as they do not have the educational resources on menstruation. Chandra-Mouli's, systemic review, concluded that teachers and mothers have difficulties communicating about menstruation to their children and this leads to misunderstandings about menstruation.<sup>53</sup> Menstrual related challenges have a harmful impact on the girl child's schooling and widens the gender gap in the educational sector which ultimately affects their right to education. As will be shown in the proceeding sections several

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<sup>47</sup> SP Pillitteri 'School menstrual hygiene management in Malawi: more than toilets' 2011 [RURAL WATER SUPPLY SECTOR SUSTAINABILITY REVIEW \(ircwash.org\)](#) (accessed 30 May 2022).

<sup>48</sup> Pillitteri (n 47) 11.

<sup>49</sup> R Boosey *et al.* 'Menstrual hygiene management amongst schoolgirls in the Rukungiri district of Uganda and the impact on their education: a cross-sectional study' (2014) 19 *PanAfrican Medical Journal* 253.

<sup>50</sup> Chirwa (n 19) 40.

<sup>51</sup> Chirwa (n 19) 40.

<sup>52</sup> A Kamlongera 'What Becomes of 'Her'? A Look at the Malawian Fisi Culture and Its Effects on Young Girls' (2007) 21 *Agenda: Empowering Women for Gender Equity* 74.

<sup>53</sup> V Chandra-Mouli & SV Patel 'Mapping the knowledge and understanding of menarche, menstrual hygiene and menstrual health among adolescent girls in low- and middle-income countries' (2017) 14 *Reproductive Health* 1.

studies that has investigated the relationship between MHM and school or period poverty in the context of schools; however, there is limited research on the legislative obligations that sovereign countries have to eradicating period poverty.

There has been significant mobilization by NGOs to redress the lack of access to menstrual products and its impact on the right to education. In South Africa, national efforts to eradicate period poverty began in 2011, when the then President of the Republic of South Africa, Jacob Zuma, during his State of the Nation address (SONA), he emphasized the need to provide menstrual health related services to women.<sup>54</sup> Six years later, in 2017, the then Minister in the Presidency, Susan Shabangu, responsible for Women, also emphasized the necessity for the health system to make provision of sanitary towels for the disadvantaged women. The pronouncement by Minister Susan Shabangu, led to the drafting of the Sanitary Dignity Framework through the Department of Women later renamed Department of Women, Youth & Persons with Disabilities (DWYPD) in 2017 with the purpose of providing sanitary pads to women in schools, free of charge to ensure access to education for menstruators and promote economic self-sustainability.<sup>55</sup> That same year, the Kwazulu-Natal Department of Education allocated R 50 million and implemented a free sanitary pad program with the aim of providing sanitary pads to girls in quintile 1 to 4 schools but there is no performance report to confirm progress of the initiative.<sup>56</sup> In 2018 the South African government scrapped the tax on sanitary products after a study conducted by the Stellenbosch University Law Clinic found that 30% of menstruators were missing school as a result of the lack of access to sanitary products.<sup>57</sup>

The zero-tax on menstruation products was only effective from April 2019. The sanitary dignity programme was only launched in 2019 and the effectiveness of the programme is still yet to be analysed to determine whether South Africa is fulfilling its national and international obligations concerning the eradication of period poverty and education.

To promote human rights in the context of period poverty, in 2017, Scotland became the first country in the world to provide free sanitary products through pharmacies and community centres to anyone in need.<sup>58</sup> This was followed by Botswana, Victoria (Australian state) and

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<sup>54</sup> Department of Women, Youth & Persons with Disabilities. Sanitary Dignity Framework. June 2019.

[https://genderlinks.org.za/wp-content/uploads/2017/06/Menstrual-Hygiene\\_South-Africa\\_SanitaryDignityFramework\\_2019.pdf](https://genderlinks.org.za/wp-content/uploads/2017/06/Menstrual-Hygiene_South-Africa_SanitaryDignityFramework_2019.pdf) (accessed 8 March 2022).

<sup>55</sup> Department of Women, Youth and Persons with Disabilities (n 54) 52.

<sup>56</sup> Department of the Presidency 'Technical paper on women and gender for NDP review'

[https://www.nationalplanningcommission.org.za/assets/Documents/Technical%20Paper%20on%20Women%20and%20Gender%20for%20the%20NDP%20Review\\_03%20March%202021.pdf](https://www.nationalplanningcommission.org.za/assets/Documents/Technical%20Paper%20on%20Women%20and%20Gender%20for%20the%20NDP%20Review_03%20March%202021.pdf) (accessed 31 August 2022).

<sup>57</sup> The Citizen '30% of SA learners miss school when menstruating' 22 June 2018

[30% of SA learners miss school when menstruating | The Citizen](https://www.citizen.co.za/news/south-africa/30-of-sa-learners-miss-school-when-menstruating/) (accessed 8 March 2022).

<sup>58</sup> Global Citizen '20 Places Around the World Where Governments Provide Free Period Products' 1 October 2021 <https://www.globalcitizen.org/en/content/free-period-products-countries-cities-worldwide> (accessed 7 March 2022).

New Zealand in 2017, 2020 and 2021 respectively with South Africa increasing funding for period poverty and providing sanitary products to underprivileged schools with limited access.<sup>59</sup> The year 2022 saw , Scotland becoming the first country to legally enforce the right to free sanitary products by introducing the Period Products Act; which obliges educational institutions and local governments to provide sanitary products to any menstruator in need.<sup>60</sup>

## 1.7. Theoretical Framework

The right to education is not only a human right but an enabling right which a critical primary tool for empowering people.<sup>61</sup> The inability to access education due to lack of MHM means that girl children who are economically and socially disadvantaged will not be able to lift themselves out of poverty and their dignity will be negatively affected. The stigma and lack of privacy associated with the lack of MHM means that people's dignity is affected.<sup>62</sup> Chris Williams agrees and adds that “without access to toilets, women fear assault and a loss of dignity.”<sup>63</sup> The statement mentioned above imply that that menstruators' dignity is negatively affected by the lack of access to menstrual products, lack of proper sanitation and period stigma. However, this situation can be rectified through the provision and accessibility of essential services and resources to uphold the essentiality of human dignity and human rights.<sup>64</sup>

In addition, human dignity is a right and is considered as a founding principle of the human rights framework. Albuquerque contends that human dignity is “the foundation of all human rights” and that the stigma experienced by menstruators dehumanizes them and thus, violates their dignity.<sup>65</sup> Sanghera agrees and adds that stigma associated with menstruation infringes various human rights, especially a “woman's right to dignity.”<sup>66</sup> Human dignity is a legal principle that can exist away from the experiences of menstruators. However, for the purpose

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<sup>59</sup> Global Citizen (n 58).

<sup>60</sup> BBC News 'Period poverty: Scotland first in world to make period products free' 15 August 2022 <https://www.bbc.com/news/uk-scotland-scotland-politics-51629880> (accessed 30 August 2022).

<sup>61</sup> United Nations 'd) General Comment No. 13: The right to education (article 13) (1999)' [OHCHR | d\) General Comment No. 13: The right to education \(article 13\) \(1999\)](#) (accessed 7 March 2022).

<sup>62</sup> United Nations 'Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque' 2 July 2012 [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-42-Add2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-42-Add2_en.pdf) (accessed 7 March 2022).

<sup>63</sup> Huffpost 'Women's Rights Are Human Rights, Period' 7 March 2017 [https://www.huffpost.com/entry/womens-rights-are-human-rights-period\\_b\\_58be9780e4b0abcb02ce21ef](https://www.huffpost.com/entry/womens-rights-are-human-rights-period_b_58be9780e4b0abcb02ce21ef) (accessed 7 March 2022).

<sup>64</sup> Brems (n 24) 128.

<sup>65</sup> Jere (n 22) 12.

