

CONSOLIDATED ANNUAL REPORT

2017
-
2018



Contents

Message from our Chairperson and the Executive Director.....	1
Community Lawyering	3
Movement Lawyering	10
Research and Advocacy	20
Research and Submissions	21
Events and Conferences	23
Finances, Supporters and Board of Trustees	25



Message from the Chairperson of the Board of Trustees



The Preamble of our Constitution declares that it was adopted “to establish a society based on democratic values, social justice and fundamental human rights” and “to improve the quality of life of all people and free the potential of each person”. This is a noble vision, but more than 20 years later, there is much to be done to achieve it. Education is core to the achievement of that vision as is recognised in the main object of the Equal Education Law Centre (the

EELC), which is to promote “equitable, adequately-resourced and high-quality education in South Africa”.

The Equal Education Law Centre has had a busy and successful two years. The three key areas of activity, Community Lawyering, Movement Lawyering and Research have all registered significant successes over the two years. Yet, although much has been achieved, there is much more work to do.

On behalf of the Board of Trustees, I should like to thank the executive team of Nurina Ally, Daniel Linde and

Robyn Beere, for their hard work and dedication to pursuing the objectives of the EELC and for the constructive and open manner in which they work with the Trustees.

I should also like to record our thanks to all those who work at EELC for what they do to achieve the objects of the Trust, and to all EELC’s partners who share EELC’s commitment to the constitutional vision of building a society based on democratic values, social justice and fundamental human rights.

Kate O’Regan

Message from the Executive Director



This consolidated annual report provides a snapshot of the Equal Education Law Centre’s work over a vibrant two-year period. The EELC is characterised by the use of a unique combination of movement lawyering, community lawyering and advocacy to advance education equity and the rights of children in South Africa.

Over the period of the report, the EELC has continued to provide movement lawyering support to Equal Educa-

tion (a social movement of primarily high school learners) as well as to movements such as #UniteBehind. The EELC’s activist attorneys work hand in hand with movement members and partners to advance campaigns for good governance, accountability, transparency and effective delivery of social services. Highlighting the interconnections between various struggles for social justice, the EELC has worked on campaigns related to transport, school infrastructure, spatial and land justice, the right to protest, and private actor accountability in education. Significant progress has been achieved, following years of dedicated campaigning by members of Equal Education and other social movements. As we enter our next year we continue to work together with our social movement partners to monitor delivery and deepen government accountability.

At the same time, there has also been significant introspection within and by our own movements and organisations. Over the course of 2018, Equal Education and the broader civil society sector confronted issues of sexual harassment and accountability within its own structures. Whilst difficult and painful, the lessons from these challenges continue to inform our effort at building movements and organisations that reflect the principles we champion. To this end, the EELC supported the third national congress of EE where a new leadership council was elected. We congratulate Noncedo Madubadube and Tracey Malawana on their election to lead the movement and we look forward to working with them.

In addition to our movement lawyering work, the EELC provides crucial legal support on a daily basis to learners,

parents and communities across the country through its advice clinic. Over the period of the report, the EELC assisted more than 450 clients. The issues dealt with generally range from unlawful school admission exclusions, school fee exemptions, discrimination against learners in schools, including against girl learners who are pregnant and against foreign and undocumented learners, unlawful disciplinary issues, and school resourcing challenges. Through the advice clinic, the EELC identifies systemic issues impacting on the rights of children and education equity, which informs strategic litigation interventions. An example of this is the case of *Michelle Saffer v Western Cape Department of Education and Others*, which was heard by the Supreme Court of Appeal. In a significant victory, the case has resulted in substantial reform of school fee exemption processes for single parents.

In 2018, the organisation saw the establishment of a dedicated research unit,

with a focus on monitoring education law and policy developments provincially, nationally and internationally. This has been particularly timely as the education sector has seen significant education law reform proposals over the period covered by the annual report. At the international level, the EELC was particularly honored to form part of the organising secretariat for the development of the landmark Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education.

The EELC now enters its seventh year since founding with optimism. Whilst there is much work still to be done, the successes advanced through the collaboration of a wide range of stakeholders have been significant. As the Executive Director, I extend my personal appreciation to our dedicated team who have committed themselves with passion and excellence to furthering access to justice for all.

We also thank our Trustees, some of whom have been founding members of the Board, for the critical role they each play in advising and guiding the organisation's development. In 2019, the EELC says farewell to its current Deputy Director, Daniel Linde. Daniel has served the EELC with integrity and commitment, for which I am personally indebted. We wish him all the best in his next endeavours. At the same time, we welcome Robyn Beere as the incoming Deputy Director. Robyn joins the EELC with extensive experience, having led Inclusive Education South Africa for eight years. I look forward to working with Robyn in leading the organisation and in the struggle for social justice.

Nurina Ally
Executive Director



Community Lawyering

Central to the work of the EELC is prioritising access to justice through the provision of legal services to marginalised individuals and communities. This is done through a specialist education advice clinic run by the EELC, which provides advice and support to learners, parents and teachers on a wide-range of matters. Where strategic, the EELC supports community members in litigation with the goal of realising the constitutional right to education. In 2017 and 2018 the EELC received more than 450 walk-in cases. Of these, approximately 325 cases have been resolved.

THE EELC IN COURT



VICTORY FOR SINGLE PARENTS:

Michelle Saffer v Head of Department, WCED and Others

The EELC represented Michelle Saffer in court, following Fish Hoek High School's refusal to grant her a fee exemption for her daughter's school fees. The school stated that the fee exemption form had to be completed by both parents, despite the fact that Ms Saffer, a single divorced mother, had custody of her daughter and a difficult history with her former spouse.

The EELC recognised the worrying trend throughout the country whereby many single women were unable to process their fee exemption applications because of the education departments' view of them as a 'family unit' with their former spouses. With this systemic trend emerging from our community lawyering and our walk-in clinic, it became clear that a strategic litigation intervention was required.

Ms Saffer appealed her fee exemption application to the Western Cape Education Department (WCED), but to no avail. Following this, with the EELC's representation, Ms Saffer proceeded to challenge this rejection in court.

The Western Cape High Court handed down judgment in September 2016 and held that the South African Schools Act (SASA) holds parents jointly liable for the payment of school fees. The court also recognised the disproportionate burden single mothers

"I really need to thank all of you, regardless of the outcome... Having you involved gave me strength. It really was a massive help, I can't begin to tell you how the crushing load was lifted. I was always impressed by your incisive arguments and the way you laid out the case, consistently, time and time again as the case progressed. Maybe this is what attorneys do, but I noted that you never allowed yourself to be bullied or intimidated, just stuck to the fight...Again, I thank you for all you have done, what you are doing for education and for being attorneys who fight for a cause rather than focusing on the big bucks" – Michelle Saffer, email to the EELC.



face in providing their children with access to education, but proceeded to uphold SASA's requirement that both parents' income must be produced in fee exemption application.

The appeal was heard on 23 November 2017 in the Supreme Court of Appeal (SCA), which handed down judgment on 13 December 2017. The SCA set aside the refusal to grant the fee exemption, and declared that the school and its SGB violated Ms Saffer's constitutional and statutory rights repeatedly when dealing with her application. It further upheld an order drafted by both parties that where a parent has refused or is

unable to provide income details for both parents, public schools must grant a conditional fee exemption to the custodial parent, having regard to only that parent's income.

This judgment is a victory for single custodial parents in similar positions to Ms Saffer with regard to applying for fee exemptions. The EELC looks forward to the WCED taking all necessary steps to ensure that the order is effectively implemented by public schools.

Advocates Pete Hathorn and Ncumisa Mayosi were instructed by the EELC in this matter.

RESISTING UNLAWFUL SCHOOL MERGER - LIMPOPO

In June 2018, the EELC represented Sephaoweng Primary School in litigation involving the unlawful temporary merger of 2 schools situated in rural Limpopo.

Due to failing infrastructure at Makangwane Secondary School, the Limpopo Department of Education (LDE) took a decision on 9 May 2018 to move the secondary school on to the premises of Sephaoweng Primary School. This decision was taken without the necessary engagement or consultation with either of the schools, parents or community members; and without the requisite consideration of the best interests of the children.

