

**UNIVERSAL PERIODIC REVIEW: EQUAL EDUCATION LAW CENTRE'S  
SUBMISSION ON THE STATE OF BASIC EDUCATION IN SOUTH  
AFRICA**

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## **INTRODUCTION**

This is a submission made by the Equal Education Law Centre (“EELC”) on the state of basic education in South Africa. This submission is not an exhaustive discussion of all the various issues impeding the realisation of the right to a basic education in South Africa. Instead, it attempts to highlight some of the most pressing concerns within our basic education system.

The EELC is a registered law clinic. Its staff of social justice lawyers specialise in education law and policy, through conducting legal research and advocacy, community lawyering and public interest litigation. The EELC’s overriding goal is to use the law to ensure the realisation of every learner’s right to equitable, safe and quality basic education regardless of the learner’s circumstances.

### **1. SAFETY IN SCHOOLS**

The Convention on the Rights of the Child, 1989, places a duty on signatories to put measures in place to ensure that the child is protected against all forms of discrimination or punishment. This is mirrored quite closely in the African Charter on the Rights and Welfare of the Child, 2000.

Despite these international obligations and the domestication thereof in national laws and policies aimed at ensuring that learners are free from abuse and violence while at school, many learners are exposed to abuse and violence in-and-around the school environment. In this section we look at some of the key safety concerns being, corporal punishment, bullying and sexual abuse and call on the South African government to ensure the urgent implementation of these existing laws in order for schools to be a place of safety for our learners.

### **2. CORPORAL PUNISHMENT**

Despite it being prohibited through national legislation, Corporal punishment continues at high rates in South African schools - nationally, approximately 50% of learners had experienced physical punishment by teachers with no difference between 2008 and 2012.<sup>1</sup> The Equal Education Law Centre (EELC), through its advice clinic, is frequently approached by many concerned parents/caregivers whose children have experienced corporal punishment at school. In a recent case referred to us in 2022, Thando\* was assaulted by the school principal due to his parent’s inability to pay the school fees. Thando was summoned to the principal’s office and physically attacked.

A lack of implementation of existing laws and policies, such as, the South African Schools Act, National School Safety Framework, the Educators Employment Act, South African Council of Educators Act, the ‘Protocol to deal with instances of corporal punishment in schools issued by the Department of Basic Education, results in the continuous use of corporal punishment in South African schools. In many cases corporal punishment incidents are left unchecked at school-level. School management often fails to take action and no recourse is taken against perpetrators. We have also seen very inconsistent sanctions being meted out where cases are dealt with and a failure to utilise rehabilitative approaches. Learners are often left scarred with no psychological, medical or other support services being offered.

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<sup>1</sup> Patrick Burton and Lezanne Leoschute “School violence in South Africa: Results of the 2012 national school violence study” Cape Town: Centre for Justice and Crime Prevention (2013).

### 3. BULLYING

The 2019/20 Annual Crime Statistics report indicates that nine murders and 19 attempted murders which were recorded by the police between April 2019 and March 2020 were as a result of bullying in schools. Further, statistics indicated that 345 assault with the intent to cause grievous bodily harm (assault GBH) and 546 common assault cases were opened as result of bullying in the country's schools. While we acknowledge the efforts of the Department of Education to combat bullying in schools, there is an urgent need for the implementation of the existing law and policy framework to combat bullying in schools.<sup>2</sup> We also note the failure of many schools to introduce anti-bullying policies. The last few years have seen an increase in not only the number of incidents, but also the severity thereof, which has had devastating effects on our learners including reports of suicide due to school bullying.