<sup>66</sup> Brems (n 24) 129.

of this research, human dignity is essential to menstruators as human beings and a right in itself which cannot be achieved unless they have adequate MHM. This research will contribute to the available research by discussing the obligations that South Africa has in eradicating period poverty and by looking at what Kenya and Zambia have done; South Africa could use that to add on what is already in place. Moreover, by discussing the challenges that South Africa is experiencing in implementing its national sanitary dignity programme and pinpointing recommendations, South Africa might use these to better their implementation process. For the menstruators attending school, this research will encourage them to speak up and know that it is within their right to demand access to sanitary towels and appropriate wash facilities within their school environment; to enable them to menstruate in a dignified manner.

## 1.8. Structure

Following this introductory chapter, chapter two discusses South Africa's national and international obligations by examining its Constitution and international treaties concerning the right to education in the context of period poverty. In chapter three, the study will be within the human rights framework focusing particularly on the right to education and the right to dignity. Moreover, the study analyses how the international treaties have addressed menstruation. Chapter four explores how South Africa has implemented policies to eradicate poverty and subsequent challenges. Finally, in chapter five the study concludes the thesis and suggest recommendations.



## Chapter Two: The Right to Education and Period Poverty in South Africa: The South African Constitution and International Law

### 2.1. Introduction

Internationally, there is a consensus that the right to education is a fundamental human right which should be accessible to everyone without discrimination to enable people to realize their full potential and participate in society. The lack of sanitary products, the challenges experienced during menstruating and the stigma associated with menstruation affects the menstruators' right to access education. In this chapter, the study will discuss the right to education and how it is protected and promoted by the South African Constitution and international law within the context of period poverty and school.

### 2.2. The South African Constitution and the Right to Education

The South African Constitution aims to redress historical inequalities and protect its citizens from discrimination by including 'positive rights' which obligates the state to legislate policies that reduces inequality.<sup>67</sup> Section 1(a) of the above mentioned -constitution stipulates that human dignity and upholding human rights, freedom and equality are fundamental values of the Constitution.<sup>68</sup> Section 10 of the Constitution stipulates that everyone has an intrinsic dignity which deserves to be protected and respected and this obliges the government to adapt measures that further protect and promote people's right to dignity such as overcoming the challenges menstruators encounter in their quest to realise the right to education.<sup>69</sup>

The right to education is contained in section 29(1) of the Constitution of South Africa and it stipulates that "everyone has the right – (a) to a basic education, including adult basic education; and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible."<sup>70</sup> The above cited clause of the South African Constitution implies that education should be available and accessible to every person regardless of but not limited to nationality, age, sex, gender and race among other

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<sup>67</sup>Rational Standard 'Is the South African Constitution The 'Best in The World'?' 16 July 2018 <https://rationalstandard.com/is-the-south-african-constitution-the-best-in-the-world/> (accessed 7 March 2022).

<sup>68</sup> The Constitution of the Republic of South Africa, 1996 (hereafter the Constitution) Section 1 (a).

<sup>69</sup> The Constitution, 1996. Section 10.

<sup>70</sup> F Veriava *et al.* *Basic Education Rights Handbook-Education Rights in South Africa* (2017) 400.

considerations.. In the case between *Minister of Home Affairs v Watchenuka* the Supreme Court of Appeal concluded that the state acted unlawfully by prohibiting asylum seekers from attending school and confirmed the term ‘everyone’ to include, all people within the South African borders.<sup>71</sup>

Although the Constitution does not define ‘basic education’, the South African Qualification Authority (SAQA) defines basic education as education provided for children between grades R and 9.<sup>72</sup> Moreover, basic education is compulsory and South African government has the constitutional obligation to ensure that every child in South Africa within the school age range has access to basic education and where there is need remove barriers that might impede human rights including s period poverty. Veriava and Coomans argued that section 29 of the South African Constitution is not only a socio-economic right, but a civil and political right.<sup>73</sup> This section is primarily a socio-economic right because it, obligates the state to ensure availability and accessibility to education. Secondly, it is a civil and political right because it provides for the freedom of choice concerning the right to be taught or instructed in preferred choice from the list of official languages or to either go to private or public school. Moreover, the hybrid nature of section 29 confirms that human rights are inter-dependent and indivisible.<sup>74</sup>

In contrast, Kriel argued that section 29(1) is a strong positive right since “it gives Constitutional support to a social or economic demand on a state for something”.<sup>75</sup> However, section 29(1)(b) is a weak positive right as it “does not support the right to education per se, but a right to reasonable state measures that make further education progressively available and accessible”.<sup>76</sup> In the case between *Governing Body of Juma Masjid Primary School & Others v Essay N.O and Others*, the South African Constitutional Court provided the content and scope for education in South Africa. The court held that “it is important, for the purpose of this judgement, to understand the nature of the right to a ‘basic education’ under section 29(1)(a). Unlike some of the other socio-economic rights, this right is immediately realizable. There is no internal limitation requiring the right to be ‘progressively realized’ within ‘available resources’ subject to ‘reasonable legislative measures’”.<sup>77</sup> The statement mentioned above

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<sup>71</sup> Veriava (n 70) 22.

<sup>72</sup> The South African Qualification Authority <https://www.saga.org.za/docs/pol/2015/Legislation%20Matters.pdf> (accessed 7 March 2022).

<sup>73</sup> F Veriava and F Coomans “The right to Education” In Brand and Heyns (eds) *Socio-Economic Rights in South Africa* (2005) Pretoria: Pretoria University Press.

<sup>74</sup> Veriava & Coomans (n 73) 59.

<sup>75</sup> R Kriel “Education” in Chaskalson A (ed) *Constitutional Law of South Africa* (RS 5 1999).

<sup>76</sup> Kriel (n 75).

<sup>77</sup> Kriel (n 75).

implies that every child has a right to basic education here and now and should not wait for the state to take reasonable measures over time.

The South African government acknowledges and realizes the importance of MHM, the negative impact on education and the right to dignity as menstruators try to navigate the challenges associated with menstruation. As such, in 2019, the DWYPD launched the National Sanitary Dignity Programme under the theme 'restoring the dignity of young women'; with the main objective of ensuring that menstruators should be able to manage their menstruation in a dignified manner by ensuring access to menstrual information, investing in menstrual facilities where menstruators can access sanitary products, educating people on the topic, making provision for accessing water and improving toilet infrastructure in schools.<sup>78</sup> The South African Schools Act (SASA) of 1996 legally mandates the Minister of Education and government to ensure that systems for supply water and sanitation are in place as set out in the White Paper on Education and Training of 1995.<sup>79</sup> The National Development Plan (hereafter NDP) adopted in 2012, has the main objective of reducing poverty and inequality by 2030 by prioritising education, health and social protection.<sup>80</sup> Thus the provision of sanitary products will contribute to NDP's overall goal. The White Paper on Education and Training of 1995 addresses and provides for the improvement and general upkeep of the school environment by obligating states to provide basic physical facilities including electricity, water and toilets and school equipment to all government schools.<sup>81</sup> Moreover, the Department of Basic Education (hereafter DBE) adopted 'Norms and Standards for School Infrastructure' in 2013 which outlines the materials which are deemed safe and proper for school structures and the standards for sanitation to combat inequality in educational infrastructure.<sup>82</sup> The year 2016 was set as target year for the realisation of the above-mentioned goals and the DBE failed to meet this deadline.

In November 2018, the current president, Cyril Ramaphosa, introduced the Sanitation Appropriate for Education (SAFE) Initiative with a primary objective of replacing pit toilets with appropriate sanitation as part of the Norms and Standards for School Infrastructure.<sup>83</sup> This initiative was the result of deaths arising from the use of pit latrines by students such as the

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<sup>78</sup> Department of Women, Youth and Disabilities (n 54) 38.

<sup>79</sup> Department of Women, Youth and Disabilities (n 54) 4-5.

<sup>80</sup> Department of Women, Youth and Disabilities (n 54) 42.

<sup>81</sup> Department of Women, Youth and Disabilities (n 54) 42.

<sup>82</sup> Pulitzer Center 'The Legal Precedent for Basic Education in South Africa' 10 December 2018

<https://pulitzercenter.org/stories/legal-precedent-basic-education-south-africa> (accessed 7 March 2022).