The LDE failed to formulate any plans relating to how the limited infrastructure at the primary school will be utilised by 2 schools, or how two schools will run distinctly but cohesively on the same property.

On 26 June 2018, Section27, representing Makangwane Secondary School, appeared in court seeking resolution to the matter. The EELC appeared on behalf of Sephaoweng Primary in order to place the primary school's interest before the court. In a significant victory, Section27 successfully obtained a court order requiring the LDE to provide 5 mobile classrooms to the Secondary School as well as desks and chairs for all of the learners. The Court further ordered that the LDE must communicate and engage with the secondary school and particularly with its SGB in any matters involving the school and its future. The EELC emphasised the negative impact that the LDE's failure to consult had on the primary school and community.

Advocate Hasina Cassim was instructed by the EELC in this matter.

COMMUNITY LAWYERING – CASE STUDIES



ADMISSIONS – MAKING SURE LEARNERS ARE PLACED IN SCHOOLS

LACK OF CAPACITY IN SCHOOLS

At the beginning of the 2017 academic year, about 380 learners in the Joe Slovo Community, Grades R to 8, were not placed in schools. In response, the community occupied mobile classroom facilities, and volunteer teachers from the community taught the learners.

Whilst the community hoped that a new school would be formally registered, the Western Cape Education Department (WCED) wanted learners and the mobile classrooms to be placed at already-existing schools in the area and obtained an eviction order against the occupiers. EELC lawyers met with concerned parents and community members on several occasions and assisted in collecting information and documents for children to be registered at schools. Acting in the best interests of children, the EELC worked to ensure that the unplaced learners were accommodated at the schools where the mobile classrooms were eventually placed. After almost five months of engagements between the EELC, the parents, the community and the WCED, most learners have now been placed. While access to education has been obtained, it is clear that a sustainable solution is required to address capacity problems in schools.

PLACEMENT OF LEARNER WITH AUTISM

The EELC also assisted in the case of an autistic learner in the Eastern Cape whose mother was unable to find a place for him to attend grade one. After the EELC's interventions, the learner was placed at College Street Primary School.

PLACEMENT OF LEARNER REQUIRING DIFFERENT LANGUAGE OF INSTRUCTION

The aunt of a learner seeking admission into grade 8 approached the

EELC. Throughout her primary school, the learner had never had isiXhosa as one of her language subjects. For this reason, she sought admission to a high school that could offer English and Afrikaans language subjects. The client approached the relevant district for assistance with placing the learner into a high school that offer English and Afrikaans. However, the district refused and recommended a township school which offers English and isiXhosa instead. The EELC dispatched a letter to the district director and requested the district to place the learner into a nearby High School. The EELC argued that this was not a “school of choice” matter and that the district should specifically look for a high school that offer English and Afrikaans. The district ultimately complied and placed the learner into the desired high school.



DISCRIMINATION AGAINST UNDOCUMENTED LEARNERS

FOREIGN AND UNDOCUMENTED LEARNERS AT EASTLEIGH PRIMARY SCHOOL

In February 2017, the EELC became aware of a letter that was sent by Eastleigh Primary School in Johannesburg to “foreign parents”, threatening to have learners without proper documentation arrested and removed from the school. The EELC addressed a letter to the school explaining the unlawfulness of this dangerous, irresponsible, and xenophobic approach. The EELC coordinated the drafting of a letter on behalf of various public interest law centres to the Departments of Home Affairs and Education. The school then retracted its threats and issued a public apology to the parents. Following this case, the EELC has worked with Section27, LRC, and LHR to engage the SAHRC and relevant government departments, and has provided infor-

mation to assist the SAHRC in the process of formulating their position paper on this issue.

Unfortunately, the EELC continues to assist a number of clients, throughout 2018, faced with exclusions from schools and other forms of education related discrimination, on the basis of their nationality or lack of documentation.



“The need to afford asylum-seekers, refugees and foreign learners the full benefit and protection of the South African Constitution, which guarantees the right to basic education, cannot be over-emphasized.

We also note that xenophobia has been, and continues to be, a significant issue of societal injustice, and has led to widespread violence and displacement. The singling out of foreign nationals, and the imposition of unlawful and unreasonable threats to their fundamental right to education, is an irresponsible flaming of this fire and a poor example for educators to set for learners.”

Letter from EELC to Eastleigh Primary, 24 February 2017

Quote from iThemba Labantu: “On behalf of all of us here at iThemba Labantu I would like to thank you so very much for your kind assistance – and for actually achieving the impossible by placing (the learner) in a school! We had really given up hope!”

GENDER IDENTITY IN SCHOOLS

SINGLE GENDER CLASSES IN A GAUTENG CO-ED SCHOOL

The EELC was approached by a parent of a learner at a co-ed school in Gauteng. The school had separated its Grade 1 class by gender, without consulting the parents of incoming learners. While the Gauteng Department of Education (GDE) had committed to investigate the matter, no further action had been taken. After the EELC intervened in the matter, the GDE released its report stating that the establishment of single gender classes in a co-ed school is unlawful. The EELC has further encouraged the GDE to ensure that the school engages with the parent community in future decisions.

LEARNING AND TEACHING SUPPORT MATERIALS

SHORTAGE OF SCHOOL TEXTBOOKS FOR GRADE 9 LEARNERS

During 2018 a client approached the EELC to inform us of textbook shortages at a High School in the Northern Cape. As a result of the shortage the client's nephew, a learner at the school, was struggling academically. The EELC approached the school and learnt that the Department had instructed the school to expand Grade 9 enrolment and had undertaken to provide additional teachers and textbooks to the school. However, only additional teachers were provided and not textbooks. The EELC intervened, writing to the Department noting that the courts have declared textbooks a component of the constitutional right to basic education. Following this, the Department committed to providing the required textbooks in October 2018.

RESISTING UNLAWFUL DISCIPLINARY PROCESSES

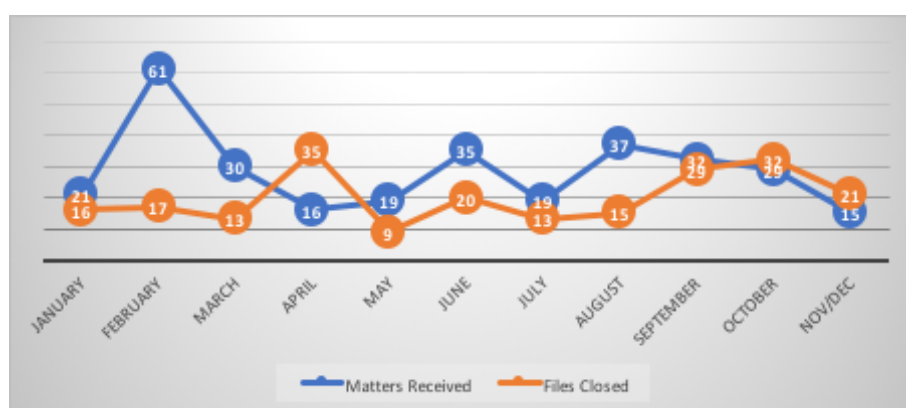
The EELC regularly assists families where learners are subject to unlawful suspensions or expulsions, or where unfair procedures have been implemented, rather than the disciplinary processes required by the South African Schools Act. A few examples include: In one matter, a learner was expelled by the principal of his school after he pulled a prank (switching off classroom lights) on his peers during an evening grade 12 revision class. The principal told the learner not to come back to school. The parent of the learner approached the school and asked that her child be placed back in school. The principal refused and explained that he would ensure that the child is not allowed back into the school for the rest of the year. The parent then approached the EELC seeking guidance around suspension/expulsion matters. The EELC advised the client about suspension and expulsion procedures, and that the power to expel a learner vests in the Head of Department. The parent approached the school and informed the principal that she is aware that he acted unlawfully; she furthermore threatened to report the principal. The principal thereafter allowed the learner back into school.

