

NEWSLETTER 2022

In this newsletter, we provide a snapshot of some of our key areas of work during the course of 2022.

The Equal Education Law Centre (EELC) uses legal advocacy, research, and litigation to advance the struggle for equal and quality education in South Africa



THE EELC CELEBRATES A MILESTONE ON ITS 10TH ANNIVERSARY

2022 marks 10 years since the establishment of the EELC! This is a significant milestone in the life of the organisation, one which offered an opportunity for reflection. We have indeed been reflecting on our accomplishments and our approach as movement activist lawyers in the education sector. We were able to celebrate this milestone at our inaugural Arthur Chaskalson Memorial Lecture on 28th July. Arthur was our founding Chairperson and we paid tribute to his legacy with an exhibition of our work and a compelling lecture entitled 'The rule of law in times of political crisis' delivered by Adv Tembeka Ngcukaitobi SC. The lecture was both relevant and challenging and the discussion which took place amongst the panelists and audience afterwards was a lively one. The EELC's Executive Director, Tshego Phala, facilitated the panel discussion and was joined by Adv Geoff Budlender SC, a long-standing defender of human rights and who worked to dismantle some of the oppressive Apartheid laws, most notably the pass laws. Activist Nomzamo Zondo, Director of the Socio and Economic Rights Institute (SERI) completed the panel.

We want to thank all those who were able to join us, both in person and virtually, and we look forward to continuing the work of the EELC over the next 10 years.

Read Adv Tembeka Ngcukaitobi SC's speech [here](#).

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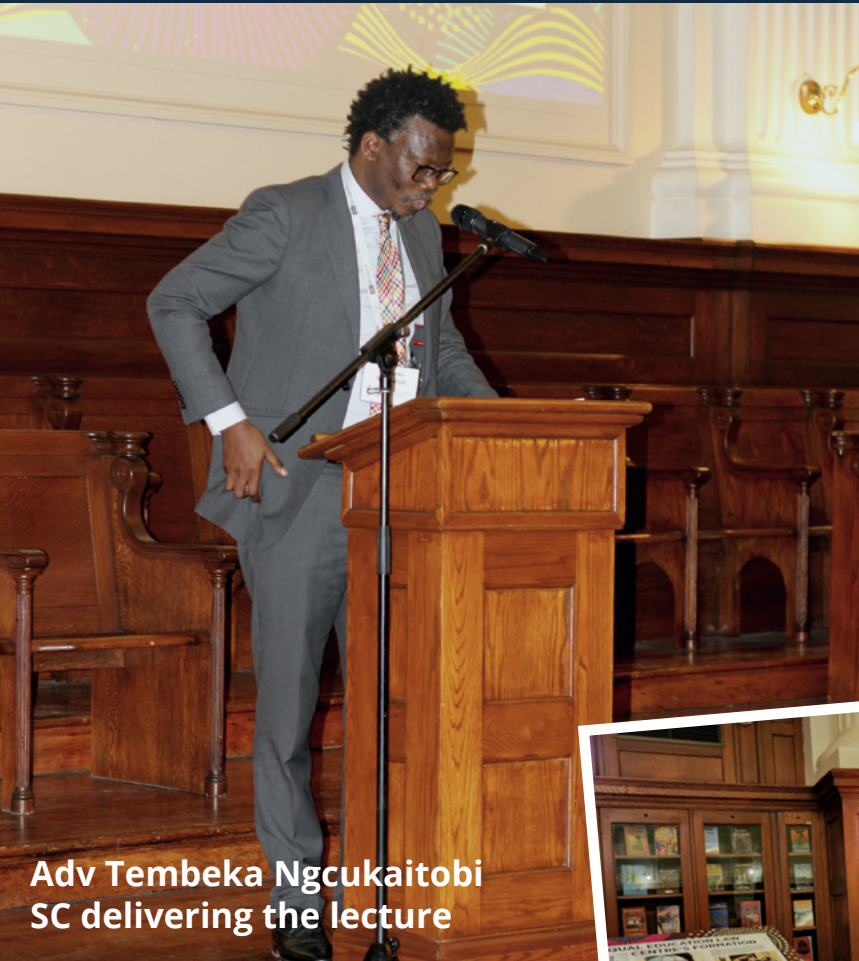
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PICTURES FROM THE 10 YEAR ANNIVERSARY EVENT THAT WAS RECENTLY HOSTED BY EELC 2022



