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Our Reference: Draft National Policy on the Prevention and Management of Learner Pregnancy
Date: 3 June 2018

The Director-General
Private Bag X895
PRETORIA
0001

For Attention: Ms T Shikwambane / Dr Kumalo

Deputy Director: Health Promotion
Department of Basic Education

By email: pregnancypolicy@dbe.gov.za

Dear Ms Shikwambane / Dr Kumalo

RE: SUBMISSIONS ON THE DEPARTMENT OF BASIC EDUCATION DRAFT NATIONAL POLICY ON THE PREVENTION AND MANAGEMENT OF LEARNER PREGNANCY IN SCHOOLS

- 1 We refer to the abovementioned matter, specifically to the notice published in the Government Gazette of 23 February 2018, calling for public comments in respect of the Department of Basic Education Draft National Policy on the Prevention and Management of Learner Pregnancy in Schools ("the draft Policy").
- 2 Cause for Justice ("CFJ/we") hereby thank the Department of Basic Education ("the Department") for the opportunity to present these written submissions and to participate in the law-making process.
- 3 We focus our submissions on matters affecting rights, values and interests protected and/or promoted in the Bill of Rights, especially the best interest of children, protection of the family unit and parental rights, and related matters affecting the public interest in the context of the prevention and management of learner pregnancy.

MANAGEMENT COMMITTEE: RYAN SMIT, GENERAL MANAGER, +27 (0)83 235 1511 | WYNAND VILJOEN, CHAIRPERSON, +27 (0)82 891 7682 | CRAIG SNYDERS, EX-OFFICIO EXECUTIVE MEMBER | DIETER VON FINTEL, EX-OFFICIO EXECUTIVE MEMBER

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A BACKGROUND TO CAUSE FOR JUSTICE

4 CFJ is a non-profit human rights and public interest organisation founded to advance constitutional justice in South Africa, primarily through participating in the legislative process and governmental decision-making structures, litigation and through creating public awareness. Four of CFJ's core values give it a particular interest in policies and laws applicable to the prevention and management of learner pregnancy, namely (1) the responsible exercise of freedom, (2) protection of the family unit, (3) protection and promotion of human dignity/worth, and (4) protection of the vulnerable in society (social justice).

B STRUCTURE OF SUBMISSIONS

5 As requested by the Department, our submissions are structured according to the headings of the draft Policy, as follows:

6 C Introduction

D1 Preamble and Purpose

D2 Policy Alignment

D3 Policy Goals

D4 Scope of Application

D5 Guiding Principles

D6 Policy Provisions

D6.1 *Enabling Environment*

D6.2 *Prevention*

D6.3 *Care, Counselling, and Support*

D6.4 *Impact Mitigation*

D6.5 *Policy Management and Implementation*

D7 Index of Key Policy Issues

E Conclusion

Annexure: List of Questions and Requests for Meaningful Engagement with Draft Policy

C INTRODUCTION

7 CFJ commends the Department for proactively seeking to ensure that all learners, especially girls, receive a quality basic education. Equality, human dignity and social justice demands the elimination of unjust socio-economic imbalances between men and women (and especially rural women and women belonging to groups who have been disadvantaged by apartheid laws and policies). Receiving a quality education is essential to equipping and empowering girls to

meaningfully engage and contribute socio-economically and to pursue their greatest potential and fulfilment (and to actively rectify the injustices of the past).

- 8 The prevention and management of learner pregnancies, in order to ensure that girls who fall pregnant continue to receive a quality education with as little disruption as reasonably possible, is an important societal goal which requires an empathetic/relational and evidence-based response, both by government and civil society. Girls should be provided with a caring and compassionate educational environment which enables them to complete their basic education while pregnant and/or raising a child.
- 9 It is imperative that any governmental learner pregnancy policy recognises that parental rights take precedence as they are the primary educators and care givers of their children. It is in the best interest of children that parents' constitutional rights to raise their children in accordance with their family values, and their cultural and religious beliefs and customs, are protected and promoted, as this enables children to meaningfully engage in and enjoy their particular community's values, beliefs, practices and heritage.
- 10 It is accepted that in instances where there is consensus or clear precedent that particular family values or cultural beliefs and customs are not in the best interest of the child, there will be justification for disrupting and intervening in the *status quo* – although, such measures will always be exceptional in nature.
- 11 CFJ urges the Department to promote and protect the values of the South African Constitution and its diverse social contexts, while at the same time assisting pregnant girls and those who are mothers to receive a quality basic education. In this regard, we caution the Department not to entertain or accept propagandist views expressed by agencies and organisations, to the extent that such views have not been adopted by international decision-making authorities (of e.g. the UN and AU). Views that are not based on solid evidence supported by unbiased scientific research, should similarly not be entertained.
- 12 ***For the sake of public interest and governmental transparency and accountability, we request the Department to disclose who the drafter(s) of the draft Policy is/are and who the main influencers were in the Department's consultations for the purposes of the policy drafting process.***
- 13 CFJ specifically calls the Department's attention to the fact that there are no binding legal mandates, either in terms of the Constitution or international law, that obligate the Department to

implement Comprehensive Sexuality Education (“CSE”) in South Africa and request the Department to be guided accordingly.¹