In another matter, a learner had been suspended indefinitely after being caught with marijuana at school. The EELC guided the parent on the procedure of suspensions, resulting in the learner being placed back in school pending a full disciplinary hearing. The EELC guided the learner and parents on how best to engage in the hearing, which ultimately led to the learner being sanctioned with community service and a final warning rather than suspension.

In yet another matter, a school unlawfully expelled a learner without holding a formal disciplinary hearing or writing

to the Head of Department. The EELC wrote to the school informing them of the irregular process and the rights of the learner. The school allowed the learner back into school and issued a notice of disciplinary proceedings. Prior to the hearing, the EELC prepared and advised the parents of the learner's rights, and the proper procedure the school must follow. During the proceedings the School Governing Body found that the teacher was guilty of assault, through learner witnesses and the teacher's own admission. The learner was ultimately allowed back into the school.

LAW CLINIC INTAKE



ACCOUNTABILITY FOR SEXUAL VIOLENCE IN SCHOOLS

THE EELC ASSISTS FAMILY IN ENSURING JUSTICE FOR SEXUAL VIOLENCE IN SCHOOLS.

In one shocking case, a 13-year old student was raped in the boy's section of a school hostel by a male student. The school's code of conduct states that it is misconduct for a learner to be in the hostel of the opposite gender and to have consensual or non-consensual sexual intercourse. Despite having suffered the trauma of being raped, the student herself was subjected to a demeaning disciplinary process for having violated the school's code of conduct. The student was subsequently expelled from the school hostel, which effectively meant that she could no longer attend school. She was eventually placed in another school. The EELC was able to advise the student's parents on the student's rights and potential legal remedies. The EELC subsequently engaged the relevant provincial education department and were successful in the department unreservedly apologising to the student for any trauma that she experienced, which may have been caused by the conduct of an official.

Through the EELC's intervention, the department also followed up by offering the student psychological and educational support and committed to amending the school's code of conduct. The department also agreed to insti-

tute gender sensitivity training at the student's school, and in all schools in the province.

PRINCIPAL'S LEGAL OBLIGATION TO REPORT SEXUAL HARASSMENT

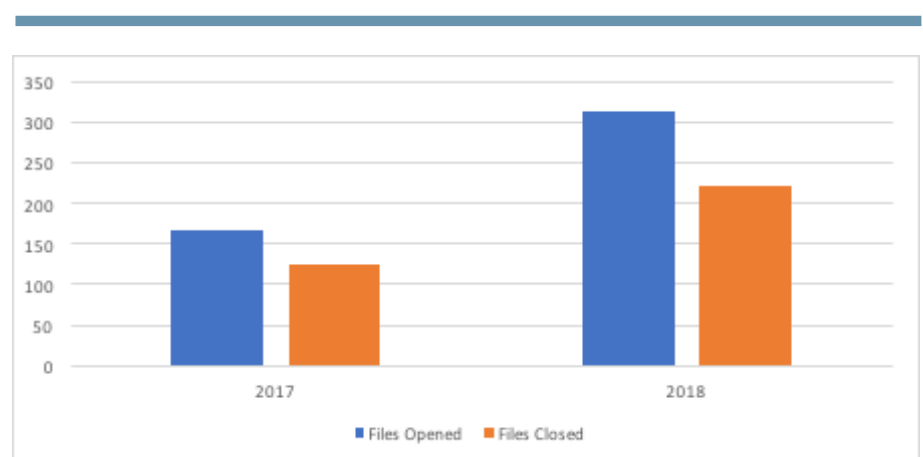
In a separate matter, the EELC was approached by a female learner who sought assistance and protection from an educator who was sexually harassing her at school. The harassment had continued for months, despite the victim having informed her principal. It was only when her mother approached the school to find out what steps were being taken to address the harassment and threatened to involve the EELC that the principal reported the matter to the Western Cape Education Department (WCED) for investigation. The educator was charged and disciplinary proceedings are underway. The WCED decided also to charge the school principal for his failure to honour his legal obligation to report the case.

INVESTIGATION INTO HARASSMENT OF LEARNER BY TEACHER

The EELC successfully intervened on behalf of a parent to secure an investigation into harassment at a school in the North-West province. The parent whose child was allegedly being harassed by her teacher approached the EELC after being ignored by the school principal and the provincial education department. The EELC's intervention resulting in the district immediately initiating an investigation.

Quote from Parent: "My sincere gratitude to Equal Education Law Centre for going out to manifest that education is a right deserved by both privileged and helpless..."

COMPARISON OF LAW CLINIC INTAKE 2017 - 2018



UNIVERSITY ENGAGEMENTS AND TEACHING

As a specialist law clinic, the EELC attends numerous workshops and courses with university students and staff. The organisation is grateful for its many opportunities to engage in academic discourse on constitutional rights and litigation, and to be able to teach about its work and the challenges in realising equity and equality for South African learners. Here are just some examples of the EELC's recent university events:

UNIVERSITY OF CAPE TOWN (UCT):

On 29 September 2017, the EELC partnered with the Centre for Law and Society (CLS) to offer a one-day workshop on 'Movement Lawyering and the Right to Education' to UCT law students. The interactive workshop was led by Nurina Ally and Demichelle Petherbridge, who introduced the concept of "Movement Lawyering" utilising various examples from the work of EELC and EE. Following the success of the workshop, an inaugural four-day "spring school" was held in 2018 co-hosted by EELC and CLS, focusing on the intersection between law and activism and strategy. In addition to these significant schools of movement lawyering, the EELC has participated as guest teachers and lecturers in a wide range of UCT events. These include:

- In April 2017, Nurina Ally was a guest lecturer for a UCT Masters class on "Litigating the Bill of Rights". Nurina returned to present a similar guest lecture for the Masters students in August 2018
- Mbekezeli Benjamin and Precillar Moyo presented a UCT guest lecture on public interest litigation for final year LLB students in 2018.

- The EELC's Rubeena Parker presented on land justice and education justice at Al-Sharq / Amnesty UCT event in October 2018.

UNIVERSITY OF THE WESTERN CAPE (UWC):

In August and September 2017, the EELC's Lisa Draga and Mbekezeli Benjamin lectured on the right to basic education in a second-year Constitutional Law course, as part of a lecture series held in collaboration with the UWC's Department of Public Law. The lecture series was aimed at encouraging students to think critically and creatively about the law, and to inspire them to pursue a career as human rights lawyers.

UNIVERSITY OF PRETORIA:

In July 2018, the Faculty of Education at the University of Pretoria hosted the EELC's Executive Director, Nurina Ally, as a guest speaker on discrimination in schools.

NELSON MANDELA METROPOLITAN UNIVERSITY (NMMU):

On 5 July 2017, EELC attorney Chandre Stuurman, and candidate attorney Ziphokazi Sisilana, presented on expanding access to education justice through community at the NMMU law clinic in Port Elizabeth. EELC supervising attorneys, Chandre Stuurman and Tarryn Cooper-Bell, participated in the Nelson Mandela and the Law conference at UWC in November 2018.

NEW YORK UNIVERSITY (NYU):

On 13 September 2017, the EELC's Executive Director Nurina Ally was a guest lecturer at a class at NYU Law School on Strategic Human Rights Litigation. The EELC shared reflections and experiences on using strategic litigation as a tool to advance education justice.

OXFORD UNIVERSITY:

The EELC's Executive Director, Nurina Ally, and attorney, Lisa Draga, have contributed to the development and content of a freely available course called "Learning Lessons from Litigators: Realising the Right to Education Through Public Interest Lawyering". The four-module course was launched by the Oxford Human Rights Hub on 25 October 2017. In February 2018, Nurina Ally was a guest presenter at the Strategic Litigation in Practice conference co-hosted by Oxfam and Oxford Bonavero Institute.



Movement Lawyering



The EELC provides legal support to its partner organisation, Equal Education (EE), a democratic social movement of parents, teachers, and learners (known as Equalisers). As movement lawyers, EELC attorneys provide legal advice, interventions, and strategic litigation where necessary to further EE's campaigns for equal and quality education.