### 4. SEXUAL ASSAULT / VIOLENCE IN SCHOOLS

In the 2019/2020 Annual Crime Statistics report, more than 24,000 children were sexually assaulted in South Africa. Statistics are not readily available for schools and there is a great deal of under-reporting but it's estimated that 22.2% of school children have been victims of violence.<sup>3</sup> In April 2019, the EELC was approached by a Community Advice Office based in the Western Cape, seeking legal assistance for parents whose minor children were victims of a traumatic rape incident that took place at a primary school on 19 November 2018. In this matter the school and the relevant provincial education department did not only fail to follow the proper procedures in terms of reporting but failed to provide the learners with adequate psychological, medical and academic support services. This is but one example of a case where schools (educators and school management) who are responsible for the safety of learners while at school, fail to adequately protect them.

### 5. EARLY CHILDHOOD DEVELOPMENT ("ECD") PROVISIONING IN SOUTH AFRICA

The importance of ECD and the long-term benefits for the child have been well established. We welcome the South African government's recently promulgated policy which outlines plans to promote provisioning of ECD.<sup>4</sup>

The provisioning of ECD in South Africa is however stultified by incoherent legislation and the sector is poorly funded. The incoherence in legislation makes it difficult for many ECD programmes to register which in turn results in those programmes not receiving any funding from the government. The ECD sector in South Africa is fragile and is often not supported. Low-quality and socio-economic deprivation characterises much of the ECD sector. Parker *et al*'s out that "about 20% of programmes surveyed (in 2020) had inadequate water, 25% were overcrowded, 74% of ECD

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<sup>2</sup> Included in these policies are the National School Safety Framework, The South African Schools Act, the Employment of Educators Act, and the South African Council of Educators Act.

<sup>3</sup> Isabel Kreifels and Giselle Warton, "Addressing Violence in South African Schools Understand Schools" <https://www.saferspaces.org.za/understand/entry/school-violence-in-south-africa> (Accessed 30 March 2022).

<sup>4</sup>National Integrated Early Childhood Development Policy 2015 [https://www.gov.za/sites/default/files/gcis\\_document/201610/national-integrated-eed-policy-web-version-final-01-08-2016a.pdf](https://www.gov.za/sites/default/files/gcis_document/201610/national-integrated-eed-policy-web-version-final-01-08-2016a.pdf) (Accessed 23 March 2022).

<sup>5</sup> Rubeena Parker, "Education, inequality and innovation in the time of COVID-19", (2020) 7.

practitioners did not have any qualification in early childhood development.<sup>6</sup> More so, COVID-19 has amplified the infrastructural inadequacies in the ECD sector and inequalities across wealthier and poorer areas. In addition, ECD programmes that serve the poorest communities are often small-scale and operate out of private homes, community facilities or rented venues and consist of a few staff members who earn subsistence stipends, often without a formal employment contract or any benefits.<sup>6</sup> It is patently clear that more needs to be done to uproot these issues in the sector and provide support to them in order to ensure access to early learning education for learners.

## **6. ADMISSION PROCESSES AS A BARRIER TO ACCESSING EDUCATION**

Dominating the various areas of educational law that the clinic advises on is admission to school and school placement issues.<sup>7</sup> Year-on-year the EELC is approached by a number of concerned parents and communities requesting assistance with placement of their children in grade appropriate schools,<sup>8</sup> - in particular those in grade 1 and grade 8. What we see is that each year there is a substantial number of learners who are unable to secure school placement within the first term of the academic year. Often many of them fail to secure school placement for the academic year.

The issue of admission is multifaceted with a range of factors attributing to the admission crises in South Africa. These factors include, the year-on-year growth in learner numbers, oversubscription of schools, a lack of adequate school infrastructure, and a lack of enough schools being built. These factors can be attributed to ineffective admission administration systems, inaccessible online application systems, budgetary constraints amplified by reduced education budgets, and the lack of adequate, timeous and effective planning and oversight. Furthermore, we have observed issues with exclusionary and discriminatory admission practices which often affect overaged learners, LGBTQI learners and foreign nationals in particular.