<sup>83</sup> Department of Basic Education 'Sanitation Appropriate for Education (SAFE) Initiative'

<https://www.education.gov.za/Programmes/SAFE.aspx#:~:text=The%20primary%20objective%20of%20the,de%20terminated%20by%20the%20learner%20enrolment> (accessed 7 March 2022).

late Michael Komape and Lumka Mketswa, who drowned in 2014 and 2018, respectively.<sup>84</sup> In the case between *Komape v Minister of Basic Education* the Polokwane High Court found the government in breach of the constitutional obligation to provide safe and decent sanitation and this resulted in the violation of various rights, including the right to basic education.<sup>85</sup> This resulted in the tragic death of Michael Komape who fell into a pit toilet in Mahlodumela Primary School and died in 2014.<sup>86</sup> Water and sanitation are very crucial in redressing period poverty.

### 2.3. The Right to Education under International Law

South Africa has furthermore guaranteed the right to education through the ratification of regional and international conventions.<sup>87</sup> These statute obligate states to ensure that girls and women should have access to health, water, sanitation, education, and economic development. The right to education is collectively recognised in the above-mentioned instruments as a fundamental human right beneficial to individuals and society since it essential for "...human, social, and economic development, and a key element to achieving lasting peace and sustainable development. It is (also) a powerful tool in developing the full potential of everyone and in promoting individual and collective wellbeing."<sup>88</sup> The above instruments use different terminologies in reference to the first phase of education: the UDHR refers to it as elementary or fundamental education while the Convention on the Rights of the Child (hereafter CRC), Convention against Discrimination in Education (hereafter CDE) and International Covenant on Economic, Social and Cultural Rights (ICESCR) use the term primary education. to

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<sup>84</sup> Sunday Times 'Only 266 of 3,898 schools have benefitted from Ramaphosa's sanitation campaign' 3 March 2022 <https://www.timeslive.co.za/news/south-africa/2020-03-03-only-266-of-3898-schools-have-benefitted-from-ramaphosas-sanitation-campaign/> (accessed 7 March 2022).

<sup>85</sup> Section 27 'Supreme Court of Appeal judgment gives the Komape Family #Justice4Michael' 18 December 2019 <https://section27.org.za/2019/12/56405/> (accessed 7 March 2022).

<sup>86</sup> Section 27 (n 85).

<sup>87</sup> South Africa ratified International Convent on Economic Social and Cultural Rights (ICESCR) in 2015; the UNESCO Convention against Discrimination in Education (CDE) in 2000; the Convention on the Rights of the Child (CRC) in 1995; Universal Declaration on Human Rights (UDHR) in 1996 and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was ratified in 1995. Regionally, there is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol, adopted in 2003 and ratified by South Africa in 2004, to hold African countries accountable for the protection of the rights of women and girls, and the African Charter on the Rights and Welfare of the Child (ACRWC or the Children's Charter), also ratified by South Africa in 2000.

<sup>88</sup> Inter-agency Network for Education in Emergencies 'Right to Education' <https://inee.org/collections/right-education> (accessed 20 July 2021).

refer to the basic level. However, in the African Charter on the Rights and Welfare of the Child (hereafter ACRWC) it is referred to as basic education.<sup>89</sup>

General Comment 13 of the Committee on Economic, Social and Cultural Rights (CESCR) lists the essential features of education, commonly known as the four As of education, namely: availability, accessibility, adaptability, and acceptability.<sup>90</sup> These are used as a way to identify states' obligations in terms of the right to education. While availability refers to ensuring adequate and functioning educational facilities within a country,<sup>91</sup> accessibility means that these educational facilities and education itself is accessible by the population without any obstacles.<sup>92</sup> Accessibility also means that education must be financially and physically accessible by its citizens. Moreover, education must also be flexible to adjust to new conditions such as the provision of Open Distance e-Learning (ODEL) education for learners during the Covid-19 era. That means that education must be adaptable, and it must positively respond to the dynamic needs of the various categories of persons.<sup>93</sup> Acceptability, on the other hand, refers to the various aspects of the content of education with reference to its quality or standard and "...requires that the content of education should be pluralistic, relevant, non-discriminatory, culturally appropriate, and of corresponding quality..."<sup>94</sup> This means that the right to education must guarantee the parents and the children their right to access education in sync with their cultural beliefs, and expectations for quality and relevancy. The guarantee to provide quality education must also include providing for access to water and sanitation as well as ensuring standard infrastructural development and safety in schools.

The Convention on the Elimination of All Forms of Discrimination against Women's (hereafter CEDAW) articles 12 and 16 covers sexual and reproductive rights. Under these articles, states are encouraged to ensure the availability of health care facilities to enable women access to family planning. The South African constitution upholds

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<sup>89</sup> ACRWC 11 (3) (a).

<sup>90</sup> United Nations 'Preliminary report of the Special Rapporteur on the right to education submitted in accordance with Commission on the Human Rights resolution 1998/33E/UN Doc CN.4/1999/49' 13 January 1999 <https://digitallibrary.un.org/record/1487535?ln=en#record-files-collapse-header> (accessed 7 March 2022).

<sup>91</sup> General comment 13 Article 13 (2) (a)

<sup>92</sup> General comment 13 article 13 (2) (b).

<sup>93</sup> General comment 13 article 13 (2) (d).

<sup>94</sup> General comment 13 article 13 (2) (c).

the right to provide health care facilities and this is also specified by the international conventions, namely: CRC, CEDAW and CRPD. Moreover, the Maputo Protocol, as the main instrument in Africa and first treaty to recognise abortion and guarantee sexual and reproductive rights, promotes the rights of girls and women, guarantees sexual and reproductive rights, and ensures access to family planning. Its General Comment No. 2 explains and clarifies what sexual and reproductive rights entail.<sup>95</sup>

Countries that are member states are obliged to ensure that women enjoy the aforementioned rights without any interference from the state and free from any form of discrimination. However, the African Commission does argue that certain member states have not availed health care facilities for women to enjoy these rights. This is regardless of the fact that article 14(2) guarantees women “the right to adequate, affordable health services at reasonable distances, including information, education and communication programs for women, especially those living in rural areas.” The fact that young women make use of old clothes, rags, or newspaper, affects their health and may result in infections.<sup>96</sup> This also means that women’s reproductive rights are being violated as menstruation is essential to reproductive health.<sup>97</sup> However, the Maputo Protocol falls short in addressing menstruation as an issue that affects girls and women in every aspect of their lives.

Moreover, the international treaties have been criticized for lack of clarity on issues concerning menstruation. This alludes to the fact that the institutions that monitor regional and international treaties should take into consideration women issues to eliminate discrimination. Boosey and Wilson argue that the silence on menstruation in the CRC, ICESCR and CEDAW creates a vicious cycle. They found that the majority of the CEDAW and CRC reports do not refer to menstruation although 39% of these reports are drawn from middle to low income countries, where most menstruation

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<sup>95</sup> African Union ‘Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa’ 11 July 2003 [https://au.int/sites/default/files/treaties/37077-treaty-charter\\_on\\_rights\\_of\\_women\\_in\\_africa.pdf](https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf) (accessed 7 March 2022).

<sup>96</sup> The Borgen Project ‘Period Poverty in South Africa’ 30 June 2021 <https://borgenproject.org/period-poverty-in-south-africa/> (accessed 5 June 2020).

<sup>97</sup> Global citizen ‘Period poverty: everything you need to know’ 5 February 2019 <https://www.globalcitizen.org/en/content/period-poverty-everything-you-need-to-know/> (accessed 5 June 2020).

related human rights violations are prevalent.<sup>98</sup> Moreover, CEDAW committee only mentions ‘menstrual cycle’ as an acknowledgement that women menstruate but does not mention how it might impact their lives.<sup>99</sup> This is the same case with the Special Procedures mandates on the right to education and the right to health.<sup>100</sup> Boosey and Chirwa conducted document analysis of core international human rights treaties and human rights bodies which highlighted deafening silence on menstruation. The scenario confirms that states do not have proper guidelines to fulfil their obligations in terms of the right of education in the context of menstruation.