Historic context – Relevance and implications

- 14 South African history is marred by the destructive legacies of colonialism and apartheid. The detrimental effects and consequences of past human rights violations are still seen and felt today and are even perpetuated and sustained through harmful colonialist and apartheid institutions and structures that are yet to be dismantled. Driven by a false sense of superiority and greed for material wealth, Africa was seen and exploited as a resource for Western profits.
- 15 Some of the criticisms against CSE is that it promotes sexual promiscuity and experimentation by focusing on the pleasures of sex while underemphasising the associated risks, consequences and responsibilities of engaging in sex.² It is noteworthy that the UN General Assembly rejected the controversial definition of CSE used in the UNESCO International Technical Guidance on Sexuality Education (the Guidance)³ (specifically the broad notion of “sexuality” which is understood to refer to social norms that emphasise sexual autonomy) in favour of a narrower health-centred approach.⁴ It is concerning that the International Planned Parenthood Federation (IPPF) publication “Healthy, Happy and Hot”,⁵ a guide to sexual rights for young persons living with HIV, seems to discourage HIV positive persons from sharing their HIV status with sexual partners.
- 16 Early sexual debut and promiscuity is obviously directly linked to an increased risk of contracting STD’s and STI’s and becoming pregnant. An increased availability in contraception has been linked to a higher prevalence of unintended (and unwanted) pregnancies and an increased demand for abortion, which is euphemistically referred to as sexual and reproductive health services.⁶ The availability of legal abortions services has been linked to an increase in STD’s.⁷ Perhaps not coincidentally, these are the very services provided by IPPF. It is concerning that

¹ Family Watch International Policy Brief entitled, "Comprehensive Sexuality Education: Sexual rights or Sexual health" January 2018. (“FWI Policy Brief”)

² <https://www.comprehensivesexualityeducation.org/what-is-cse/>

³ <http://unesdoc.unesco.org/images/0026/002607/260770e.pdf>

⁴ https://c-fam.org/friday_fax/un-agency-defies-general-assembly-promotes-comprehensive-sexuality-education-part-1/

⁵ https://www.ippf.org/sites/default/files/healthy_happy_hot.pdf

⁶ <http://www.physiciansforlife.org/studies-birth-control-contraception-do-not-cut-abortion-numbers/>

⁷ <https://www.law.upenn.edu/fac/jklick/32JLS407.pdf>

IPPF has been involved in controversies involving the harvesting of human tissues and organs from aborted fetuses and even still living aborted babies.⁸

- 17 We urge the Department to scrutinise any proposed CSE curricula for possible hidden and profit-driven motives of promoters of CSE. The people of Africa should not be manipulated by way of western profits-driven propaganda, endorsed and sponsored as “education”, into becoming a market for the global abortion industry’s services and neither should the tissue and organs of their unborn children be harvested and sold as products for profits.

D SUBMISSIONS

D1 PREAMBLE AND PURPOSE

- 18 CFJ notes that the draft policy refers to officials, principals, school management teams and educators as *in loco parentis* in their response to learner pregnancies. While we agree that the Department and school management and staff have an important role to play and contribution to make in respect of the management of learner pregnancy, we emphasise that the primary responsibility and accompanying rights to manage a learner pregnancy is borne by the parents of the pregnant girl. Any learner pregnancy policy should therefore promote and protect parental rights.

- 19 The rights of parents to guide the education/upbringing of their children is explicitly recognised by Article 26.3 of the Universal Declaration of Human Rights.⁹ Article 5 of the UN Convention on the Rights of the Child (the Convention),¹⁰ explicitly requires State parties to respect the rights of parents to provide appropriate direction and guidance to their child in the exercise of their child’s rights. Article 14 of the Convention explicitly requires State parties to respect the rights of parents to provide appropriate direction and guidance to their child with regard to freedom of thought, conscience and religion (including the freedom to manifest religion and belief).

- 20 Article 18.4 of the UN International Covenant on Civil and Political Rights (the Covenant),¹¹ recognises that parents have the primary responsibility for the upbringing and development of their child and that the best interests of a child will be parents’ basic concern. Likewise, Article 9 of the African Charter on the Rights and Welfare of the Child (Charter),¹² recognises the duty (and therefore right) of parent to provide guidance and direction to their children in respect of thought, conscience, religion and education.

⁸ <https://www.washingtontimes.com/news/2015/aug/19/planned-parenthood-kept-aborted-babies-alive-to-ha/>; <http://www.europeandignitywatch.org/planned-parenthood-selling-aborted-baby-parts/>

⁹ http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

¹⁰ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

¹¹ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹² http://www.achpr.org/files/instruments/child/achpr_instr_charterchild_eng.pdf