SCHOLAR TRANSPORT – A VICTORY FOR LEARNERS!

Over the past two years, the EELC has supported EE in the struggle for safe and effective scholar transport. Through advocacy and litigation, the campaign has achieved significant victories. Following written submissions made by the EELC and EE to the Portfolio Committee on Education advocating for a conditional grant for scholar transport, the Minister of Basic Education made a public commitment to consider implementing such a grant. The EELC and EE also launched a short film, 'Long Walk to School', documenting the campaign and the situation students without transport face in Kwa-Zulu Natal. This has been an effective creative tool in mobilising around adequate scholar transport.

THE EELC IN COURT



The EELC launched litigation on behalf of EE in the Pietermaritzburg High Court on 28 March 2017 against the MEC for Education, the MEC for Transport, and the MEC for Finance. This application sought adequate provision of transport to learners at twelve schools in Nquthu, as well as structural relief relating to government policy and coordination. On 7 November 2017, the day of the hearing, the state chose to settle and conceded to the relief sought by EE. The settlement agreement, which was made an order of court, ordered the state to take all reasonable steps to provide learners of the twelve schools

with scholar transport by 1 April 2018, and to report to the court by this date on the status of provincial scholar transport policy.

The successful litigation has meant that, since 1 April 2018, transport has been provided to 12 schools and approximately 3500 learners in Nquthu. This represents a resounding victory for activists and EE members. The EELC accompanied EE in early 2018 on visits to schools to inform and engage with learners, parents and community members of the court order and what it means.

In addition, the provincial departments of education and transport conducted a province-wide assessment of scholar transport provisioning, and concluded that more than 370 000 learners are in need of transport to and from schools. Unfortunately, this confirmed the EELC's long held view that the state's previous needs' assessments drastically underestimated the crisis in scholar transport.

Despite the state's promises, which included the finalisation of a KwaZulu-Natal provincial policy by December 2018, there remains no policy in place



and no certainty over planning and implementation of transport to cater for the identified need. This means that the work of the EELC with EE will continue in 2019, to ensure that advocacy

and legal interventions ultimately yield broader and more structural change towards the realisation of scholar transport, an essential component of the right to basic education.

Advocates Andrea Gabriel (SC) and Deborah Ainslie were instructed by the EELC in this matter.

SCHOOL INFRASTRUCTURE

THE EELC IN COURT



The EELC has provided ongoing legal support to EE's long-term campaign to secure the enactment and implementation of a binding law setting out the state's obligation to provide safe and adequate infrastructure to all schools - the Regulations for Minimum Uniform Norms and Standards for School Infrastructure ("the norms and standards").

APPLICATION TO REVIEW THE NORMS AND STANDARDS REGULATIONS

The adoption of the Norms and Standards Regulations on 29 November 2013 followed years of campaigning by members of Equal Education, and an eventual court endorsed settlement which said the Minister had to create a binding law on school infrastructure. EE members, and lawyers at the EELC, celebrated this moment as a major step in the right direction. However, both organisations recognised from the outset that the Regulations contained significant loopholes and vague language that would allow government to delay, potentially indefinitely, in fixing schools.

For activist lawyers at the EELC, the most concerning of the provisions in the norms and standards was Regulation 4(5)(a). This provision said implementation of the norms and standards was subject to "resources and cooperation of other government agencies and entities responsible for school infrastructure.." In other words, if the Department of Basic Education wanted to give a school electricity, but another organ of state was uncooperative, the state could say it had no legal duty to actually follow through on the

commitments in the Regulations. EE members and the EELC team worried that this would render the norms and standards ineffective. Fearing government would use Regulation 4(5)(a) to evade fixing school infrastructure in an equitable and urgent fashion, EE dubbed the provision 'the escape clause'.

In an effort to engage constructively, we raised these concerns with the Minister of Education in numerous letters. Unfortunately, the Minister of Basic Education never properly answered our concerns.

With a sense of frustration, EE instructed the EELC to approach a court to take the steps which it had asked the Minister to take in fixing the unconstitutional provisions of the Norms and Standards. In March 2018 the case was heard at the Bhisho High Court.

On 19 July 2018 the Bhisho High Court ruled in favour of Equal Education, declaring the escape clause unconstitutional and invalid, and addressing the other loopholes in the norms and standards law. Critically, the court also agreed with our submissions that the

Minister is obligated to make public the annual provincial plans and reports on compliance with the norms and standards, to ensure accountability and transparency.

Sadly, and despite our pleas to the Minister and to President Ramaphosa, the state sought to appeal the case. The EELC made submissions to the Constitutional Court which said this case needed to be urgently resolved and that the state had no legal basis for challenging the decision at the Bhisho High Court.

On 29 October 2018 the Constitutional Court dismissed the state's application for leave to appeal, ruling that it had no chance of success. This is a significant victory. Our work now is to ensure compliance with the standards and timelines in the Regulations, and to work with EE to hold the state to account.

Advocates Geoff Budlender SC and Aymone du Toit were instructed by the EELC in this matter.

"We had to rely on the Court to "Stop the Appeal", because you did not. We are concerned that you missed an opportunity to show the type of leadership, political will, and dedication to Constitutionalism that we have hoped from you." Equal Education letter to President Ramaphosa, 5 November 2018

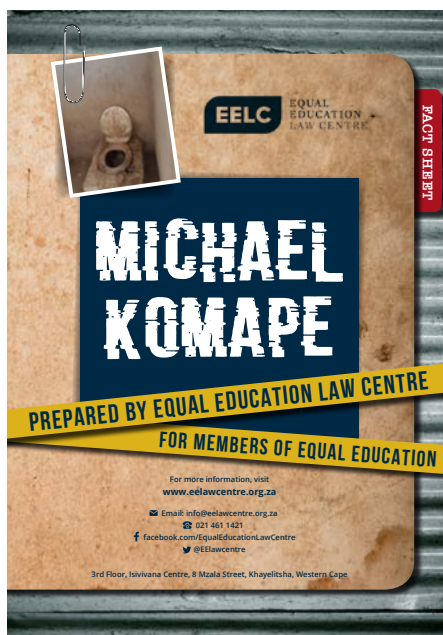
THE STATE'S DUTY TO PROTECT LEARNERS: KOMAPE V MINISTER OF BASIC EDUCATION AND OTHERS

In January 2014, 5 year old Michael Komape died after falling through a dilapidated pit latrine at his school in Chebeng Village near Polokwane. His death, drowning in waste, represented the ultimate tragedy: the avoidable death of a young learner, new to schooling, at a time that should have been about joy, learning and the promise of the future.

It also represented the abject failure of the state to address the continuing legacy of unsafe and inadequate school infrastructure in South Africa's poor and black communities.

Michael's parents and siblings, represented by SECTION27, instituted action against the school, and the provincial and national governments, seeking traditional damages as well as constitutional damages arising from this horrific incident. In support of their case, the EELC represented Equal Education as an *amicus curiae* (friend of the court).

In November 2017, EE presented evidence to show the court that the issue of inadequate school infrastructure has consistently been brought to the Department of Education's attention through the Norms and Standards campaign. The Komape family gave moving testimony on Michael's death, and the importance of precedent that holds the State responsible for its constitutional duties toward learners. The court endorsed a settlement agreement in respect of claims around psychological trauma and loss of income that the State acknowledged liability for.



However, when judgment was handed down, the court failed to order anything more than minor compensation for the suffering of the Komape family. The court refused the claim to extend the common law to cover damages from grief in exceptional circumstances such as these, and refused the alternative claim to award damages to the Komape family directly via the Constitution (known in South African law as "constitutional damages").

However, there was one very important and positive aspect to the High Court's judgment. Justice Muller ordered that the national and provincial departments of education report to the court on their plans to ensure that proper sanitation is provided to the thousands of learners still attending schools in Limpopo with inadequate and unsafe toilets. Having presented evidence of EE's long history struggling for adequate infrastructure and a legally binding framework for communities to demand the fixing of their schools, the EELC welcomed this aspect of the order.