## 2.4. Conclusion

The right to education is protected by the South African constitution and the international and regional treaties that South is signatory to. However, although the right of schoolgirls to education is nationally, regionally and internationally in South Africa, it continues to be violated since MHM is not in place, thus affecting right of school girls to access education. In the next chapter, the study will discuss South Africa’s practical strategies to address period poverty and obligations to national and international treaties. Moreover, the study will discuss human rights as a framework underpinning the research and the right to dignity.

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<sup>98</sup> Boosey & Wilson (n 23) 9.

<sup>99</sup> Boosey & Wilson (n 23) 9.

<sup>100</sup> Boosey & Wilson (n 23) 10.

## Chapter Three: International Human Rights Framework and South Africa's Implementation of Legislation to End Period Poverty in Education

### 3.1. Introduction

Period poverty is a human rights issue as the lack of access to menstrual products, adequate water and sanitation, proper and safe infrastructure coupled with menstruation stigma means that menstruators cannot manage their menstruation effectively. This impacts menstruators' well-being and performance at school as they are unable to manage their menstruation with dignity. In this chapter, the study will examine the international human rights framework as the theoretical framework that underpins and guides this research by analysing the extent to which menstruation is addressed and the implication on the right to education.

### 3.2. Background: The International Human Rights Framework

*"The stigma and shame generated by stereotypes around menstruation have severe impacts on all aspects of women's and girls' human rights, including their human rights to equality, health, housing, water, sanitation, education, freedom of religion or belief, safe and healthy working conditions, and to take part in cultural life and public life without discrimination."<sup>101</sup>*

World War 2's extreme human rights violations were internationally condemned and after its horrors, there was a global consensus and movement amongst states to identify rights that oblige states to respect and protect its citizens. This required states to establish mechanisms to promote and ensure adherence to human rights obligations and as such, states had to cooperate which resulted in the establishment of the United Nations (U.N), the Organization of American States, (O.A.S) and the Council of Europe with the main purpose of advancing human rights.

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<sup>101</sup> United Nations Human Rights 'International Women's Day - 8 March 2019 Women's menstrual health should no longer be a taboo' 5 March 2019 <https://www.ohchr.org/en/press-releases/2019/03/international-womens-day-8-march-2019womens-menstrual-health-should-no> (accessed 5 June 2020).



Subsequently, the adoption of the Universal Declaration in Human Rights (hereafter UDHR) in 1948 and its international acceptance by all states “gives great moral weight to the fundamental principle that all human beings...are to be treated equally and with respect.”<sup>102</sup> The fact that menstruators continue to struggle to realise their right to education and be treated in a dignified manner implies an infringement on human rights.

The UN has many legally binding international human rights treaties and agreements applicable to human rights issues. Under this framework, the states are regarded as “duty-bearers” of human rights whilst the “right-holders” are the people within the state.<sup>103</sup> Therefore, states must ensure that its people can enjoy human rights without any challenges. Moreover, there are mechanisms in place that hold states accountable in situations where states fail to comply or protect peoples’ rights. However, this is only applicable to states that have voluntarily acceded or ratified a treaty or protocol.<sup>104</sup> Once a state decides to ratify an international treaty, it must implement the rights under that treaty and submit periodic reports to the correct treaty body.<sup>105</sup> Thereafter, the state must put in place domestic measures and legislation compatible with their treaty obligations.<sup>106</sup> NGOs as non-state actors are obliged to operationally promote and respect the human rights treaties.<sup>107</sup>

The international human rights framework is fundamental to menstruation and period poverty because, internationally, states have accepted human rights as a moral vision and the majority of these states have engaged with the international human rights system. Thus, this framework is a valuable tool in addressing gender inequality.<sup>108</sup> The menstruation topic is relevant because regardless of it becoming a topical issue, it is still considered a taboo thus disadvantageing menstruators, globally. This is because menstruators right to education and dignity is being affected and thus affecting their

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<sup>102</sup> UNICEF ‘The international human rights framework’ 22 March 2019

<https://www.unicef.org/armenia/en/stories/international-human-rights-framework> (accessed 7 June 2020).

<sup>103</sup> L Parisi ‘Feminist Perspectives On Human Rights’ (2017) *Oxford Research Encyclopedia Of International Studies*. doi:10.1093/acrefore/9780190846626.013.48.

<sup>104</sup> Parisi (n 103) 45.

<sup>105</sup> United Nations Human Rights ‘What the treaty bodies do’

<https://www.ohchr.org/en/treaty-bodies/what-treaty-bodies-do> (accessed 7 June 2020)

<sup>106</sup> D Forsythe ‘Human Rights in International Relations. Cambridge’ (2011) Cambridge University Press.

<sup>107</sup> MA Glendon ‘Knowing the Universal Declaration of Human Rights’ (1998) 73. *Notre Dame Law Review* 5 1153.

<sup>108</sup> C Vlassoff & R St. John ‘A human rights-based framework to assess gender equality in health systems: the example of Zika virus in the Americas’ (2019) 11 *Global health action* 1.

personal development. Moreover, the international human rights treaties set the global standards and guide the states in terms of the acceptable conduct where a treaty is concerned.

As previously mentioned, this research used CEDAW, CRC and CESCR as the international treaties that are relevant to the topic of education and menstruation. 187 states are party to CEDAW, 193 to CRC and 160 to CESCR thus showcasing the potential of the member states in ensuring that the international system addresses human rights issues related to period poverty.<sup>109</sup> However, it is important to explore how menstruation and period poverty is addressed in these human rights instruments, by analysing how the treaties have been interpreted.

### 3.3 MHM in the International Human Rights System

States have been urged by the CEDAW and CRC Committees to put in place appropriate measures to reduce school dropouts and discrimination that could cause people to leave school.<sup>110</sup> Water and sanitation in schools are associated with girls missing school, especially in rural areas, according to the CEDAW Committee in 2016. As a result, the committee recommended that states put in place appropriate facilities to meet their education obligations.<sup>111</sup> States were advised to eliminate all forms of discrimination against rural women and provide access to education, water, and sanitation..<sup>112</sup> The quality, accessibility, and affordability of education must also be ensured for rural girls and women, including those with disabilities. This will entail ensuring that the educational infrastructure is improved and that quality teachers are available.<sup>113</sup> Furthermore, primary education must be compulsory, free, and provided in local languages in a culturally appropriate manner. In order for countries to implement appropriate menstruation and education policies at the national level, it is imperative to take a closer look at how these human rights treaties deal with these

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<sup>109</sup> Boosey & Wilson (n 23).

<sup>110</sup> Chirwa (n 19) 54.

<sup>111</sup> Chirwa (n 19) 54.

<sup>112</sup> Convention on the Elimination of All Forms of Discrimination against Women 'General recommendation No. 34 (2016) on the rights of rural women' 7 March 2016 <https://digitallibrary.un.org/record/835897?ln=en> (accessed 31 August 2022).

<sup>113</sup> Convention on the Elimination of All Forms of Discrimination against Women (n 112).

issues. To analyse this, the study analysed the research by Boosey and Wilson as well as Chirwa.

In order to examine how UN human rights treaties, treaty bodies, and special procedures address menstruation, Boosey and Wilson applied the document analysis methodology.<sup>114</sup> The treaty bodies on CEDAW and CRC are relevant because their scope of work is relevant to menstruation. According to Boosey and Wilson, concluding observations are further analysed since they are directed at a specific state party, and the Committee makes observations and provides recommendations as to what the state must do to fulfil its obligations.<sup>115</sup> Additionally, special procedures are important because they bring specific human rights issues to the UN's attention, speeding up its response time. Boosey and Wilson used keywords in all relevant treaties and reports and categorised the result into reports with no clear references or allusions (phrases that did not mention/include menstruation but referred to it indirectly) to menstruation, reports with only allusions to menstruation, reports with only clear references to menstruation and reports with both clear references and allusions to menstruation. This was then used to analyse the extent to which menstruation is addressed however the study will only discuss the results for CEDAW and CRC for this research.