- 21 CFJ is generally concerned by the draft policy's objective to ensure accessible information on choice of termination of pregnancy (CToP) to learners. Learners should never regard CToP as a relatively easy way to avoid and undo the consequences of engaging in sex. Learners should rather be taught to understand the risks and responsibilities involved in choosing to engage in sex. Being pregnant and giving birth while being a learner in the process of completing basic education is admittedly inconvenient and is accompanied by difficulties. Yet, choosing to end a developing human life is a grave decision with far reaching consequences (especially detrimental long term psychological consequences)¹³ that outweigh the inconvenience and difficulty of the pregnancy and giving birth.
- 22 The value of human life and the accompanying joy and privilege of motherhood/parenthood can never be secondary or subjugated to the inconvenience and difficulties of completing basic education during pregnancy or with a child (after birth).
- 23 To put our concern into sharper focus therefore: The context in which information about CToP will be provided is all important, as it will play a decisive role in determining the societal values we foster in the next generation. In this regard, the spirit, purport and objects of the CToP Act, as informed by the Constitution, is instructive. A conspectus of the CToP Act reveals that the state has an interest in the protection of pre-natal (unborn) life from very early in a pregnancy and that a pregnancy may only be terminated without medical (or other) justification up to 12 weeks. This is a clear indication of the acknowledgement of the value of unborn human life in South African law and that pregnant women's rights in respect of bodily integrity are justifiably limited by the value of human life and the state's interest therein.
- 24 Accordingly, the provision of information about CToP should be clearly contextualised as an exception to the protection of the continued development of unborn human life.
- 25 In addition, the draft policy does not provide the curriculum content or the learning objectives of the CSE to which it refers. ***We request the Department to provide us with the exact curriculum content or the learning objectives of the CSE to enable us to meaningfully engage therewith and comment thereon.*** The two sentences on CSE is wholly inadequate to meaningfully engage.
- 26 The draft policy contains an unsubstantiated assumption that CSE is crucial to optimal sexual and reproductive health. ***Please provide us and the public with evidence-based substantiation of this disputed assumption/claim, to enable us to meaningfully engage with the draft policy.***

¹³ <http://afterabortion.org/2011/abortion-risks-a-list-of-major-psychological-complications-related-to-abortion/>

27 According to the most recently research, released on 31 May 2018, and attached hereto:¹⁴

Summary. It is far more likely to see evidence of failure than success in international school-based CSE programs. There is very little evidence of real effectiveness (sustained effects for the intended population) on any sexual health outcome (pregnancy, STDs, condom use, etc.), and the evidence of success at CSE’s purported dual benefit of increasing both abstinence (i.e., delayed sexual initiation) and condom use in adolescent populations is virtually non-existent. This overall pattern of findings is similar to the one found for CSE in U.S. schools.¹⁰ The studies cited by UNESCO – both in U.S. and non-U.S. settings – do not support its claim that “the evidence base for the effectiveness of school-based [CSE] continues to grow and strengthen” nor does the research support UNESCO’s assertion that CSE “does not increase sexual activity, sexual risk-taking behaviour or STI/HIV infection rates.”¹¹ The UNESCO database demonstrates that CSE in schools has not been an effective public health strategy and in non-U.S. settings it may be doing more harm than good.

28 The researchers recommend that, ***“Policymakers should examine the discrepancies presented here between the research findings and UNESCO’s claims of CSE success, and rethink the global dissemination of CSE in schools.”***

29 The most recent research therefore suggests that CSE is not necessary for optimal sexual and reproductive health and is not an effective solution and method for the prevention and management of learner pregnancy.

30 We note with concern the stance taken by the Department in the DBE Policy on HIV, STI’s TB’s¹⁵ towards termination of pregnancy as an option to prevent an “unintended” pregnancy.

31 We do not support the provision of health services to learners by the Department. Schools are not health care facilities. Any public health care services, to the extent that civil society and/or private health care service providers are unable to supply in the demand, should be provided by the Department of Health.

32 We do not support termination of pregnancy as a learner pregnancy management option. Abortion does not manage a pregnancy, but rather terminates a pregnancy. The focus should be on teaching learners the value of human life and teaching about abortion in its proper context, i.e. termination of a human life. We reiterate that learners should never regard CToP as a relatively easy way to avoid and undo the consequences of engaging in sex. Learners should be taught to understand the realities and responsibilities involved in choosing to engage in sex – it is always accompanied by the possibility of falling pregnant - and accordingly that engaging in sex is for people who are ready and willing to take up the responsibility of becoming parents.

¹⁴ Weed, S.E and Ericksen, I.H. “**Re-Examining the Evidence for Comprehensive Sex Education in Schools - Part Two: Research Findings in Non-U.S. Settings**”, The Institute for Research and Evaluation, 2018.

¹⁵ https://www.gov.za/sites/www.gov.za/files/41024_gon777.pdf

- 33 We would support the operationalisation of the draft Policy, and consequently the Policy as a whole, **only to the extent that** it will again be done with public consultation, since its operationalisation is in itself an integral component thereof.
- 34 We support the active involvement and continuous provision of information to parents as required by the DBE Protocol on the Management and Reporting of Sexual Violence in Schools.¹⁶
- 35 With regard to learner pregnancy, Article 11.6 of the African Charter states that “State Parties to the ... Charter shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue their education on the basis of their individual ability”. The Charter nowhere mentions termination of pregnancy as a method of preventing or managing learner pregnancy, any accompanying rights thereto or duties in respect thereof.
- 36 While the Eastern and Southern Africa Ministerial Commitment is a multi-lateral ministerial commitment, it is not a binding international legal instrument. According to Dugard,¹⁷ standards generated by declarations adopted by diplomatic conferences or resolutions of international organisations, that are intended to serve as guidelines to States in their conduct, does not have the status of “law”.
- 37 While we support learners’ right to confidentiality regarding their health status, since parents bear a constitutional obligation to care for their children and act in their best interest, the health status of learners who are children should be disclosed to their parents in order for parents to effectively fulfil their parental and constitutional obligations towards their children.