Sadly, the education departments have failed to comply with the structural order which the court crafted. On the

afternoon of the very date on which their plan was due to be filed with the court, the state filed an application for an extension of that deadline.

When the plan was finally filed, it was wholly inadequate.

Following the filing of this unacceptable report, EELC lawyers joined Equal Education on a visit to schools in Limpopo. From the small sample we assessed, it was quite clear that the departments' plan failed to account for schools that had dangerous latrine structures and plain pits. In an answer that filed with the High Court, EE explained that the "plan" to fix Limpopo school sanitation is entirely unconstitutional and lacking in factual basis.

At the close of 2018, two streams of the Komape court case continue. In the first, the Komapes seek justice for themselves as a family, and are appealing the High Court's failure to properly compensate them. In the second stream of the case, the constitutionality of the national and provincial education departments' plan for Limpopo school sanitation will be argued in the High Court. Section27, on behalf of the Komapes, and the EELC on behalf of Equal Education, will submit to the court that it must again step in to guide the executive on the elements it must take into account when planning to protect the country's children's safety and hygiene at schools.

Advocates Kate Hofmeyr and Ndumiso Luthuli are instructed by the EELC in this matter.

THE RIGHT TO PROTEST

The right to assemble and protest is a critical element of any free society. As supporters of social movement, the EELC works to protect the space for mobilization and expression of dissent. .

Arising out of the harsh clampdown on protests arising during the emergence of the #FeesMustFall movement, the

EELC has been part of the Right to Protest Coalition (R2P) since its inception. R2P is a coalition of civil society organisations which use progressive lawyering to further the constitutional right to protest. In January 2017, the EELC team participated in a workshop on bail applications conducted by R2P members from the Centre for Applied Legal Studies (CALS), and gained

valuable practical knowledge to be used in defence of detained protestors.

Beyond this advocacy, the EELC has taken on a series of important court cases to protect communities' right to protest and to resist efforts to criminalise and clamp down on that right.

"Equal Education, drew this Court's attention to how the right to freedom of assembly has distinct importance for children...In particular, it must be emphasised that for children, who cannot vote, assembling, demonstrating, and picketing are integral to their involvement in the political process.

By virtue of their unique station in life the importance of the section 17 right has special significance for children who have no other realistic means of expressing their frustrations.

Advocates Thembalihle Sidaki, Ria Matsala were instructed by the EELC in the High Court and Ndumiso Luthuli supported the EELC in the Constitutional Court.

THE EELC IN COURT



CHALLENGING THE CRIMINALISATION OF PROTEST: THE SJC 10

EE, represented by the EELC, was admitted as a friend of the court in an appeal of the conviction of ten members of the Social Justice Coalition (SJC) for convening an illegal gathering. Through this appeal, the SJC seeks to challenge the apartheid-era Regulation of Gatherings Act which effectively criminalises the constitutional right to protest. The SJC 10 had been convicted on the basis of a provision which said it was a crime for a person merely to convene a gathering without having given the statutory notice – even in circumstances where the protest was peaceful and no harm was done in the course of the gathering.

In preparation for the hearing, the EELC conducted a workshop with EE staff on the right to protest and EE's submissions in the upcoming case. These focused on the particular impact of such criminalisation on children who protest to enforce their rights, as do equalisers and other learners across the country organising for better education. The right to gather without notice can be particularly important for children. In many instances children may not know of the requirement of notice, or may not have the time or capacity, especially in poor or rural communities, to file the required notice or attend the meeting with officials which may follow. To punish these children criminally if they proceed with a peaceful protest is entirely untenable. In fact, the mere threat that children may face the trauma of police intervention, arrest and detention, for peacefully attempting to assert their rights or political voice, is something that the EELC and Equal Education considered unacceptable.

The matter was heard on 14 and 15 June 2017.

In January 2018, the Western Cape High Court recognised the unconstitutional limitation that the Gatherings Act had placed on the right to peacefully assemble and demonstrate.

On 19 November 2018, the Constitutional Court upheld the High Court judgment. Specifically recognizing the submissions made by EE, the Court emphasised the importance of the right to protest for children.



CHALLENGING THE LIMITATION OF THE RIGHT TO PROTEST: KZN EQUALISERS

On 11 July 2017, equalisers and other EE members in KZN staged a protest outside the provincial Department of Education (DoE) by projecting the #LongWalkToSchool film onto the building, in order to raise awareness around the scholar transport campaign. However, department officials and police unlawfully dispersed the protest using threats of teargas and violence, despite the fact that all relevant protest procedures were followed by the equalisers. On behalf of EE, the EELC addressed a letter to the KZN DoE and the South African Police Services (SAPS) requesting a public apology, to which SAPS responded that an investigation was underway and a report would be provided by 15 November.

Over the course of 2018, the EELC repeatedly requested a formal response to our letter of demand, and the report of the investigation which was apparently underway.

After more than a year of waiting and of trying to engage in good faith, Equal Education instructed the EELC to launch a case to declare the shutting down of the protest unlawful. We argue that the correct way to vindicate the rights of EE and its members who were at the protest (many of whom were minors) is to compel the state to publicly and unequivocally apologise.

Court papers were exchanged throughout the latter part of 2018, and we anticipate that the case will be heard in the Pietermaritzburg High Court during the first half of 2019. Advocate Lerato Zikilala is instructed by the EELC in this matter.



The EELC represented #UniteBehind in ensuring that public funding was not paid to a company that had been awarded contracts tainted with suspicions of corruption. A range of related companies, collectively called "Siyaya", had entered into suspect contracts with PRASA, concluded settlement agreements with the interim board, and was able to have those agreements made orders of court.

The result was that PRASA would be forced to pay around R57 million of public funds to Siyaya. In order to obtain the court orders, the board relied on its resolution to suspend its legal panel - the very resolution which is the subject of #UniteBehind's and

Equal Education's pending legal review. For this reason, the EELC represented #UniteBehind in an urgent application to prevent the sheriff from paying any funds to Siyaya.

Thankfully, the chair of the interim board resigned, and the Minister of Transport has since appointed a new board. As a result of this, and of the courageous work of PRASA's legal division, before the hearing #UniteBehind urgent application PRASA itself launched an application to rescind the Siyaya court orders and for an interdict against the sheriff's paying Siyaya, which was granted.

CHALLENGING STATE CAPTURE: THE EELC SUPPORTS #UNITEBEHIND

#UNITEBEHIND: PRASA AND STATE CAPTURE

#UniteBehind is a coalition of social justice organisations and movements mobilising around corruption and the impact of state capture on the operations of the Passenger Rail Agency of South Africa (PRASA). The coalition is working toward litigation to compel the NPA to investigate the freezing of assets relating to alleged corrupt activities. Over the past two years the EELC has successfully represented #UniteBehind and EE in efforts to ensure that the governance processes at the rail agency do not undermine efforts to address its recent history of corrupt and irregular practices. In particular the EELC has supported litigation to prevent the implementation of a PRASA board resolution which sought to suspend the work of the legal panel

responsible for the review of several irregular contracts. At the end of 2018 this had led to an undertaking not to implement that resolution in respect of any of the existing cases, and we anticipate the matter being resolved in 2019.

#UNITEBEHIND CHALLENGES PAYMENT OF PROCEEDS FROM SUSPECT CONTRACTS

The EELC represented #UniteBehind in seeking to ensure that public funding was not paid to a company that had been awarded contracts tainted with suspicions of corruption. A range of related companies, had entered into suspect contracts with PRASA, concluded settlement agreements with the interim board, and was able to have those agreements made orders of court.

The result was that PRASA was set to pay around R57 million of public funds in relation to suspect contracts. The EELC represented #UniteBehind in

an urgent application to prevent the sheriff from paying these funds. The matter was withdrawn since PRASA's own legal division was ultimately able to launch an application to interdict the payments.

#UniteBehind's intervention played a critical role in delaying the payments and demonstrating vigilant civil society watch over public entities.