**Adv Tembeka Ngcukaitobi
SC delivering the lecture**



**EELC's display at the
venue entrance**



**Equalizers in a bus on
the way to the event**



**EELC's display at the
venue entrance**



**The panel Adv Geoff Budlender
SC, Activist Nomzamo Zondo
and Adv Tembeka Ngcukaitobi SC**



**Adv Tembeka Ngcukaitobi SC
delivering the lecture**

#BELABILL- BASIC EDUCATION AMENDMENT BILL

In October 2017, the draft Basic Education Laws Amendment (BELA) Bill was published for public comment. At the time, the DBE received more than 5 000 written submissions from stakeholders and the general public. After concluding the consultative processes, the BELA Bill was introduced in Parliament on 24 November 2021. On 16 May 2022, the Portfolio Committee invited stakeholders and interested individuals of the general public to submit written comments on the BELA Bill. The 2022 BELA Bill provides a crucial opportunity for civil society and communities to contribute to shaping the laws which will apply to schooling in South Africa for the foreseeable future.

The purpose of the Bill is to bring laws dealing with schools, namely the South African Schools Act (SASA) and the Employment of Educators Act (EEA), in line with the significant developments in the law over the last decade related to the right to basic education. EELC and EE made submissions on what we believe are necessary changes to the Bill to ensure that schools have safe and workable policies that protect learners' basic rights. Some of the key concerns highlighted in the submission related to documentation required for admission to school, the sale of alcohol on school premises and the criminalisation of parents. Read the full EE and EELC submission [here](#)



DEFINITIONS

Act	An "Act" is another way of referring to a law. For example, the South African Schools Act is a law about South African Schools.
Bill	A "Bill" is something which is not law yet but our law makers are considering making it a law in the future. A Bill is a "draft" of a law. It makes proposals and sometimes people are allowed to make comments on it. Sometimes a Bill suggests changes to or "amends" laws that already exist.
Legislation	Legislation is the word used all over the world to describe a collection of laws. For example, another way of saying "all the laws involving children" is "all the legislation involving children."

As part of our advocacy regarding the BELA Bill, the EELC also co-authored various Op-Ed's to inform the public about the Bill to ensure public participation and engagement. In addition, and in recognising our important role to facilitate and enable learner participation, the EELC also developed a child friendly resource to help learners engage with and make submissions on BELA. This was shared with the Western Cape Children's Commissioner for use with their young activists. Two of our Attorneys were part of the presenters at a webinar that was hosted by the People's Assembly to inform stakeholders about the issues identified in BELA.



[Daily Maverick: BELA Bill- Corporal Punishment Ban in S.A Schools more than two decades later: More needs to be done](#)



[Times Live: Judgment securing undocumented pupils' rights to education has been eroded](#)



[Sunday Times: BELA Bill- Criminalisation of parents over absent children is harsh and ineffective](#)

UNPLACED LEARNER CRISIS IN THE WESTERN CAPE METRO EAST DISTRICT

At the commencement of each academic year, the EELC has seen a notable increase of parents and caregivers approaching our law clinic seeking assistance with placement of learners, particularly within the Western Cape. The reality remains that there are too few schools being built in order to accommodate learners, despite the statutory duty placed on MEC's to ensure that there are sufficient school places within their respective provinces. This situation is further fuelled by inadequate year on year planning; weak administrative systems within education districts and an online system which is not accessible for all parents and caregivers.

These factors in turn lead to thousands of learners out of school at the beginning of each year which impacts many other issues which we face in our education such as overcrowding, and learner drop out. This context sadly disproportionately effects parents and caregivers based on their socio-economic background. This is particularly seen in the Metro East District of the Western Cape which routinely has one of the highest numbers of unplaced learners each year. The Metro East district includes Khayelitsha, Kraaifontein, Strand, Macassar, Somerset West and Kuilsriver.

The EELC received more than 200 individual admission enquiries since the beginning of 2022. We identified seven parents/ caregivers who highlighted concerning practices which were taking place within the Metro East District. In particular, parents and caregivers of unplaced learners, who were approaching the district as early as February 2022 were either being sent away without receiving any assistance and or simply being told to apply for 2023, in contravention of the existing legislative framework and obligations.