D2 POLICY ALIGNMENT

- 38 No comment.

D3 POLICY GOALS

- 39 CFJ supports the Department’s goal of reducing the incidence of learner pregnancy. However, without substantiation by the Department of its policy goal, we are unable to support the Department’s *modus operandi* and we are therefore unable to engage meaningfully on whether the Department will be able to reach its goal through the provision of CSE and access to sexual and reproductive health services to learners.¹⁸

¹⁶ [http://www.kzneducation.gov.za/Portals/0/snes/NationalDoESH%20Guidelines\[1\].pdf](http://www.kzneducation.gov.za/Portals/0/snes/NationalDoESH%20Guidelines[1].pdf)

¹⁷ J Dugard “International Law: A South African Perspective” 2ND Edition Juta 2000, p 36.

¹⁸ We refer in this regard to paragraphs 27 to 29 above.

40 The draft Policy refers to an “accompanying Implementation Plan” in which the means to achieve the learner pregnancy prevention and management goals are detailed. However, we are unable to consider and comment on same, as it is not attached to the draft Policy. ***We request the Department to provide us with a copy of the Implementation Plan to enable us to meaningfully engage therewith and comment thereon.***

D4 SCOPE OF APPLICATION

41 No comment.

D5 GUIDING PRINCIPLES

42 The Department states that the principles contained in the draft Policy are informed by “a number of local, regional and international obligations, commitments and targets”. ***CFJ requests the Department to identify the specific agreements, conventions, protocols and/or other documents (including the specific articles, clauses, paragraphs and/or provisions) from which these principles and local, regional and international obligations, commitments and targets derive and/or are based on.***

43 With regard to the revision from time to time of the draft Policy, CFJ emphasises the importance and necessity of conducting a proper public consultation process at each such instance of revision.

D5.1 Access to Education

44 No comment.

D5.2 Gender Equality

45 No comment.

D5.3 Access to Comprehensive Pregnancy Prevention

46 ***Why does the draft policy propose a limit of 12 years?***

47 ***What is meant by the phrase, “... or after their pregnancy”?***

D5.4 Access to Comprehensive Sexuality Education

48 There is no constitutional right or right in terms of binding international law obligations to CSE. Neither the Constitution nor any international legal instrument binding on South Africa provides

for the right to CSE. There are no UN documents or treaties that mention or provide a right to CSE and CSE remains one of the most controversial terms at the UN.¹⁹ For example, the controversial definition of CSE used in the UNESCO International Technical Guidance on Sexuality Education (the Guidance)²⁰ was rejected by the UN General Assembly (specifically the broad notion of “sexuality” which is understood to refer to social norms that emphasise sexual autonomy) in favour of a narrower health-centred approach.²¹

49 The provision of CSE will only be constitutionally lawful to the extent that:

- Parents agree to the content of the curriculum that will be taught to their children; and
- Parents who do not agree with the content of a particular CSE curriculum have the right to compile and present their own sex education curriculum or choose to withhold their children from attending CSE classes.

Concerns regarding CSE

50 Family Watch International (FWI)²² describes IPPF as the architect behind CSE Guidelines.²³ FWI further points out that IPPF is a select NGO partner in the Human Reproduction Program (HRP), along with UNDP, UNFPA, UNICEF, World Bank, and UNAIDS and therefore has increased influence on the development of CSE Guidelines within the UN.²⁴

51 Some of the criticisms levelled against current CSE curricula is that it promotes sexual promiscuity and experimentation by emphasising the pleasures associated with sex while underemphasising the associated risks, consequences and responsibilities of engaging in sex.²⁵ It is noteworthy that the UN General Assembly rejected the controversial definition of CSE used in the Guidance (specifically the broad notion of “sexuality” which is understood to refer to social norms that emphasise sexual autonomy) in favour of a narrower health-centred approach.²⁶ It is concerning that the IPPF publication *Healthy, Happy and Hot*,²⁷ a guide to sexual rights for young

¹⁹ FWI Policy Brief.

²⁰ <http://unesdoc.unesco.org/images/0026/002607/260770e.pdf>

²¹ https://c-fam.org/friday_fax/un-agency-defies-general-assembly-promotes-comprehensive-sexuality-education-part-1/

²² FWI is a non-profit organization with Special Consultative Status with the Economic and Social Council of the United Nations.

²³ Policy documents such as the UNESCO International Technical Guidance on Sexuality Education. (<http://unesdoc.unesco.org/images/0026/002607/260770e.pdf>). FWI Policy Brief.

²⁴ FWI Policy Brief.

²⁵ <https://www.comprehensivesexualityeducation.org/what-is-cse/>

²⁶ https://c-fam.org/friday_fax/un-agency-defies-general-assembly-promotes-comprehensive-sexuality-education-part-1/

²⁷ https://www.ippf.org/sites/default/files/healthy_happy_hot.pdf

persons living with HIV, seems to discourage HIV positive persons from sharing their HIV status with sexual partners.