Boosey and Wilson discovered that none of the international human rights treaties makes references or allusions to menstruations apart from the CEDAW and CRC that are more notable because menstruations is topical on their agenda and scope of work.<sup>116</sup> Although these instruments provide for the right to education, water and sanitation, they fail to mention or allude to menstruation.<sup>117</sup> Moreover, even CEDAW and CRC's reports do not make references or allude to menstruations regardless of the fact that 39% of these reports focus on low to middle class countries where menstrual related human rights violations are prevalent.<sup>118</sup> The above-mentioned violations result from a myriad of factors : firstly, to be some form of discomfort or reluctance, amongst people, to speak about menstruation since it is associated with

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<sup>114</sup> Boosey & Wilson (n 23) 6.

<sup>115</sup> Boosey & Wilson (n 23) 6.

<sup>116</sup> Boosey & Wilson (n 23) 8.

<sup>117</sup> Boosey & Wilson (n 23) 8.

<sup>118</sup> Boosey & Wilson (n 23) 8.

sexuality and reproduction issues that are regarded as girls/women concerns<sup>119</sup> Secondly, mothers and family relatives are the primary sources of information and advice concerning menstruation and as a result, this creates knowledge gaps and misconceptions which are passed on to menstruators.<sup>120</sup> Thirdly, in communities and schools where there are health education programmes, more often menstruations is rarely addressed.<sup>121</sup> However, when menstruation is addressed the solutions focus mostly on the biological aspects and not on its association with sexual and reproductive health and the practicalities of managing menstruation, especially in the context of schools.<sup>122</sup> Most of the information is directed to girls and women, while boys and men are excluded even though they are critical for successful gender transformation.<sup>123</sup> The silence of regional and international treaties silence on menstruation can be justified by the fact that they give a broad overview of human rights standards that are relevant to their scope of work, however the treaty bodies are responsible for defining and explaining the vagueness of human rights in the context of the respective treaty.

Moreover, Boosey and Wilson found that only seven out of the 751 treaty bodies reports (concluding observations reports that are directed at specific state parties) explicitly referred to menstruation, while CEDAW inexplicitly refers to menstruation as a biological factor that might affect women without clarity on how it might affect them and the resources, they might need in dealing with menstruation.<sup>124</sup>

In total 31 treaty body reports allude to menstruation, which 3.7% and 4.5% are respectively CEDAW and CRC reports.<sup>125</sup> However, menstruation seems to be mentioned in allusive terms (meaning that instead of directly discussing menstruation, the reports refer to school toilets as the only context where it is appropriate to discuss

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<sup>119</sup> A van Eijk *et al.* 'Menstrual hygiene management among adolescent girls in India: a systematic review and meta-analysis' (2016) 6 *BMJ Open* 3 <https://doi.org/10.1136/bmjopen-2015-010290>.

<sup>120</sup> Z Sooki *et al.* 'The role of mother in informing girls about puberty: a meta-analysis study' (2016) 5 *Nursing and midwifery studies* 1 <https://doi.org/10.17795/nmsjournal30360>.

<sup>121</sup> S Tellier S & M Hyttel 'Menstrual health management in east and southern Africa: a review paper' (2018) Johannesburg: UNFPA ESARO [UNFPA Review Menstrual Health Management Final 04 June 2018.pdf](#) (accessed 30 May 2022).

<sup>122</sup> M Sommer 'Where the education system and women's bodies collide: the social and health impact of girls' experiences of menstruation and schooling in Tanzania' (2010) 33 *Journal of adolescence* 4 <https://doi.org/10.1016/j.adolescence.2009.03.008>.

<sup>123</sup> T Mahon *et al.* 'Putting the men into menstruation: the role of men and boys in community menstrual hygiene management' (2015) 34 *Waterlines* 1.

<sup>124</sup> Boosey & Wilson (n 23) 9.

<sup>125</sup> Boosey & Wilson (n 23) 9-10.

menstruation). Even the special procedure (body of independent experts that are mandated by the UN to make reports and recommendations on human right issues from country specific perspectives) on the right to education is silent on menstruation.<sup>126</sup> Boosey and Wilson found that CEDAW makes various allusions to emphasise that the lack of infrastructure within school facilities impacts on girls' education although the term infrastructure is vague.<sup>127</sup> The right to education refers to the need for girls to have a separate sanitation service in the context of schools but the report does clarify why this is needed.

On the other hand, the CRC discusses menstrual health education, under the right to water and sanitation, it mentions the need for “comprehensive sexual education, including on menstruation to combat silence and stigma, targeting girls and boys.”<sup>128</sup> Boosey and Wilson argue that considering the stigma surrounding menstruation, the CRC does not make a distinction between the education of the two genders where menstruation is considered. Moreover, both CEDAW and CRC acknowledge the negative impact of the lack of adequate sanitation on school attendance by arguing that toilet facilities and proper sanitation have direct impact on girls' right to education although they do not provide more details.<sup>129</sup> It is only the special procedures under the right to water that acknowledges the correlation between poor menstrual hygiene to missing school or dropping out completely.<sup>130</sup> Although the reasoning was vague as there are more challenges that menstruators encounter which might affect their school attendance or productivity. It is encouraging to note that special procedures under the right to water have acknowledged the effects of menstruation on one's right to education.

Using a similar methodology as highlighted above, Chirwa's research was concluded six years later and its findings on CEDAW and CRC were very similar. Chirwa found that the only allusions made to menstruation in CEDAW and CRC, are in reference to discrimination and education.<sup>131</sup> Above that, Chirwa concurs with Boosey and Wilson on that CEDAW and CRC treaties acknowledged the need for states to employ

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<sup>126</sup> Boosey & Wilson (n 23) 10.

<sup>127</sup> Boosey & Wilson (n 23) 11.

<sup>128</sup> Boosey & Wilson (n 23) 13.

<sup>129</sup> Boosey & Wilson (n 23) 14.

<sup>130</sup> Boosey & Wilson (n 23) 55.

<sup>131</sup> Chirwa (n 19) 55.

appropriate measures to reduce the number of early school leavers and eliminate discrimination of those who have left school. The CEDAW committee recommends that states must ensure appropriate infrastructure within the school premises to ensure that the right to education and hygiene is promoted, whilst prioritising human-rights issues related to menstruation.<sup>132</sup> CEDAW focuses on ensuring equality, access, and opportunity for both genders but most importantly; it focuses on eliminating discrimination in the career and educational environment. Boosey and Wilson, Chirwa highlighted CEDAW's failure to discuss the challenges that women (read menstruators) encounter during their menses.

The CRC makes an allusion in reference to the right to health, but it uses ambiguous language.<sup>133</sup> The illusion that the CRC makes in reference to education is provided for under article 28 section (e) which encourages states to enforce measures that will motivate children to attend school and thus reduce the school dropouts. However, Chirwa points out that there is still hope since the Human Rights Council included MHM in the water and sanitation resolution passed in 2014.<sup>134</sup> In September 2018, the Human Rights Council adopted a resolution which urges states to “address the widespread stigma and shame surrounding menstruation and menstrual hygiene by ensuring access to factual information thereon, addressing the negative social norms around the issue and ensuring universal access to hygienic products and gender-sensitive facilities, including disposal options for menstrual productions.”<sup>135</sup>

In the conclusion, Chirwa praised the UN body for recognising the urgent need for states to address the menstrual related challenges, co-sponsored by 50 member countries. Therefore, besides the treaties failure to address menstrual challenges, there is definitely optimism even though it is worrying that the two treaties that are relevant to education do not address the challenges of menstruation.

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<sup>132</sup> Chirwa (n 19) 54.

<sup>133</sup> Chirwa (n 19) 55.

<sup>134</sup> United Nations General Assembly ‘Resolution adopted by the Human Rights Council’ 02 October 2014 A/HRC/RES/27/7.

<sup>135</sup> United Nations General Assembly ‘Report of the Working Group on the Universal Periodic Review\*’ 10 July 2018 A/HRC/39/8.