In a bid to assist the seven caregivers and other similarly placed learners, we instituted strategic litigation against the WC Education HOD, Director of the Metro East District and the MEC in the Western Cape High Court. On Friday, 03 June 2022, Justice Gamble issued a favorable order directing the HOD and the District Director of the Metro East Education District, to place the seven learners in school by Friday, 10 June 2022. The Court Order further instructed the District Director and the HOD to take all reasonable and necessary steps to ensure that all learners who are placed in a similar position who have remained at home for the 2022 academic year, are also placed in school. In order to assist in identifying similarly placed learners, the court directed the HOD and District Director to



Equalizers and parent members of Equal Education with EELC Attorneys at the Western Cape High Court



Parent members of Equal Education singing outside the Western Cape High Court



Cape Argus: Parents Desperate to educate their kids

UNPLACED LEARNER CRISIS IN THE WESTERN CAPE METRO EAST DISTRICT



Equal Education Law Centre 's legal team led by Adv. Tembeka Ngcukaitobi SC with Adv. Lerato Zikalala and Adv. Letlhogonolo Mokgoroanea

circulate a notice on local radio stations and newspapers calling on all parents and caregivers of unplaced learners in the Metro East District, to approach the Department for assistance. Since the granting of the court order, the EELC is aware of over 100 unplaced learners who have come forward.

“This situation is further fuelled by inadequate year on year planning; weak administrative systems within education districts and an online system which is not accessible for all parents and caregivers.”

In terms of the court order, in collaboration with the parents and caregivers, necessary steps will have to be taken by the Department to provide all unplaced learners who are identified with academic and psychosocial support and a catch-up plan. The parents will have to be provided with Individual Support Plans (ISPs) for each learner in order to assist them due to the learning time which they have lost.

The EELC is pleased with the order of the Court and looks forward to Part B of the application which will be heard on a semi-urgent basis in due course. Whilst the urgent part of the application was aimed at obtaining immediate placement of all unplaced learners for the 2022 academic year and the provision of support, Part B seeks to address the longstanding crises of unplaced learners in the Western Cape, and in particular the Metro East Education District who simply fall between the cracks. Part B aims to direct the role-players within the WCED to fulfill their statutory obligations by adequately managing and planning for the admission and registration of learners at ordinary public schools and placing all learners. We also seek to have the failure to take a decision on the placement of the 7 learners, and other similarly placed learners, in 2022 declared unconstitutional and unlawful.

There is a need for proper plans to be put in place which make access to school possible for all learners irrespective of their socio-economic circumstances. We are hopeful that this court application will contribute towards the proper recording of unplaced learners within the WCED and inform better planning in future.



Equal Education's Newly elected secretariat/council members



Equal Education's 4th National Congress took place on 1 and 2 May 2022. The National Congress takes place every three years and is a key moment for EE as a social democratic movement.

At each National Congress, the following important processes take place:

- EE's new leadership is democratically elected- this leadership includes the General Secretary, Deputy General Secretary and the other members of EE's National Council (NC).
- Amendments to EE's constitution are debated and adopted.
- Resolutions on EE's political and campaign priorities are adopted.
- Members get to learn about and debate issues in education and politics.

The EELC provided tactical and legal support to EE at various points on their road to congress including having EELC lawyers sitting on some of EE's Congress

Committees. Our Executive Director chaired EE's Constitutions Committee.

The Committee is tasked with ensuring that EE members understand the content of EE's Constitution, to encourage and support members to think about the Constitution and guide them in deciding whether they wish to suggest amendments to the Constitution to ensure that it remains a living document.

Another fundamental responsibility of this committee was to create activities to make sure that members were empowered to engage and propose changes to the Constitution. This work was done in close collaboration with EE Facilitators and staff who were material in assisting the committee to carry out their key functions.

The EELC welcomes the newly elected National Council of EE. EE's National Council is its highest decision-making body in between Congress' and will steer and guide the movement over the next three years in their journey and activist work towards equal and quality Education in South Africa.

Qina Mfundi, Qina! Amandla!

NORMS AND STANDARDS - EQUAL EDUCATION AND EQUAL EDUCATION LAW CENTRE'S FIGHT TO KEEP DEADLINES PART OF THE SCHOOL INFRASTRUCTURE LAW.



Minimum Uniform Norms and Standards for Public School Infrastructure (the Infrastructure Norms) are regulations that define the infrastructural conditions that make a school a school. They stipulate the basic level of infrastructure that every school must meet to function properly.