- 52 Early sexual debut and promiscuity is obviously directly linked to an increased risk of contracting STD's and STI's or becoming pregnant. An increased availability in contraception has been linked to a higher prevalence of unintended (and unwanted) pregnancies and an increased demand for abortion, which is euphemistically referred to as sexual and reproductive health services.²⁸ The availability of legal abortions services has been linked to an increase in STD's.²⁹ Perhaps not coincidentally, these are the very services provided by IPPF. It is concerning that IPPF has been involved in controversies involving the harvesting of human tissues and organs from aborted fetuses and even still living aborted babies.³⁰
- 53 We urge the Department to scrutinise any CSE for possible hidden and profit-driven motives of promoters of CSE.
- 54 According to FWI,³¹ CSE as currently defined and promoted by UN agencies provides "educational guidance" that distorts abstinence, promotes early sex and promiscuity, promotes sexual pleasure for children, promotes transgender ideology (by undermining traditional gender identity), promotes affirmation of diverse sexual orientation (by undermining sexual orientation), promotes masturbation, teaches children to consent to sexual behaviour, promotes abortion, manipulates values, attitudes and belief on sexuality (by undermining traditional cultural and religious identities), teaches children to question their parents' values on sexuality, makes false claims about CSE, promotes a fictitious right to CSE information, and creates customers for the abortion industry's services.
- 55 Asserting a right to CSE is a misinterpretation of UN agreements. No UN agreements or documents provides a right to CSE.³²
- 56 FWI voices concern regarding high level IPPF involvement with UN agencies and influence in the content of these agencies' reports, reports such as the UN inter-agency WHO-led Sexual Health, Human Rights and the Law³³ report which makes several false claims concerning CSE, human rights and law.³⁴ The most notable false claims include that CSE is crucial for sexual health, that

²⁸ <http://www.physiciansforlife.org/studies-birth-control-contraception-do-not-cut-abortion-numbers/>

²⁹ <https://www.law.upenn.edu/fac/jklick/32JLS407.pdf>

³⁰ <https://www.washingtontimes.com/news/2015/aug/19/planned-parenthood-kept-aborted-babies-alive-to-ha/>; <http://www.europeandignitywatch.org/planned-parenthood-selling-aborted-baby-parts/>

³¹ FWI Policy Brief.

³² Ibid.

³³ Ibid.

http://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf;jsessionid=E1E0EC5C67A8CB420012B54887D00AB6?sequence=1

³⁴ Ibid.

states are obliged to provide CSE, that sexuality education forms part of reproductive health services, that states may not censor sex education, that CSE is part of the right to education, health and information, that laws relating to obscene and pornographic material does not apply to CSE, that CSE “rights” supersedes parental rights, including the right to parental consent, and that states must advance sexual orientation and/or gender identity rights.³⁵

57 FWI also notes that CSE attempts to violate parental rights,³⁶ which is of serious concern. We emphasise that any policy or programme on sex education should explicitly recognise the rights of parents to guide the education of their children as enshrined in Article 26.3 of the Universal Declaration of Human Rights.³⁷ Any attempt to limit or disregard parents’ prior and overriding rights through CSE or any other sex education programme is an unacceptable (unjustifiable and unreasonable) human rights infringement.

D5.5 Access to Sexual and Reproductive Health Services

58 There is no constitutional right to access to services required for “*comprehensive sexual*” health. It is not contained in section 27(1)(a) of the Constitution.

59 *Why does the Department want to introduce this language into its policy?*

D5.6 Counselling, Care and Support

60 We note with concern that the Integrated School Health Policy (ISHP)³⁸ includes information on choice of termination of pregnancy in the curriculum from Grade 7 onwards. We reiterate that we do not support the teaching of termination of pregnancy as a learner pregnancy management option. We are strongly opposed to the idea that schools should play a role in facilitating abortion or presenting abortion as a means pregnancy management. If this is done, the Department and by extension schools run the risk of becoming part of the marketing machinery of the abortion industry, propagandising for international abortion providers such as Planned Parenthood.

61 CFJ supports the promotion of abstention - until such time as learners are ready to take up the privilege and responsibilities of parenthood - as the primary option of prevention of learner pregnancy. Due to the far-reaching consequences of engaging in sex, of which pregnancy is one, the Department should strongly discourage early sexual debut.

³⁵ Ibid.

³⁶ Ibid.

³⁷ <http://www.un.org/en/universal-declaration-human-rights/>

³⁸ https://www.health-e.org.za/wp-content/uploads/2013/10/Integrated_School_Health_Policy.pdf

D5.7 Stigma and Discrimination

62 No comment.

D5.8 Dignity, Privacy, Confidentiality

63 While we support the right to dignity and privacy of children, since parents bear a constitutional obligation to care for their children and act in their best interest, the pregnancy status of learners who are children should be disclosed to their parents, irrespective of age. Dealing with the realities of pregnancy is not something that pregnant learners should be forced to undertake alone, especially not without their parents' guidance, support, love and protection.