#UNITEBEHIND: THE NPA 8

In November 2017, eight #UniteBehind activists were arrested for occupying the National Prosecuting Authority (NPA) offices. These activists, who were calling for Zuma's arrest, spent a night in jail despite the peaceful nature of the protest. The Women's Legal Centre and the EELC provided legal assistance resulting in charges being dropped when the 'NPA 8' appeared in court on 5 December 2017.



SPATIAL JUSTICE, EDUCATION JUSTICE

THE EELC IN COURT



LAND EXPROPRIATION AND PUBLIC SCHOOLS: GROOTKRAAL PRIMARY SCHOOL

Jacobus du Plessis NO & Others v MEC for Education, Western Cape and Others

The EELC, acting on behalf of EE, has intervened as friend of the court in a case concerning the eviction of a public primary school on private land that was purchased by a trust to be developed into a game reserve. This matter has been in court since 2012, and the Grootkraal community has argued for the recognition either that they are the rightful owner of the land, or of a public servitude for use and occupation of the land. EE's submissions as a friend of the court has highlighted that the history of farm schools in South Africa must be considered, and EE has argued that the MEC has an obligation in terms of the South African Schools Act to consider expropriating the land. This would protect Grootkraal learners against eviction and would set an important

precedent of the state taking active steps to remedy historical land and education injustice.

The Western Cape High Court heard the matter on 12 May 2017. In preparation for the hearing, the EELC has worked with EE to teach equalisers about the case through creating 'lawyer guides' and holding a mock trial in which equalisers had to argue either side of case. Following the hearing, EE and its legal team went to witness the judge inspecting the property, and the EELC filed a detailed note describing the schools and roads used by learners in the area.

The Court handed down partial judgment on 1 August 2017, dismissing the Grootkraal community's claims and also refusing to order the eviction until the Western Cape Education Department (WCED) fulfilled a previous court order requirement of meaningful engagement with both parties.

Following the filing of reports to Court by both parties in early October 2017, the EELC submitted a response to WCED and the landowner's reports indicating their vagueness and the

unlawful nature of their proposed solutions. The matter returned to court on 19 October 2017, and leave to appeal the High Court's decision on the existence of a servitude was granted to the Grootkraal community. In a groundbreaking judgment, the Supreme Court of Appeal recognised that the community's claim to a servitude. Finally, in November 2019, after more than 5 years of the community struggling against efforts to evict them from their school, the decision of the Supreme Court of Appeal resolved the matter in the community's favour. While the EELC had not made representations at the SCA, as we had not been engaged in arguments around the question of servitude, this is a significant victory for the community. We continue to advocate for the Department of Education, in appropriate circumstances, to consider utilising expropriation to advance education justice.

Advocates Zeynab Titus and Luis Ostler were instructed by the EELC in this matter.

"A big word of thanks to every staff member of Equal Education and every sector of you who took part in the court case of Grootkraal since 2011, it is with a thankful heart that I spread the news, we went to the Court of Appeal on the 5th of November 2018. We received judgment this morning. We won."
Text message from Mr L J Metembo, principal of Grootkraal Primary.



RECLAIM THE CITY

The EELC has filed an application on behalf of EE to be admitted as friend of the court in a case brought by the social movement, Reclaim The City. The case relates to the Tafelberg property in Sea Point that is being sold by the City of Cape Town to a private school instead of being developed for affordable housing. This case is important because the property represents a large piece of publicly owned land near the centre of the city, which holds potential to be used for public good and spatial justice. Despite this, and despite the fact that the province's own feasibility studies show that the property could viably be utilised for mixed income housing, the Western Cape government sought to sell the land off to the highest bidder.

On behalf of EE, the EELC has made submissions which focus on the impact of urban housing inequality on the right to access quality education, emphasising that spatial equality and transformation advances access to schools formally reserved for the well off.

UPDATE: FEEDER ZONES

In May 2016 the Constitutional Court handed down a groundbreaking decision in the matter of FEDSAS v MEC for Education, Gauteng and Another. In his last judgment as a Constitutional Court justice, former Deputy Chief Justice Dikgang Moseneke gave the Gauteng Department of Education one year to formulate new rules for feeder zones.

The EELC had represented Equal Education as a friend of the court in that case, arguing that Apartheid geographic divides meant that feeder zones based on work and living addresses alone would entrench racial inequality.

Following this judgment, the EELC has worked with EE in attending meetings of the task team which the Gauteng Department of Education set up for purposes of implementing the judgment.

Our submissions to the Department highlighted alternative zoning models and comprehensively commented on various aspects of admission policies and criteria..

Ultimately, this has led to a significant shift in laws and policies. For the first time in South Africa, regulations specifically state that spatial justice and transformation must be considered when determining feeder zones. Gauteng MEC Panyaza Lesufi claiming: "You will see how we have broken the backbone of apartheid planning".

HOLDING PRIVATE ACTORS IN EDUCATION ACCOUNTABLE

The EELC has worked with EE to ensure that legal pressure is placed on the private sector, in addition to state bodies, so that neither shirk their responsibilities in terms of the constitutional right to education, particularly where learners from low-income families are concerned.

THE EELC IN COURT



CONTRACTUAL POWERS OF PRIVATE SCHOOLS: AB AND ANOTHER V PRIDWIN PREPARATORY SCHOOL AND OTHERS

The EELC represented EE as a friend of the court in a matter between an elite private school and the parents of two learners. Due to a dispute between the school and the parents on the quality of sports coaching at the school, the school attempted to exclude the learners, relying on a provision in their contract with the parents allowing the school to terminate the contract 'for any reason'. EE chose to intervene to argue that such contractual clauses can be harmful to the interests of children, particularly in the cases of children from low-income families attending low-fee private schools, and are therefore unconstitutional. Ahead of the hearing, the EELC conducted a workshop with EE facilitators in Johannesburg on privatisation in education and the rising phenomenon of low-fee private schools.

The matter was heard in the Johannesburg High Court on 25 and 26 May 2017, and judgment in favour of the school was handed down on 7 July 2017. Significantly however, Acting Judge Hartford sympathised with EE's arguments, suggesting that such clauses in the case of low-fee private school contracts may indeed be impermissible. The parents were then granted

CONTRACTUAL POWERS OF PRIVATE SCHOOLS: AB AND ANOTHER V PRIDWIN PREPARATORY SCHOOL AND OTHERS

The EELC represented EE as a friend of the court in a matter between an elite private school and the parents of two learners. Due to a dispute between the school and the parents on the quality of sports coaching at the school, the school attempted to exclude the learners, relying on a provision in their contract with the parents allowing the

"It is time for private schools to recognise that they bear constitutional duties. The legislature and the judiciary have a responsibility to ensure that pupils who attend these schools are not exploited by unchecked powers. Where the elite seek to take advantage of the weaknesses of these state institutions, it is up to ordinary citizens and civil society to hold them to the principles of our Constitution." – 'Private Schools Flirt with Constitutional Delinquency', EE and EELC Op-ed, Business Day (20 May 2017).

PUBLIC-PRIVATE PARTNERSHIPS IN SCHOOLS: COLLABORATION SCHOOLS

A key concern of EE over the past year has been the introduction of a project

in the Western Cape referred to as "collaboration schools". This project involves the WCED functioning as a donor and collaborating with an "operating partner" in pilot schools. The operating partner receives some of the donor funding, and has at least 50% voting representation on the school's SGB. The WCED intends for 20-50 schools to form part of the pilot project, with 7 schools already operating as collaboration schools. A draft provincial Bill seeking to establish such schools as a type of public school has been published, but the legislation process has seemingly stalled with no indication given of when the draft legislation is to be published. The EELC secured an opinion from counsel regarding the lawfulness of this project, which advised that the appointment of operating partners as voting representatives on SGBs is unlawful. EE then instructed the EELC to send a letter to the WCED requesting to engage with EE and also to commit that no further approvals be given for private entities to have voting representation on SGBs. The WCED responded that it would not make such a commitment but was open to meeting with EE.

Despite this, the Bill went ahead and was passed into law in early 2019. The EELC is working with Equal Education now to assess potential advocacy and other steps to address challenges in the new provincial legislation.