The Infrastructure Norms were published in 2013, following years of advocacy led by Equal Education supported by EELC. The Infrastructure Norms provide a legally binding standard for provincial education departments to work towards, and against which to be held accountable, and enable communities to hold government officials accountable.

In July 2022, EELC and EE found themselves having to protect the gains which have been made over the years, when the DBE published draft amendments to the Infrastructure Norms. The proposed amendments were quietly published in the Government Gazette on 10 June 2022 and nowhere else. Had a journalist not raised the alarm, the DBE's attempts to amend the Infrastructure Norms would likely have quietly been affected in June 2022 with minimal public participation.

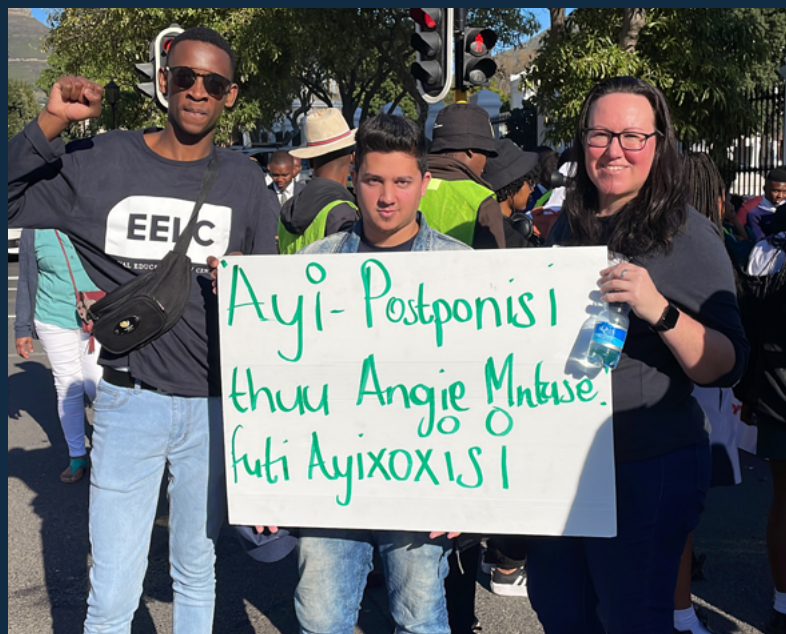
In addition to our concerns regarding meaningful engagement, there were four other key concerns that EE and EELC had regarding the proposed amendments:

- The inaccessible wording and formatting of the document
- Scrapping of crucial infrastructure delivery deadlines
- The removal of provincial reporting requirement guidelines

EELC and EE explain these concerns in a [press statement](#) that was released on 01 August 2022.

A [written submission](#) on the DBE's proposed changes to the school infrastructure law, urging it not to scrap the urgency and accountability needed for fixing schools was co-written by EELC and EE. The DBE's proposed changes remove all the measures that are important for monitoring government's performance, and for accountability. Measures that are crucial for schools to claim the right that learners are entitled to.

EE and EELC have strongly urged the DBE to adopt the recommendations in the recent submission through protest action the press statements an [opinion article](#) in the Daily Maverick and a number of articles published by IOL.



DISCIPLINARY HEARINGS IN SCHOOLS AND THE FAILURE OF SCHOOLS TO COMPLY WITH THE STATUTORILY PROTECTED RULES AND PROCESSES

“Some schools seem to be under the impression that they are autonomous organisations with complete discretion on how they deal with learners who contravene the school’s code of conduct. This is not true.”

- Ebrahiem Daniels

From the start of 2022, the EELC’s daily walk-in clinic has worked on over 123 school discipline matters. Through our work we have noted that a growing number of public schools are not following the correct procedures when disciplining learners. This represents a sharp increase compared to previous years and can largely be to the EELC’s intentional advocacy around this topic.

While a learner is required to follow the rules and to not breach a school’s Code of Conduct, in protecting the right to education, it is important that there are rules which govern the powers of schools and school governing bodies when it comes to discipline. Due process must be followed to ensure that learners’ rights are safeguarded and that their best interests are considered, throughout the disciplinary process.

The South African Schools Act and the regulations published under the Act provide procedures for schools to follow in respect of search and seizure, drug testing, suspension and expulsion, as well as the disciplinary processes to be followed in cases of contraventions of the School’s Code of conduct. Despite these clear obligations, schools still take it upon themselves to bypass procedure. We have observed through our cases that often, learners deemed to be “problem children” do not have their right to a fair disciplinary hearing recognised.