D5.9 Reasonably accommodation

64 No comment.

D5.10 Critical Partnerships

65 No comment.

D6 POLICY PROVISIONS

D6.1 Enabling Environment

D6.1.1 Policy Objective

66 No comment.

D6.1.2 Advocacy and Leadership

67 We support the public commitment to, and advocacy of, the draft Policy ***subject to the right to conscientious objection*** by officials, principles, school management teams, school governing bodies and educators to the extent to which they disagree with the policy.

D6.1.3 Policy Implementation and Review

68 No comment.

D6.1.4 Management and Coordination

69 No comment.

D6.1.5 Roles and Responsibilities

70 The implementation of the draft Policy at school level is a governance function that falls within the governing function of the school governing body. In this regard we agree with, confirm and support the submission made by FEDSAS on “The role of the SGB”.³⁹

D6.1.6 Elimination of Discrimination and Abuse

71 No comment.

D6.1.7 Partnerships and Policy Alignment

72 The draft Policy refers to social sector partners. **CFJ requests the Department to identify the social sector partners to which it refers.**

D6.2 Prevention

D6.2.1 Policy Objective

73 CFJ requests the Department to define the term “unintended pregnancy” (in the context of non-coerced sex). The term contains a logical fallacy in that people who intend to have sex, presumably can somehow be shielded completely from its consequences. There is however no way to mitigate the possibility of falling pregnant altogether. It is part and parcel of the decision to engage in sex. To hold otherwise is to deny human agency and to propagate that sex is cheap.

74 A pregnancy that is the result of non-coerced sex between fully knowledgeable individuals, therefore cannot be unintended, alternatively can only be unintended if society has decided to propagate the notion that sex is cheap and that people do not need to take responsibility for their actions (i.e. a denial of agency).

D6.2.2 Prevention of Learner Pregnancy

75 CFJ supports the promotion of abstinence and discouragement of early sexual debut as the primary/default options of prevention of learner pregnancy. It is a rather obvious conclusion, but an increase in abstinence will directly and immediately decrease instances of learner pregnancy and the transmission of STD’s, STI’s and HIV.

76 The draft Policy refers to the provision of rights-based sexual and reproductive health rights (SRHR) information to learners. However, we are unable to consider and comment on same, as

³⁹ FEDSAS *FEDSAS Comments on the DBE Draft National Policy for the Prevention and Management of Learner Pregnancy* 23 March 2018 page 3 to 4.

the draft policy does not specify the content of the SRHR information. ***We request the Department to provide us with the content of the SRHR information to enable us to meaningfully engage therewith and comment thereon.***

- 77 Rather than providing SRHR information that is “rights-based”, CFJ encourages the Department to follow a pragmatic public health approach that is values-based and outcomes-based. A values and outcomes-based policy will focus on, and educate learners about, sexual behaviours and choices that are most beneficial to a healthy and thriving lifestyle. Instead of only providing information on what behaviours and choices are legally permissible (rights), ***quality*** education speaks to which choices give the best outcomes, i.e. which choices have consequences that are in the child’s best interest.
- 78 The draft Policy refers to referral and linkage mechanisms between the Department and the Department of Health. However, we are unable to consider and comment on same, as the draft policy does not specify what these referral and linkage mechanisms are and how they will work. ***We request the Department to provide us with information on the referral and linkage mechanisms to enable us to meaningfully engage therewith and comment thereon.***
- 79 There is no constitutional right or right in terms of binding international law obligations to CSE. There is therefore no obligation on the Department to implement CSE in South African schools. Until such time as the Department has provided evidence-based substantiation for the assumption that CSE is crucial to optimal sexual and reproductive health and provided the public with the content of CSE curricula, we oppose the notion that CSE is/must be a necessary part of the Life Orientation curriculum at any age. Therefore, we do not support the introduction of CSE, neither in principle, nor as early as possible and reiterate that CSE is not necessary at any age, unless this claim can be properly substantiated.⁴⁰

D6.2.3 Information and Access

- 80 We note with concern the proposal that information and materials on SRHR and termination of pregnancy services will be made be available or accessible to all learners in the basic education sector. We oppose the notion that schools should play a role in facilitating abortion or providing CSE that the schools, educators or parents disagree with.
- 81 Furthermore, we note with concern the proposal that learners, and even primary school learners, will be given quick and easy access to condoms. Schools should not provide children with condoms. Schools are neither health care facilities, nor sex shops. There is a real risk that this will encourage learners to engage in sex. Schools should not attempt to usurp the role and authority of parents in the lives of their children.

⁴⁰ We refer in this regard again to paragraphs 27 to 29 above.

- 82 If government and the Department are serious about serving children and acting in their best interest, they will not sidestep parents and guardians, but will work with and through them for the benefit of their children. We accordingly would support –
- 82.1 the provision of training of some sort to **parents** on matters such as the sexual habits of children, the importance of teaching children about healthy sexuality and sexual choices and its consequences; and
- 82.2 providing **parents** (not children/learners) with condoms/contraceptives to provide to their children in the context of a discussion in the home about sexuality, sexual choices and consequences.