### 3.3. Conclusion

The continuous silence of the treaty monitoring bodies, particularly CEDAW and CRC on menstruation and the challenges it causes for the menstruators in the context of education affects the states' response to this critical issue. However, the resolution passed by the Human Rights Council in September 2018 implies that the human rights regime is committed to ensure that states fulfil their obligations in terms of dealing with the challenges of menstruation so that menstruators' rights are upheld and protected. As such, the responsibility lies with states to fulfil their obligations towards MHM, in this case the South African government.

## Chapter Four: South Africa's Response to Period Poverty in Practicality

### 4.1. Introduction

South Africa introduced the sanitary project under the Department of Education in 2016 and drafted the Sanitary Dignity Policy Framework in 2017 with the objective of providing sanitary products to disadvantaged girls in schools to reduce the dropout rate and improve academic performance. However, it was only in 2019 that it was published and launched with implementation plan for the different provinces as the Sanitary Dignity Framework.<sup>136</sup> Since then, there has been limited reports on its progress although some provinces took the initiative and distributed sanitary pads to some underprivileged schools.<sup>137</sup> Although it has only been three years since the launch, and it is early to evaluate what has been achieved. Considering the purpose of this research, it is important to understand how the government has managed the above-mentioned project and the challenges encountered to assess whether the South African government has done enough to fulfil its obligations in terms of period poverty or MHM.

### 4.2. South African's Response to Period Poverty: The Implementation

Poverty is a harsh reality in South Africa, and it affects the majority of the populace. The Pietermaritzburg Economic Justice & Dignity group (PMBEJD) discovered that an estimated 30.4 million South Africans were living below the old upper-bound poverty line of R1,268, while 13.8 million people live below the food poverty line.<sup>138</sup> Upper-bound poverty means that a citizen can afford the minimum required daily energy intake in terms of food and a non-food items for the household, while, food poverty line means that one is able to afford only the minimum in terms of food. This means

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<sup>136</sup> South African government 'Premier Refilwe Mtshwene: Launch of Sanitary Programme' 28 February 2019 <https://www.gov.za/speeches/sanitary-dignity-programme-28-feb-2019-0000> (accessed 31 August 2022).

<sup>137</sup> Women, youth, and persons with disabilities 'Integrated progress report on the national rollout of the Sanitary Dignity Programme in Quintiles 1 – 3 Schools' [201013Sanitay Dignity Programme....pptx \(live.com\)](#) (accessed 30 May 2022).

<sup>138</sup> BusinessTech 'How much money the poorest in South Africa are living on each month' 9 September 2021 [How much money the poorest in South Africa are living on each month \(businesstech.co.za\)](https://www.businesstech.co.za/news/economy/201013-how-much-money-the-poorest-in-south-africa-are-living-on-each-month/) (accessed 30 May 2022).



that sanitary pads are a luxury, and it is not a surprise that approximately a third of South African women cannot afford sanitary pads and turn to unhygienic methods to deal with their monthly menstruation.<sup>139</sup> As a result, an estimated one-third of the schoolgirls do not go to school when menstruating.

However, through Global citizen, a global movement that fights for solutions to societal problems; South Africa committed to making sanitary pads accessible. This resulted in eliminating the VAT on the sanitary products in late 2018 and the provision of sanitary products in government schools.<sup>140</sup> For the 2019/20 financial year, the finance minister increased the allocation to providing sanitary pads to learners from low-income households from R 78 million to R 157 million.<sup>141</sup> For the 2022/23 financial year, the government provided more than R 210 million to ensure the roll-out of sanitary products to learners in all nine provinces.<sup>142</sup>

The government further confirmed its financial commitment to ending period poverty through various partnerships such as with the United Nations Population Fund (UNFPA) and the South Africa Coalition on Menstrual Health Management (SACMHM).<sup>143</sup> However, it is important to emphasize that the Sanitary Dignity implementation framework was only approved in September 2020 with the DWYPD being assigned responsibility for monitoring the implementation process.<sup>144</sup> The National Treasury, responsible for the disbursement of all funds related to the programme, transferred the funds directly to all the nine provinces.

Nonetheless, by October 2020, Eastern Cape, Limpopo, Western Cape and Northern Cape had not started with the distribution of pads in schools for the 2019/20 year.<sup>145</sup> Reasons included litigation matters, procurement delays and lack of cooperation. The Northwest had only used 25% of its 2019/20 allocated funds and none of its 2020/21

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<sup>139</sup> BusinessTech (n 138).

<sup>140</sup> South African government 'Department of Women on Menstrual Hygiene Day' 28 May 2019 <https://www.gov.za/speeches/department-women-menstrual-hygiene-day-28-may-2019-0000#:~:text=In%20October%202018%20the%20Minister,the%20provinces%20of%20the%20country> (accessed 30 May 2022).

<sup>141</sup> Global Citizen 'South Africa Commits to Providing Free Sanitary Pads to Girls' 27 February 2021 <https://www.globalcitizen.org/en/content/south-africa-2019-budget-mhm/> (accessed 30 May 2022).

<sup>142</sup> Mail & Guardian 'Moving the needle forward for menstrual health requires multi-sectoral partnerships' 28 May 2021 <https://mg.co.za/special-reports/2021-05-28-unfpa/> (accessed 30 May 2022).

<sup>143</sup> As above no. 142.

<sup>144</sup> Parliamentary Monitoring Group 'Sanitary Dignity Programme implementation' 13 October 2020 <https://pmg.org.za/committee-meeting/31175/> (accessed 30 May 2022).

<sup>145</sup> Women, youth and persons with disabilities (n 137).

budget while Free State, Kwazulu-Natal, and Gauteng has started with the delivery although Covid-19 hindered the process.<sup>146</sup> During the 2019/20 year, 1 106 769 million schoolgirls received sanitary pads which translated to 50.8% achievement of the target.

The DWYPD also partnered with the Department of Basic Education and Water and Sanitation to redress the issue of water, sanitation, and hygiene in schools. This has been carried out by WaterAid, particularly in the Limpopo province.<sup>147</sup> This initiative led to the installation of water tanks and 12 handwashing facilities in Vhembe district, which approximately 18 000 people in the community have access to, including school pupils.<sup>148</sup> Furthermore, the UNFPA and UNICEF donated R 3 million to assist the DWYPD with a programme entitled “Empowering women and girls realise their sexual and reproductive health rights in South Africa.”<sup>149</sup> This took place in the provinces of Kwazulu-Natal and Eastern Cape, with one of its key focus on the procurement of menstrual products. Through this partnership, they are also conducting research on the alternative menstrual products and the quality and effectiveness of reusable and washable sanitary towels to ensure the safety of the recipients.

Through its national legislation and international treaties’ ratification as well as the initiatives in place through the sanitary dignity programme, South Africa has realised the importance of ending period poverty. The government further emphasized the necessity in providing sanitary pads to schoolgirls to ensure access to education. However, it has failed in execution and implementation. If the sanitary dignity programme was launched in 2019, why was its implementation framework only approved at the end of 2020? Why are provinces not being held accountable and monitored to ensure that they use the funds for the intended purposes? How were the beneficiary schools selected? How are the funds allocated to each province

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<sup>146</sup> Women, youth and persons with disabilities (n 137).

<sup>147</sup> IOL ‘Initiative aims to increase access to clean water in high-risk areas to fight rising Covid-19 infections’ 10 July 2021 <https://www.iol.co.za/saturday-star/news/initiative-aims-to-increase-access-to-clean-water-in-high-risk-areas-to-fight-rising-covid-19-infections-cd6caf93-f15e-4c88-b825-1f25af3570aa> (accessed 10 May 2022).

<sup>148</sup> IOL (n 147).

<sup>149</sup> UN Partner Portal ‘Empowering women and girls to realize their sexual reproductive health and rights in South Africa’ 12 August 2022

<https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=0CAQQw7AJahcKEwiA3Z2ojsL5AhUAAAAAHQAAAAAQAg&url=https%3A%2F%2Fwww.unfpa.org%2Fempowering-women-and-girls-realize-their-sexual-reproductive-health-and-rights-south-africa-8&psig=AOvVaw1hGaSkwY7SKrT0S3nYFxJg&ust=1660421283231123> (accessed 10 May 2022).

calculated? Moreover, how is the DWYPD monitoring the implementation process particularly in the management of funds in each province?