Noting these concerns and as part of our advocacy aimed at addressing these trends, our Candidate Attorney, Ebrahiem Daniel published an [Op-ed](#) titled “Disciplinary hearings: some schools are flouting the rules”. Recognising the need to legally empower learners, parents and caregivers, the EELC also undertook six media engagements aimed at empowering learners, parents and caregivers on their rights in respect of disciplinary processes.

The EELC conducted research informed by the cases which emanated from our walk-in clinic to identify the issues including gaps in the regulatory framework and made recommendations for how these could be addressed at a systemic level. The research was based on interviews with the walk-in clinic lawyers, and desk-top research.

We found that things are going wrong at every stage of the disciplinary process: the immediate aftermath of the alleged incident and the way this is handled; precautionary suspension pending disciplinary hearing; the disciplinary hearing itself; recommendations for expulsion; and appeals against expulsion. Key issues identified are:

- *Learners are suspended without a proper procedure being followed.*
- *Learners are suspended for too long and/or too frequently*
- *Parents are pressured into removing the learner from the school ‘voluntarily’*
- *Sanctions are unwarranted or disproportionate*
- *Learners are not given access to education during the period of suspension*
- *Disciplinary hearings are biased against the learner*
- *The process for expulsion is weighted in favour of the school*
- *The HOD does not comply with the timeframe for deciding whether a learner should be expelled.*
- *There is no avenue for appeal except in relation to expulsion*
- *The process for appealing an expulsion is not well understood or well used by parents or learners*
- *The primary actor responsible for the problems often seems to be the school principal. Walk-in clinic lawyers noted that school governing bodies and parents are not always empowered with the knowledge of learners’ rights and proper procedures, so they cannot hold the school principal to account.*

In addition, there are gaps in regulatory framework which can lead to problems. For example, the lack of avenues for appeal may encourage the school to flout the procedural rules, because they think they can get away with it. The findings of the report have been shared with government officials in fruitful engagements aimed at remedying some of these issues going forward.

UNDERPERFORMING OR UNFAIRLY STIGMATISED? A REPORT ON IMPROVING THE QUALITY IN LEARNING OUTCOMES

The Equal Education Law Centre's (EELC) released a report on Friday 1 July 2022, titled "Improvement in quality learning outcomes & equity in public education in South Africa: A spotlight on "underperforming" Schools. This report examines the current inadequate and stigmatising situation of "underperforming" schools, and the significant policy and implementation gaps that exist in the provision of support interventions to assist them. It specifically assesses the existing regulatory framework for underperforming schools to determine whether it can address systemic underperformance.

Every 30 June, the management of schools which have been declared underperforming are expected to report to Head of Departments (HOD) of Provincial Education Departments on progress made with the implementation of School Improvement Plans. EELC released this report at the time it did to urge that HODs holistically consider all relevant information when assessing underperformance and not to simply focus on information about the academic performance of the school. EELC also suggests that the existing criteria for identifying underperforming schools should be clarified.

The report recommends that the focus of the regulatory framework should be less on exam results and should look at each school, in its unique context, to identify the challenges facing the school and the appropriate support interventions to address them.

As it stands, the regulatory framework for school underperformance has not succeeded in reversing educational inequality. However, if the framework is reformed in the ways the Equal Education Law Centre (EELC) recommends, it could unlock effective, sustainable interventions for all schools who need them.

The release of this report gained a lot of media attention. EELC's Attorneys also did interviews with platforms such as [Newzroom Afrika](#), [eNCA](#), [Umhlobo Wenene FM](#), [SAfm](#)

SAfm had a follow up interview with the spokesperson of the Department of Basic Education, Elijah Mhlanga- we are hopeful that some positive changes will materialise from these conversations.

Poor academic performance is, of course, significant but – as recognised in section 58B – it is not the only reason a school might require support. The selective interpretation and application of the law, encouraged by the DBE, means that many struggling schools may be overlooked. It is vital that the mechanisms for accessing support are grounded in the reality of the South African education system and its history. Otherwise, schools will continue to grapple with the legacy of apartheid on their learning outcomes.