D6.2.4 Educator Development and Training

- 83 The draft Policy refers to Initial Professional Education of Teachers. However, we are unable to consider and comment on same, as the draft Policy does not include or disclose the content thereof. ***We request the Department to provide us with the content of Initial Professional Education of Teachers to enable us to meaningfully engage therewith and comment thereon.***
- 84 We support educators having a choice whether to refer a learner to health clinics or school nurses for information on pregnancy termination. We strongly support educators' right to refuse referring learners to abortion clinics or providing information on abortion on the basis of conscientious objection.

D6.2.5 Sexual and Reproductive Health Services

- 85 ***CFJ requests the Department to confirm in detail what is meant by “sexual and reproductive health services”?***
- 86 We reiterate that there is no constitutional right to access to services required for ***“comprehensive sexual”*** health. No obligation can therefore be put on schools to provide learners with information about this.
- 87 We note with concern that the draft Policy states that information on access to termination of pregnancy services and emergency contraception (abortifacients which terminate the life of a living human embryo) will be made available to learners. We strongly oppose the notion that schools should play a role in facilitating abortion or presenting abortion as a means of pregnancy management.

D6.2.6 Supportive Educational Environment

- 88 CFJ strongly supports the assertion that the Department's role is to ensure that delayed sexual debut and abstinence is the default option and that learners should be provided with the

necessary critical thinking skills and information to enable them to make this choice. As noted above, this should be done in conjunction with and through parents, supporting them in their role as primary educators and care givers.

D6.3 Care, Counselling, and Support

D6.3.1 Policy Objective

89 No comment.

D6.3.2 Care, Counselling and Support for Pregnant Learner

90 No comment.

D6.3.3 Gender

91 No comment.

D6.3.4 Procedures for Handling Incidence of Learner Pregnancy

92 The draft Policy refers to an accompanying Implementation Plan in which the means to achieve the learner pregnancy prevention and management goals are detailed. However, we are unable to consider and comment on same, as it is not attached to the draft Policy. We request the Department to provide us with a copy of the Implementation Plan to enable us to meaningfully engage therewith and comment thereon.

D6.3.5 Measures to Deal with Sexual Offences, Child Abuse and Neglect

93 The draft Policy refers to an accompanying Implementation Plan in which the means to achieve the learner pregnancy prevention and management goals are detailed. However, we are unable to consider and comment on same, as it is not attached to the draft Policy. We request the Department to provide us with a copy of the Implementation Plan to enable us to meaningfully engage therewith and comment thereon.

D6.3.6 Referral and Strategic Partnership

94 No comment.

D6.4 Impact Mitigation

95 No comment.

D6.4.1 Policy Objective

96 No comment.

D6.4.2 Retention in School

97 No comment.

D6.4.3 School Support and Flexibility

98 No comment.

D6.5 Policy Management and Implementation

D6.5.1 Policy objective

99 No comment.

D6.5.2 Management and Coordination

100 The draft Policy refers to an accompanying Implementation Plan in which the means to achieve the learner pregnancy prevention and management goals are detailed. However, we are unable to consider and comment on same, as it is not attached to the draft Policy. We request the Department to provide us with a copy of the Implementation Plan to enable us to meaningfully engage therewith and comment thereon.

D6.5.3 Structural Arrangements

101 No comment.

D6.5.4 Roles, Rights and Responsibilities

102 No comment.

D6.5.5 Strategic Partnerships

103 The draft Policy refers to partner departments and organisations. ***CFJ requests the Department to identify the partner departments and organisations and to specifically confirm whether any of the identified partner departments and/or organisations are either International Planned Parenthood Federation or any of its partner and/or affiliate organisations.***

D6.5.6 Educator Development and Training

104 No comment.

D6.5.7 Monitoring, Evaluation and Reporting

105 The draft Policy refers to strategic partners and representative partners. **CFJ requests the Department to identify the strategic and representative partners.**

D7 INDEX OF KEY POLICY ISSUES

106 No comment as no index of key policy issues is provided in the draft Policy.

E CONCLUSION

107 While education about healthy sexuality and sexual choices has an important role to play in assisting learners to make choices that are in their best interest, **the method, message (content of the education) and by whom** the education is done, are critical questions in formulating a policy response to the issue of prevention and management of learner pregnancies.

108 In our opinion, sex education is the privilege and responsibility of parents/guardians, seeing as sexuality is informed - to a greater extent than most aspects of the human identity - by family values and community/religious beliefs and customs.

109 While it is accepted that in instances where there is consensus or clear precedent that particular family values or cultural beliefs and customs are not in the best interest of the child, there will be justification for disrupting and intervening in the status quo, such measures will always be exceptional in nature.

110 As noted hereinbefore, to our knowledge there are no binding legal mandates, either in terms of the Constitution or international law, that obligate the Department to implement CSE in South Africa.

111 In these circumstances, having insight into the exact content of CSE curricula becomes all important in order to meaningfully engage with the draft policy. In addition, the Department would need to substantiate the claim/assumption that CSE is desirable, and beneficial and crucial, including providing evidence of how it (CSE) is able to address the issue at hand, i.e. why and how CSE will reduce the incidence of learner pregnancies.