A forensic report conducted by Phumalani Mkhize & Associates (Pty) Ltd reported in 2020, that approximately R 4 million was lost due to poor implementation. It also found that during its expansion phase, sanitary pads were procured for all learners instead of just the indigent ones.<sup>150</sup> In addition, they used statistics of 2016, which were incorrect and unrealistic for the 2017 implementation. *“This led to the department procuring an unnecessary amount of sanitary towels. There was no guide for the distribution and implementation of the project. A circular in the department, number 65 of 2017, which sought to address the implementation and distribution issue, was only signed into effect on 27 July 2017 when the distribution had already started on 23 May 2017.”*<sup>151</sup> It is important to analyse or assess the implementation process to ensure that the funds are not only being used for its intended cause but also to hold the provinces accountable.

Besides the government interventions, various organizations have used their own platforms to increase access to sanitary pads. Project Dignity, established in 2010, has played a significant role in reducing period poverty through distributing reusable pads, called Subz and provides education about menstruation, HIV and hygiene.<sup>152</sup> On the other hand, Qrate ZA provides education about menstruation and in 2018, it started creating resources that can be used by parents and teachers to educate children about menstruation.<sup>153</sup> Moreover, businesses such as Dischem, have also engaged in social responsibility as it runs a constant donation drive which allows customers to purchase and donate sanitary pads at the point of sale.<sup>154</sup> The Dischem Millions of Comfort initiative and Lil-lets Talk CSI initiative donated approximately 3.6 million packs of sanitary pads to girls in underprivileged schools.<sup>155</sup> This enabled an

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<sup>150</sup> News24 ‘KZN sanitary pads bungle: more than R4m lost, top officials suspended’ 23 July 2020 <https://www.news24.com/news24/southafrica/news/kzn-sanitary-pads-bungle-more-than-r4m-lost-top-officials-suspended-20200723> (accessed 10 May 2022).

<sup>151</sup> News24 (n 150).

<sup>152</sup> The Borgen Project (n 96).

<sup>153</sup> The Borgen Project (n 96).

<sup>154</sup> AB Keulemans OTC and sanitary products insights’ [https://www.supermarket.co.za/SR\\_Downloads/OTC%20&%20sanitary%20products.pdf](https://www.supermarket.co.za/SR_Downloads/OTC%20&%20sanitary%20products.pdf) (accessed 10 May 2022).

<sup>155</sup> Ethos ‘Sustainable report 2021’ <https://ethos.co.za/wp-content/uploads/2021/10/ETHOS-Sustainability-Report-2021-1.pdf> (accessed 31 August 2022).

average of 500 000 girls to stay in school for a full year and in the process, increased gender equality in South Africa. These initiatives may complement the government initiative through assisting government in the roll-out of the project and supply management as they already have the execution experiences, ensuring community participation through educating community members and schools on period poverty so that they voluntarily support the cause and assisting with identifying the disadvantaged schools.

Kenya and Zambia have seen a difference in their school attendance upon introducing policies in place and as such it is important to understand how they have committed to ending period poverty in schools. In South Africa, it is still in the implementation phase and as such, most of the information is what's within the document.<sup>156</sup> It is still early days to assess its progress and evaluate whether it has improved school attendance.

#### 4.3. Kenya and Zambia: Lessons for South Africa?

In 2019, Kenya had a population of approximately 44 million and 42% lived below the poverty line, 70% of whom were in rural areas.<sup>157</sup> In the subsequent year, Aljazeera reported that “one million girls miss school each month because they cannot afford sanitary pads” in Kenya.<sup>158</sup> It is not surprising, as most families are more anxious to put food on the table than sanitary towels become a luxury. A study conducted by FAWE found that girls' access to menstrual products depended on families' socio-economic status.<sup>159</sup> Citizen Kenya discovered that girls in Marigat, Baringo could not afford sanitary pads and had to miss school and use alternatives such as soil and chicken feathers.<sup>160</sup> This is despite the fact that there is a national sanitary towel program, aimed at distributing sanitary products to disadvantaged pupils. However,

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<sup>156</sup> K Ramafalo 'The social exclusion of homeless menstruators within the sanitary dignity framework and its implementation' Unpublished Master thesis, University of Cape Town, 2020.

<sup>157</sup> J Birech 'Innovative Ways of Dealing with Menstrual Health Among the Marginalized Communities in Kenya' (2019) 6 *Advances in Social Sciences Research Journal* 2.

<sup>158</sup> Aljazeera 'I wish I was a boy': The Kenyan girls fighting period poverty' 24 February 2020 <https://www.aljazeera.com/features/2020/2/24/i-wish-i-was-a-boy-the-kenyan-girls-fighting-period-poverty> (accessed 10 May 2022).

<sup>159</sup> Birech (n 157) 267.

<sup>160</sup> Birech (n 157) 267.

not all schools have benefited, such as the Damascus elementary school in Korogocho and the girls in Marigat, Baringo.

Kenya is party to various international agreements and conventions that guarantee the protection of human rights such as the right to education.<sup>161</sup> These include the CEDAW and CRC as well as the Maputo Protocol. Nationally, the Basic Education (Amendment) Act No.17 of 2017 emphasizes the importance of ensuring that schoolgirls have access to menstrual products and that they can dispose them without any issues.<sup>162</sup> It further states that the Kenyan government will “provide free sufficient and quality sanitary towels to every girl child registered and enrolled in a public basic education institution who has reached puberty and provide a safe and environmentally sound mechanism for disposal of the sanitary towels”<sup>163</sup> This is in line with its 2010 Constitution which guarantees inclusiveness, human dignity and non-discrimination against any individual or group.<sup>164</sup> However, Kenya’s fight against period poverty began in 2004 when it became the first country, globally, to remove the tax on sanitary products and tampons.<sup>165</sup>

In 2011, Kenya eliminated the import tax on sanitary pads and allocated US\$ 3 million to deliver pads to disadvantaged communities. It was only recently, in the year 2018 that the Kenyan government committed itself to distributing sanitary products in underprivileged schools, free of charge.<sup>166</sup> They managed to submit 140 million pads over a period of four months which resulted in an increase in school attendance.<sup>167</sup> Moreover, it has introduced the Kenya Menstrual Hygiene Management policy with the rationale to improve women and girls’ access to MHM, contribute towards the realization of their full potential for the development of the country and to guarantee them access to dignity and education.<sup>168</sup> Nonetheless, although legislatively Kenya is committed to ending period poverty, like South Africa the problem is the implementation process. How exactly are schools selected to benefit from this

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<sup>161</sup> Aljazeera (n 158).

<sup>162</sup> The Basic Education (Amendment) Act No. 17 of 2017 of Kenya.

<sup>163</sup> The Basic Education (Amendment) Act (n 162) 337.

<sup>164</sup> Kenya Constitution, 2010.

<sup>165</sup> Borgen magazine ‘Addressing Period Poverty in Kenya Keeps Girls in School’ 2 August 2021 <https://www.borgenmagazine.com/period-poverty-in-kenya/> (accessed 10 May 2022).

<sup>166</sup> Kenyan Ministry of Education (n 18).

<sup>167</sup> Kenyan Ministry of Education (n 18).

<sup>168</sup> UNESCO ‘Menstrual hygiene management policy: 2019-2030’ [Menstrual hygiene management policy: 2019-2030 | Health and Education Resource Centre \(unesco.org\)](https://www.unesco.org/en/health-and-education/resources/menstrual-hygiene-management-policy-2019-2030) (accessed 10 May 2022).

program? Evidently, Kenya has shown that the distribution of sanitary pads has a positive impact on school attendance. However, the South African government should learn from Kenya that it is ultimately the implementation process that impacts on the overall success of the programme. There must be processes in place to guide the implementation process and role players to be held accountable.