THE ABIDJAN PRINCIPLES: GUIDING PRINCIPLES ON THE RIGHT TO EDUCATION AND PRIVATE ACTORS

The EELC forms part of a global group constituting the organising secretariat for the development of guiding principles on the right to education and on state obligations with respect to private interventions in education. With a rise

globally in public private education arrangements, and the proliferation of low-fee private schools, activists, scholars and lawyers can use these principles as a tool to examine the law on the right to education and states' primary duties to deliver that right.

In August 2017, the EELC, together with the Open Society Initiative for Southern Africa (OSISA), and Open Society Foundation for South Africa (OSF-SA) hosted the Southern Africa Regional Consultation on these principles. In line with the other global consultations forming part of the process of finalising this important document, the consultation allowed activists, education experts and lawyers from around Southern Africa to bring their own context, learning and challenges to the fore.

Following more than three years of global consultations such as the one hosted by the EELC (including consultations in Kenya, Bangkok and Paris), the EELC and remaining secretariat member organisations held several meetings of expert drafters in Geneva in 2018. The EELC has contributed to the coordination of the adoption conference, set to take place in February 2019 in Abidjan.

FILM AND ADVOCACY – AFRICAN PREMIERE OF "BACKPACK FULL OF CASH"

In January 2018, the EELC and the Bertha Movie House hosted the exclusive African premiere of the acclaimed feature-length documentary, Backpack Full of Cash. Narrated by Matt Damon, the film explores the growing privatization of public schools and the resulting impact on America's most vulnerable children. US-based Frederick James Frelow was a special guest speaker at the screening.

PROMOTING MOVEMENT BUILDING AND DEMOCRACY

In July 2018 EE held its 3rd national congress, at the Wits education campus in Johannesburg. The highest decision making body in Equal Education, the national congress adopts resolutions to guide the movement over the next three years, and elects its national council, the body tasked with ensuring that those resolutions are implemented.

In addition, the national congress considers the EE constitution and any proposed amendments thereto. Congress is an incredibly vibrant space,

with hundreds of members, mostly equalisers, gathering to represent all EE members from around the country and to engage with the future of the movement and with the three years that have passed since the previous national congress.

In 2018 the EELC supported EE's congress by supporting the resolutions, elections and constitutional review committees. During congress, the EELC was in attendance assisting as independent election monitors and facilitating the

debates and decisions made in relation to new congress resolutions and constitutional amendments.

The EELC was honoured to be part of this critical moment in the movement's development and welcomed the election of EE's new national council, led by Noncedo Madubedube (General Secretary) and Tracey Malawana (Deputy General Secretary).



Research and advocacy

The EELC uses legal research and advocacy to advance the right of access to education outside of the courtroom. This is done through participating in events around key issues in education, and making submissions on draft legislation and policy which may impact equity and justice in education. The EELC also develops its own internal research to bolster its case work and legal advocacy, and develops accessible legal materials for clients, SGBs, organisations and communities.

In 2018 the EELC established a dedicated research unit. This unit conducts independent research into critical issues relating to education equity and justice, and works together with EELC's lawyers and partner organisations to deepen research and analysis in our broader advocacy and litigation strategies.



RESEARCH & SUBMISSIONS

THE ABIDJAN PRINCIPLES: GUIDING PRINCIPLES ON THE RIGHT TO EDUCATION AND PRIVATE ACTORS

The EELC forms part of the organising secretariat for the development of guiding principles on state obligations with respect to private actors in education. With a rise globally in public private education arrangements, and the proliferation of low-fee private schools, activists, scholars and lawyers can use these principles as a tool to examine the law on the right to education and states' primary duties to deliver that right.

In August 2017, the EELC, together with the Open Society Initiative for Southern Africa (OSISA), and Open Society Foundation for South Africa (OSF-SA) hosted the Southern Africa Regional Consultation on these principles. Following more than three years of global consultations such as the one hosted by the EELC (including consultations in Kenya, Bangkok and Paris), the EELC and other secretariat member organisation's held several meetings with expert drafters in Geneva in 2018. The EELC has contributed to the coordination of the adoption conference, set to take place in February 2019 in Abidjan.

SCHOOL FUNDING

In April 2017, the EELC, EE and Studies in Poverty and Inequality Institute (SPII) commissioned a report by Debbie Budlender on an alternative to the current education component of the equitable share formula, aimed at improving equitable funding for

poor and rural schools. In May 2017, the EELC along with EE and SPII held a meeting with National Treasury and representatives of all provincial treasuries on the proposed revision of the equitable share formula. The meeting afforded an unprecedented level of engagement with a positive commitment by Treasury to include EELC in further discussions and to consider our recommendations.

ASSISTING THE DEPARTMENT OF BASIC EDUCATION WITH THE DEVELOPMENT OF EDUCATION RIGHTS IMPLEMENTATION PROTOCOLS

During 2016 the EELC was approached by the Department of Basic Education to assist in the formulation of a range of protocols designed to assist provinces, districts and schools in understanding the processes to be followed in the case of certain types of rights violations. Following this, in May 2017, the EELC and onke Gender Justice made joint comments on a Draft Corporal Punishment and Positive Discipline Protocol circulated by the DBE. In 2018, the EELC was asked to take the lead in coordinating discussions and drafting of the protocol dealing with various forms of discrimination that take place in schools. This work is led by the Law Centre's research team, which aims to finalise the protocol for adoption in the second half of 2019.

PARLIAMENT WATCH

Throughout 2017 and 2018 the EELC has formed part of the Parliament Watch coalition, which monitors the manner in which legislatures perform

their accountability and oversight roles. With the challenges of the political moment nearing the end of 2017, the coalition focused on calling members of the national parliament to hold the captured executive to account. The EELC assisted in the formulation and drafting of a letter to MPs which the public is able to sign onto and to contribute their own message to.

In addition, throughout 2018 the EELC's monitoring of parliamentary committees dealing with education and relevant issues (including transport) has fed into the analysis undertaken by the coalition. This analysis focuses on assessing the extent to which these committee function as independent, efficient, accountable and open mechanisms for oversight of the executive. A report on these findings, for which the EELC forms part of the drafting sub-committee, is planned for 2019.

DEPARTMENT OF BASIC EDUCATION NATIONAL POLICY OF HIV, STIS AND TB

Following the publication of the DBE National Policy on HIV, STIs and TB, EE and the EELC submitted a comprehensive letter to the Departments of Health and Education commending the introduction of a policy, but also highlighting some concerns. In November 2017, EE and EELC held a productive engagement with DSD, DoH and DBE on this policy.

ACCESS TO INFORMATION REPORT

The Access to Information Network (ATI Network) is a collaboration of civil society organisations seeking to

strengthen the effective use of the Promotion of Access to Information Act (PAIA). As part of this network, the EELC supported the development and publication of an annual shadow report on the use of PAIA by public and private bodies. The most recent report covers the period 1 August 2016 to 31 July 2017, and the coalition is working to finalise its report on the effectiveness of efforts to promote access through the statute in 2018.

BASIC EDUCATION LAWS AMENDMENT BILL

The EELC has been working closely with EE on preparing submissions on proposed amendments to the South African Schools Act (SASA). The EELC has also sought input from other public interest law organisations and submitted comments in December 2017. On 9 February 2018 and 12 February 2018, the EELC hosted two stakeholder workshops on the proposed law reforms.

SUBMISSION ON THE LEARNER PREGNANCY POLICY

In April 2018 the EELC and Section27 made joint submissions on the draft National Policy on the Prevention and Management of Learner Pregnancy in Schools. Whilst the formulation of the policy was welcomed, our submissions noted concerning deficiencies and areas for further development.

WESTERN CAPE EDUCATION LAWS AMENDMENT BILL

Western Cape Provincial School Education Amendment Bill, 2018 – The EELC has assisted EE in drafting submissions on extensive school reform amendments

proposed in the Western Cape. EELC also supported EE in public hearings held in Paarl and in Cape Town.