112 In the absence of the aforementioned information (which to date has not been provided by the Department), it is in any event impossible for anyone to make a determination about whether to

support the draft policy or not. In fact, as noted in paragraphs 27 to 29 above, the most research indicates that ***"It is far more likely to see evidence of failure than success in international school-based CSE"*** and ***"may be doing more harm than good"***.

- 113 We specifically request the Department, in light of the numerous controversial and serious concerns surrounding CSE to not adopt a curriculum of CSE as promoted by IPPF and its affiliates as part of its learner pregnancy prevention and management strategy.
- 114 If government / the Department are serious about serving children and acting in their best interest, they will not sidestep parents and guardians, but will work with and through them for the benefit of their children. We accordingly would support, as a constructive alternative/proposal to the provision of CSE to children and providing contraceptives to children at school –
- 114.1 the provision of training ***to parents*** on matters such as the sexual habits of children, the importance of teaching children about healthy sexuality and sexual choices and its consequences; and
- 114.2 providing ***parents*** with condoms/contraceptives to provide to their children in the context of a discussion in the home about sexuality, sexual choices and consequences.
- 115 Notwithstanding the above, if the Department is able to obtain majority support from the public to continue with the development of a national strategy/policy which includes sex education, such policy should be subject to override both on provincial government and on individual school level. CFJ urges the Department to conduct a substantial public participation process with all stakeholders and interested parties to determine whether the public want a national sex education curriculum to be provided through schools and if so, to deliberate on the content of any such possible sex education curriculum.
- 116 Any national sex education policy must:
- Recognise the constitutional rights of parents as the primary educators of their children;
 - Respect and protect parents' right to be properly informed in advance of the proposed content (curriculum) of any sex education and to contribute meaningfully to such content that is proposed to be taught/provided to their children;
 - Respect and protect parents' right to decide to rather provide sex education in the home, as opposed to having their children attend sex education classes at school;
 - Allow provinces and individual schools to alter or replace the curriculum of sex education to the extent that they disagree with the national curriculum.
- 117 As noted above, we do not support the propagating of abortion to children as a means to manage "unintended" pregnancies. Conscientious objectors' rights not to take part in the provision of

information to children regarding abortion services, must also be respected and protected. Our detailed submissions in this regard is as discussed in the main body of our submissions hereinabove.

118 We trust that the above submissions are of assistance to the Department and look forward to your response thereto in due course. CFJ remains at the Department's disposal to assist in the further development of policy on the prevention and management of learner pregnancy.

119 We hereby respectfully request the Department to –

- Allow us an opportunity to augment these initial written submissions with more detailed/updated submissions at a later stage after the Department has provided the critical information and documentation requested herein in order to enable us and the public to meaningfully engage with the draft Policy; and/or
- Give us an opportunity to make oral submissions (representations) to the Department to augment these initial written submissions.

Yours faithfully

Liesl Stander (Preparer)
Legal Advisor: Law and Policy

and

Ryan Smit (Reviewer)
Director: Law and Policy

LIST OF QUESTIONS AND REQUESTS FOR MEANINGFUL ENGAGEMENT WITH DRAFT POLICY

Here below we list a series of questions and requests to the Department that are necessary for the public to meaningfully engage with the draft Policy. Numbers in brackets “()” refer to specific numbered headings of the draft Policy.

1. Who is/are the drafter(s) of the draft Policy and who were the main influencers in the Department’s consultations for the purposes of the policy drafting process?
2. Provide us with the exact curriculum content or the learning objectives of the CSE to enable us to meaningfully engage therewith and comment thereon. **(1)**
3. Provide us and the public with the evidence-based substantiation of the assumption/claim that CSE is necessary for optimal sexual and reproductive health. **(1)**
4. Provide us with a copy of the Implementation Plan to enable us to meaningfully engage therewith and comment thereon. **(3)**
5. Identify the specific agreements, conventions, protocols, and/or other documents (including the specific articles, clauses, paragraphs and/or provisions) from which the Policy’s guiding principles and local, regional and international obligations, commitments and targets derive and/or are based on. **(5)**
6. Confirm why the Policy specifies an age limit of 12 years with regard to access to comprehensive pregnancy prevention? **(5.3)**
7. Confirm what is meant by the phrase “... after their pregnancy” under comprehensive pregnancy prevention? **(5.3)**
8. Confirm why the Department wants to introduce language to the effect that learners have a right to “comprehensive sexual health”? **(5.5)**
9. Identify the social sector partners the Department refers to under partnerships and policy alignment. **(6.1.7)**
10. Provide us with the content of the SRHR information to enable us to meaningfully engage therewith and comment thereon. **(6.2.2)**
11. Provide us with information on the referral and linkage mechanisms to enable us to meaningfully engage therewith and comment thereon. **(6.2.2)**

12. Provide is with the content of the Initial Professional Education of Teachers document to enable us to meaningfully engage therewith and comment thereon. **(6.2.4)**
13. Confirm in detail what is meant by “sexual reproductive health services”? **(6.2.5)**
14. Identify the partner departments and/or organisations and specify whether any of the identified partner departments and/or organisations are either International Planned Parenthood Federation and/or any of its partner and/or affiliate organisations. **(6.5.5)**
15. Identify the strategic and representative partners. **(6.5.7)**

We request the Department to kindly attend to our questions and eagerly await the Department's feedback.