Zambia, the second largest producer of copper in Africa and land-locked middle-income country, has witnessed an average annual growth of 7.4% between 2004 and 2014.<sup>169</sup> In 2021, Zambia's economy grew by 4.3%.<sup>170</sup> Nonetheless, poverty is severe. Approximately 77% of its population lives below the national poverty line with 58% residing in rural areas.<sup>171</sup> Moreover, it has a Gini coefficient of 0.56 which means the income inequality amongst its population is extremely high. Thus, it is unsurprising that Zambian girls and women are faced with menstrual related challenges with affordability being the biggest barrier.<sup>172</sup> Girls chose to use cloths because sanitary napkins were considered costly, ranging from Zambian kwacha 8 to 10 (R 8.30-R10.38 if 1 kwacha = R 1.04). In addition, sanitary materials were not always accessible. One study found that girls used rags because they could not access absorbent menstrual materials such as cotton wool from stores or fields. A study found that girls were using cloths as they could not access absorbent menstrual materials such as cotton wool from the shops or fields.<sup>173</sup> It also found that there was a lack of support from the teaching staff as far as menstruation is concerned and some girls did not have underwear to support the wearing of sanitary pads.

The infrastructure in schools also makes it difficult for girls to manage their menses. Through direct observation, a study found that the toilets lacked water, soap, and privacy which is necessary for MHM.<sup>174</sup> In return, this affected school attendance and

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<sup>169</sup> World Bank Group. (2018). FY19-FY23 Country Partnership Framework for the Republic of Zambia. World Bank Group. <http://documents.worldbank.org/curated/en/805841545925652368/pdf/zambia-cpf12212018-636811129246125968.p> (accessed 10 May 2022).

<sup>170</sup> ZambiaInvest 'Zambia GDP to Grow 3.1% and 3.6% in 2022 and 2023, IMF Projects' 20 June 2022 <https://www.zambiainvest.com/economy/world-economic-outlook-report-imf-2022/> (accessed 10 May 2022).

<sup>171</sup> World Bank Group (n 169).

<sup>172</sup> UNICEF. (2017). Advancing Girls' Education through WASH Programs in Schools A Formative Study on Menstrual Hygiene Management in Mumbwa and Rufunsa Districts, Zambia. UNICEF. <https://www.unicef.org/zambia/media/826/file/Zambia-menstrualhygiene-management-schools-report.pdf> (accessed 10 May 2022).

<sup>173</sup> J Chinyama *et al.* 'Menstrual hygiene management in rural schools of Zambia: A descriptive study of knowledge, experiences and challenges faced by schoolgirls' (2019) 19 1 *BMC Public Health* 1 <https://doi.org/10.1186/s12889-018-6360-2>.

<sup>174</sup> Chinyama (n 173) 142.

dropout rates amongst girls, while some managed menstruation in unsanitary ways in rural areas. This included the use of the ‘traditional pad’ which involves the use of cow dung as absorbent material, while others sat in sand piles during their menstruation.<sup>175</sup> In 2010, the Educational Statistical Bulletin reported that in grades 1-9, the dropout rate of girls in schools was 2.71% in comparison to 1.88% for boys and this was attributed to menstrual related challenges.<sup>176</sup>

In 2012, the Ministry of Education established a technical team composed of a variety of cooperative partners, including NGOs, to mobilize resources to address the challenges of the MHM.<sup>177</sup> This led to the launch of national MHM guidelines in Zambian schools, aimed at helping schools cope with menstruation to improve school performance and reduce drop-out rates among girls. In 2016, the Education Statistical Bulletin reported an improvement in schools by ensuring that they provide education on menstruation, provide sanitary towels for disadvantaged girls and install sanitary facilities. However, despite the announcement of the budget allocation in 2017 of US\$ 178 000, not all schools have benefited and no plan of action on how the allocation of sanitary pads is progressing. For South Africa, this would mean bringing MHM into the national curriculum so that the rules are taught at school level. This would include boys and would reduce the stigma around menstruation. It is understandable that the government might be encountering implementation challenges, however, organizations like Qrate ZA can assist as it is already involved in such projects. Moreover, introducing the menstrual resources developed by Qrate ZA in schools would mean that parents become important role players in ensuring that the right information is disseminated to children. For example, at St. Mary’ DSG, a girl school in Pretoria, ensures that girls are taught about menstruation in grade 4.

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<sup>175</sup> End Water Poverty ‘MHM and Period Poverty: The Price of Being a Woman in Zambia’ 2 April 2019 <https://www.endwaterpoverty.org/blog/period-poverty-zambia> (accessed 10 May 2022).

<sup>176</sup> Jere (n 22) 144.

<sup>177</sup> Jere (n 22)144.

#### 4.4. Conclusion

South Africa has realised the importance of addressing period poverty to ensure access to education for schoolgirls and raising awareness on the importance of ensuring adequate MHM in schools so that girls can participate in school without any menstruation related challenges. However, while South Africa has made legislative and financial commitments, the implementation process is not moving forward as it should. There are delays in the performance of duties and the accountability of stakeholders including the provinces. The same situation prevails in Zambia and Kenya and as such, countries need to understand that redressing and ending period poverty takes more than just legislation but rather it is a collective effort. As we have seen, Kenya and Zambia have partnered with a variety of organizations to help them distribute towels and ensure that schools have adequate MMH. South Africa is encouraged to establish partnerships with organizations such as Project Dignity that already distribute towels and provide menstrual education. In addition, even retail store initiatives like Dischem can play an important role because they already have the database of disadvantaged schools they have supported.



## Chapter Five: Conclusion and Recommendations

### 5.1. Conclusion

Access to menstrual products and adequate MHM are human rights that ultimately affect one's right to education and dignity. As such, it is extremely important that schoolgirls have access not just to menstrual related products but that their school environment is conducive for them to manage their menstruation without affecting their participation or school performance. Through literature, the international treaties and/or guidelines have laid the foundation to guide the states in realising the dignity of its citizens. Nevertheless, the vagueness of the international treaties has resulted in countries interpreting the laws in their own terms for their own benefit and not that of its citizens. While the CRC and CEDAW do not specifically mention menstruation in the context of the right to education, they are broad enough to address MHM and menstruation separately under different sections of the treaties. These are the two most important treaties that should protect the rights of children and women and yet, it does not provide guidelines in terms of effective policies to redress MHM and the right to education. According to a literature review based on document analysis, international human rights treaties do not mention menstruation at all.

As a commitment to ensure that schoolgirls' right to education and right to dignity is not impacted by a lack of menstrual-related products or adequate MHM, South Africa has introduced the sanitary dignity programme in order to fulfil its obligations when it comes to period poverty and MHM in schools. This comes after the tax was removed from the sanitary products. Further, the provinces have been given the responsibility of ensuring they execute within their jurisdiction, which should make logistics easier. Thus, the government has provided resources. It is the implementation that needs improvement. However, due to the challenges of implementing the programme, the following recommendations should be considered.

## 5.2. Recommendations

The DWYPD should be accountable in monitoring the funds allocated to each province and ensuring that these funds are used for the intended purpose. It should go beyond and hold schools accountable by ensuring that they are audited, accordingly. Moreover, considering that the DWYPD is experiencing challenges in monitoring the provinces that are failing to utilize the funds due to internal challenges, it would make sense to make utilise NGOs to carry out this project, such as the Gift of the Givers Foundation, Project Dignity and the Menstruation Foundation. The above-mentioned NGOs are committed to ending period poverty and paving the way for access to education. NGOs will assist the government to ensure that the resources available are used effectively and ensure accountability. For the provinces that are experiencing challenges in procuring sanitary pads, they can explore the alternative solution such as the menstrual cup. The advantage of the menstrual cup is that it is reusable, usable for to 12 hours before one needs to empty it and usable for up to 10 years. However, these silicone or latex rubber cups need to be emptied and rinsed after every change meaning that the government would need to ensure access to adequate water, proper sanitation, and physical facilities within the schools for easier management. The silicone or latex rubber cups are sustainable since they have a 10-year duration. Lastly, like Kenya, the government should consider introducing a national guideline on menstruation for schools. To enable teachers to be confident when addressing menstruation. The guidelines should oblige schools to embark on advocacy to raise awareness among students on MHC both genders are informed as well as removing the stigma and taboos attached to menstruation.

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