01 Jul

City Press | Underperforming or unfairly stigmatised? Why support for struggling schools requires a rethink

City Press Anathi Canham And Tatiana Kazim

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Poor academic performance is, of course, significant but – as recognised in section 58B – it is not the only reason a school might require support. Photo: Getty Images

A SPOTLIGHT ON "Underperforming" SCHOOLS in the media

[City Press: The Quality Report- Underperforming schools unfairly stigmatised?](#)

CHANGES TO EELC'S BOARD OF TRUSTEES



Janice Bleazard
as Council in a
matter in which
EELC represented
EE regarding
special injustice
in education

Over the past 10 years, the EELC has maintained strong governance through the guidance and leadership of its Board of Trustees. As part of the EELC board's commitment to member rotation and a healthy governance structure, three of our longstanding trustees stepped down at the end of December 2021.

We were sad to bid farewell to Advocate Janice Bleazard, Prof. Ursula Hoadley, and Ntshadi Mofokeng, but equally excited to welcome Advocate Geoff Budlender SC and Sisesakhe Ntlabezo as our newest Board Members.

Janice Bleazard is a practising advocate and member of the Cape Bar and has been on the EELC's board since 2013. Most noteworthy, Janice played a critical role in the establishment of the EELC over ten years ago as she was contracted by EE to assist with this process. In addition to her role as a board member, Janice has represented EELC on a pro bono basis in several matters over the years which have developed the education rights jurisprudence in South Africa. Janice has played a pivotal role in guiding the EELC's litigation strategies and policies over the years and in the development and training of our team of activist lawyers.

Prof Ursula Hoadley was a member of EELC's board from 2012 till December 2021. Following the death of Arthur Chaskalson in December 2012, Ursula helped steer the EELC through its early years by serving as the EELC's interim Chairperson until 2015. Ursula is an Associate Professor in the School of Education at the University of Cape Town and a leading education expert who has researched and written extensively on multiple aspects of schooling in South Africa. She has worked on a wide range of national and international research projects and has provided extensive insights and guidance to the EELC team over the past 10 years on emerging issues in education. Her wealth of education expertise and strong leadership skills has been invaluable for the EELC over the past 10 years.

While it is not a specific requirement of the EELC Trust Deed, over the years it has become a practice for the EELC Board to have at least one person who is closely associated with our social movement partner, Equal Education on our board of Trustees. Significantly, this has allowed the EELC Board to maintain ongoing awareness of key issues impacting on EE and its learner members, its campaigns, and the health of the EE/EELC ethos of movement lawyering. Ntshadi Mofokeng, sat on the EELC board from 2019 till 2021. As the former Chief Operating Officer of EE not only did Ntshadi bring a strong understanding of the spirit of our movement lawyering identity, but she also brought with her strong organisational and operational knowledge.



**Prof Ursula
Hoadley**



**Ntshadi
Mofokeng**

CHANGES TO EELC'S BOARD OF TRUSTEES



**Sisesakhe
Ntlabezo**

Following the departure of Ntshadi from our board of trustees, the members of our board welcomed Sisesakhe Ntlabezo to the board. Sisesakhe is the former Chief of Staff of Equal Education. With his strong ties to EE and strong understanding of social mobilisation and movement building, Sakhe brings both a deep experience in civil society and a passion for movement building and education justice in South Africa.

Advocate Geoff Budlender SC is the newest addition to our Board. Geoff is a senior counsel practising in Cape Town. From his time as a young lawyer defending people against the unjust apartheid laws, Geoff continues to use the rights entrenched in South Africa's Constitution to bring about social change. It is this extensive experience and tireless commitment to justice that makes Geoff such a valuable addition to the EELC board of trustees and to the development and mentorship of our activist lawyers.



**Advocate Geoff
Budlender SC**

ENGAGEMENT WITH TREATY MONITORING BODIES

Following a series of delays, the South African government is due to submit two key reports to UN committees in 2022. Having opted for the simplified reporting process to both the Committee on the Rights of the Child (CRC) and the Committee on the Rights of Persons with Disabilities (CRPD) the state must respond to list of issues given to them by the Committees. The list of issues is informed by, amongst other things, the submissions made by civil society organisations in the country. The EELC made a submission on the issues affecting learners with disabilities to the CRPD in March and can be accessed [here](#)

The government is due to submit its country report to the CRC on the 31 August and the EELC will be drafting a shadow report to assist the CRC in its consideration of this report.

The Equal Education Law Centre (EELC) uses legal advocacy, research, and litigation to advance the struggle for equal and quality education in South Africa.

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