## **7. EXCLUSIONARY AND DISCRIMINATORY ADMISSION PRACTICES**

In this section we primarily focus on over-aged learners and the rights of learners who are part of the LGBTQI+ community who are often excluded from accessing basic education through the admissions process. The EELC Last year we saw a rise in cases relating to over-aged learners<sup>9</sup> and schools denying this group of learners access to basic education on this basis. While judgements such as the *Moko*,<sup>10</sup> judgement have unpacked the right to basic education, there remains legal and policy gaps, regarding the rights to basic education of overaged learners. Currently the Amended

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<sup>6</sup> *Ibid* page 7.

<sup>7</sup> Admissions refers to the process where the parent or caregiver submits an admission application to a grade appropriate school in the manner and time prescribed by the Provincial Head of Department.

<sup>8</sup> In 2022, the EELC has been approached by more than 237 parents requesting assistance with seeking placement for their children.

<sup>9</sup> Over-aged learners refer to two groups of learners. The first group is defined in terms of the SASA as a learner who is two years or more above the age grade norm i.e a nine-year-old in grade 1. The second group is the group of learners that fall outside the definition of compulsory school age i.e above the age of 16.

<sup>10</sup> In *Moko v Acting Principal of Malusi Secondary School and Others* (CCT 297/20) [2020] ZACC 30; 2021 (4) BCLR 420 (CC) (28 December 2020), paragraph 32.

National Admission policy,<sup>11</sup> encourages the pushing out of learners from the system and is used as an escape clause by schools and the provincial education departments when it comes to the placement of over-aged learners. Frequently, we see learners who are overage being victimized, humiliated and discriminated against, and finally, dropping out of school as a result of this treatment.

The rights of learners who are part of the LGBTQI+ community are often forgotten and overlooked. We have seen how intolerances and prejudices contribute to high levels of bullying and hate based violence and speech in the schooling system. Research shows that as a result of discrimination, LGBTQI+ learners experience reduced school attendance, early school dropout, poorer academic performance and negative impacts on their mental and physical health and their right to education.

#### **8. LACK OF LEARNER SUPPORT AS A BARRIER TO ACCESSING BASIC EDUCATION.**

Lack of support and resources is one of the biggest inhibitors for all learners more so for over-aged learners, learners with learning difficulties and learners with disabilities.

Learner support requires teachers to help learners beyond the formal delivery of content, or skills development. The support required for an over-aged learner differs from the support needed for a learner experiencing barriers to learning, as the same applies to learners who are part of the LGBTQI community.

Currently, the unwillingness of teachers, schools and districts to adapt the curriculum or provide extra lessons for over-aged learners who need to catch up with the curriculum. Often, we witness teachers victimising and ostracizing learners because of their age, which affects these learners emotionally and mentally and ultimately academically. Reasonable accommodation is vital in ensuring that learners with disabilities access education, however we see schools refuse to support and accommodate these learners in the classroom. The exclusionary, discriminatory and unlawful practices outlined above often lead to further marginalization and exclusion of learners which often results in high learner drop outs. The right to education is a continuous right and where support is absent and unlawful discriminatory and exclusionary practices prevail, the right to education is not fully realised.

#### **9. NORMS AND STANDARDS FOR SCHOOL INFRASTRUCTURE**

The link between school infrastructural conditions and their effect on learning outcomes has long been established: improved educational outcomes can be linked to factors such as age and condition of school facilities.<sup>12</sup> General Comment No.13 of the UN Committee on Economic, Social and Cultural Rights has adopted the four A scheme incorporating availability, adaptability, acceptability and accessibility as a useful benchmark against which to measure government's performance towards the realisation of the right to basic education.<sup>13</sup> A Measure of the current state of school infrastructure in South Africa against "availability" and "acceptability" will reveal that in most cases,

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<sup>11</sup> In terms of the Admission Policy for Public Ordinary Schools, Notice NO. 2432 of 1998, a learner who is 16 years of age or older and who has never attended school and who is seeking admission for the first time or did not make sufficient progress with his or her peer group, must be advised to enrol at an Adult Basic Education and Training (ABET) centre.

<sup>12</sup> Carol Weinstein "Classroom design as an external condition for learning" *Educational Technology* 21, no. 8 (1981): 12–19.

<sup>13</sup> Ann Skelton Leveraging funds for school infrastructure: The South African 'mud schools' case study (2014), 1.

our schools do not meet “acceptable” standards in terms of infrastructure, and in some cases, classrooms are not even “available”. The right to basic education includes the provision of school infrastructure and places a positive obligation on the state to provide for classrooms, water, sanitation, and electricity in order to fully realise the right.

The Norms and Standards for School Infrastructure were published on 29 November 2013 and set guidelines on school infrastructure and facilities on public schools in South Africa.<sup>14</sup> They give content to the right to basic education as envisaged in section 29 of the Constitution. The Norms and Standards set deadlines for the government to provide the following to all government schools:

By 29 November 2016, all structures in schools made from mud, asbestos, metal or wood should have been replaced. All schools were to have access to water, electricity and toilets and not pit latrines. This deadline has passed and most schools have still not received the upgrades that the Norms and Standards required. The implication is that backlogs are inevitable. By 29 November 2020, all schools should have had an adequate supply of electricity, water and sanitation, as well as electronic connectivity and fences. Yet again, the government missed this deadline. By 29 November 2023, libraries and laboratories should be provided for all schools. Judging from the fact that the government has missed the first and second deadlines, and the current appalling state of some of the schools in the country, it is doubtful that providing libraries and laboratories for all schools by November 2023 will be achieved.

By 29 November 2030, all other norms requirements such as school halls, sports fields, walkways and parking lots. Given that some schools are still made of mud, metals, wood and asbestos eight years from the publication of the Norms and Standards, we are concerned that there is little hope that school halls, sport fields, walkways and parking lots will be made available in 2030, eight years from now.

## **10. FUNDING FOR SCHOOL INFRASTRUCTURE**

One of the challenges that remain in the provisioning for education is funding. Despite the extraordinary challenges that covid-19 has presented in our already struggling education system, additional money has not been allocated to basic education. Whilst in some instances austerity measures by government has impacted negatively on the right to basic education, in other instances, funds are being mismanaged, wasted or simply underspent. In June 2020, as part of the government’s austerity measures, R1.7 billion was cut from school infrastructure grants, with another R 4.4 billion of grant money used for new Covid-19 costs in the sector.<sup>15</sup> South Africa’s Auditor General, in a presentation to Parliament’s basic education committee, highlighted that R818 million was spent ‘irregularly’ or in a fraudulent manner by the DBE in the 2019 financial year alone (more than double the amount from the previous year). The impact of this is that learners continue

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<sup>14</sup> Department of Basic Education “ South African Schools Act, 1996 Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure”  
[https://www.gov.za/sites/default/files/gcis\\_document/201409/37081rg10067gon920.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/37081rg10067gon920.pdf). (Accessed 20 March 2022).

<sup>15</sup> Equal Education “Media statement: Equal Education calls on national treasury to stop cuts to the basic education budget so that all learners can return to school safely”  
<https://equaleducation.org.za/2022/02/22/media-statement-equal-education-calls-on-national-treasury-to-stop-cuts-to-the-basic-education-budget-so-that-all-learners-can-return-to-school-safely/> (Accessed 23 March 2022).

to be denied their right to a basic education.

## **CONCLUSION**

Education receives the greatest share of government spending (5% GDP) yet, the struggle for access to safe, quality schools and education continues for many learners in South Africa- particularly those who are economically and socially disadvantaged. In light of the issues highlighted in this report, and the many other issues facing South Africa's education system, we request the South African government to show progress on measures undertaken to eradicate the problems identified in order to fully realize the right to a basic education.