EDUCATION AND THE LAND QUESTION IN SOUTH AFRICA

In June 2018, EELC and EE made a joint submission to the Constitutional Review Committee on the question of land expropriation without compensation. The submission draws on the EELC's and EE's research and experience in relation to farm schools; in particular, Grootkraal Primary School in the Western Cape.

SUBMISSION TO THE UN COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

In August 2018 the EELC, together with our sister organisation, Equal Education, submitted a parallel report to the United Nations Committee on Economic, Social and Cultural Rights (the "Committee") responding to the South African government's report to the international body. On 3 October 2018, the EELC joined EE in presenting a live, on-line summary of our submissions to the Committee. The Concluding Observations of the Committee specifically take up some of our key recommendations.

ACCESS TO EDUCATION FOR YOUTH IN CONFLICT WITH THE LAW

In September 2018 the EELC made submissions to the National Department of Justice and Constitutional Development on the Amended National Policy Framework on Child Justice (the

"Amended NPF"). Our submission was motivated by the work which we have done in the area of education provisioning to youth in conflict with the law. Whilst we acknowledged the efforts made within the Amended NPF to rectify deficiencies in the systems relating to child justice, we emphasised the need for proper guiding provisions relating to education and the provision thereof. The following month, the EELC launch a report on access to education in correctional facilities and child and youth care centres in the Western Cape, and hosted a roundtable discussion with various stakeholders to launch the launch of the report and engage with its findings.

EARLY CHILDHOOD EDUCATION

On 16 March 2018, the EELC hosted a roundtable discussion on the regulatory and funding frameworks impacting on early childhood education. In September 2018 the EELC made submissions on draft amendments to the Children's Act. In our submissions, we emphasised the need for a clear and coherent legislative framework regulating early childhood development, including progressive measures to properly fund and support ECD facilities and programmes.

EVENTS AND CONFERENCES

SAJHR CONFERENCE: CONQUEST, COLONIALISM AND DEMOCRATIC CONTESTATIONS

The EELC's Nurina Ally and Mbekezeli Benjamin presented a paper tracing policy and jurisprudential developments on the role and nature of school governing bodies at the 2017 South African Journal on Human Rights (SAJHR) conference in May.

IMPACT OF STRATEGIC LITIGATION IN EDUCATION (SAO PAULO)

The EELC attended a conference in Sao Paulo (Brazil) in May 2017, bringing together education activists from Brazil, India and South Africa. The conference saw the launch of the Open Society Justice Initiative, and the Open Society Foundation Education Support Program Report on the Impact of Strategic Litigation on Education.

EELC WORKSHOP ON THE RIGHT TO EDUCATION FOR REFUGEES

In July 2017, The EELC presented at the UCT Refugee Clinic's workshop for community leaders on the rights of refugees. Following the success of this presentation, the EELC was invited back to deliver the same presentation to the gathering in 2018.

PUBLIC INTEREST LAW GATHERING

The EELC hosted two panel discussions at the Public Interest Law Gathering (PILG) held at the University of the Western Cape (UWC) in July 2017. One panel focused on the challenges of intergovernmental cooperation in realising socio-economic rights, while the other considered the implementation of court orders and accountability.

BERTHA FELLOWS CONVENING: CONTESTING POWER, PRIVILEGE AND THE CONSTITUTION

Two of EELC's candidate attorneys, Ziphokazi Sisilana and Tabitha Paine, attended a Bertha Convening under the theme Contesting power, privilege and the Constitution. The convening was organised and conceptualised by Bertha Fellows, and made up of candidate attorneys from various public interest law centres. The EELC organised two sessions around the Marikana massacre as a way of remembering and questioning power and privilege. These sessions focused on how and whether lawyers can or should become more radical, and on the women of Marikana and the need to remember the power of marginalised voices and how they are often silenced.

CROSSING BOUNDARIES BETWEEN PUBLIC AND PRIVATE LAW WORKSHOP

The EELC's Deputy Director, Daniel Linde, and attorney, Tarryn Cooper-Bell,

presented at a workshop organised by an international research partnership between the University of Leicester and University of Cape Town (UCT) on "Crossing Boundaries between Public and Private Law". The presentations examined the EELC's work on the potential inequality that could result from private interventions into public schooling, and the constitutionality of wide ranging contractual provisions at private schools.

GLOBAL MEETING ON PRIVATISATION IN EDUCATION (NEPAL)

On 7-10 September 2017, the EELC was represented at a global meeting in Nepal on privatisation in education by attorney Tarryn Cooper-Bell. The meeting was attended by participants from 37 countries, and aimed to facilitate discussion on global trends in privatisation, and to strategise a coordinated and unified approach towards these developments. Tarryn presented during a session entitled "Advocacy on Private Actors in Education".

WOMEN'S WORKING GROUP CONVENING (PHILIPPINES)

On 11 to 15 September 2017, EELC Candidate Attorney Ziphokazi Sisilana, attended a Women's Working Group Convening hosted by Centerlaw in Manila (Philippines). The convening focused on creating a safe space for women in the Bertha network to discuss gender discrimination in and outside the work place.

KEYNOTE ADDRESS AT NAPTOSA PROVINCIAL CONFERENCE

The EELC's Deputy Director, Daniel Linde, delivered the keynote address at NAPTOSA's Gauteng Provincial Conference in September 2017. The theme of the conference was constitutional supremacy and the rule of law in education. Daniel addressed NAPTOSA leaders on the reality of education spaces for learners and teachers in poor communities, and the long drawn out litigation to ensure the state meets its obligations to keep children, and school staff, safe.

SAELA CONFERENCE

On 3-5 September 2017, the South African Education Law Association (SAELA) held its 22nd International Education Law Conference in Parys, Free State. The EELC, represented by Lisa Draga, and the Legal Resources Centre co-convened a panel discussion on understanding the role of NGOs in realising the right to basic education. The discussion focused on some of the fundamental legal developments on the right to basic education spearheaded by civil society over the last decade.

CLS SEMINAR WITH JUSTICE DIKGANG MOSENEKE

On 4 October 2017 the Centre for Law and Society (CLS) hosted former Deputy Chief Justice Dikgang Moseneke in conversation with the EELC's Mbekezeli Benjamin. Justice Moseneke addressed the scope of the right to basic education in our constitutional jurisprudence. The event provided an opportunity for the EELC to engage one of our leading jurists on the ongoing struggle for equality and quality in education, the meaning of an 'immediately realisable' socio-economic right, and how

lawyers and activists can address the gap between reality and the Constitution's promises.

SAIFAC CONFERENCE

Executive Director Nurina Ally, and attorneys Chandre Stuurman and Tarryn Bell-Cooper represented the EELC at a conference titled "A human-rights based approach to education in South Africa" hosted by SAIFAC in Johannesburg on 6-7 November 2017. The EELC presented papers which focused on age and access to education, early childhood education, and inclusive education.

MOVEMENT LAWYERING SEMINAR (NEW YORK)

In November 2017 the EELC participated in a seminar on strategies to pursue justice in adverse social and political environments, co-hosted by the Centre for Constitutional Rights (CCR-US) and the Socio-Economic Rights Institute of South Africa (SERI). The EELC's Mbekezeli Benjamin facilitated a panel discussion on Boycotts, Disinvestment and Sanctions (BDS) campaigns and the right to free speech.

DEBATING THE VALUE ADDED TAX INCREASE

The EELC forms part of the recently established Budget Justice Coalition, and hosted a workshop of the coalition which engaged public participation in VAT increase processes.

COMPARATIVE AND INTERNATIONAL EDUCATION SOCIETY CONFERENCE

In March 2018 the EELC's Mbekezeli Benjamin and Demichelle Petherbridge

attended the global CIES conference in Mexico City. The EELC co-convened a panel discussion on the challenges of privatisation in education in different contexts, and made a presentation about independent schools and new efforts to concretise private management of ostensibly public schools in South Africa.

ROMA LAWYERS EXCHANGE IN PRAGUE

In July 2018 the EELC's Precillar Moyo was invited to attend a discussion in Prague with Czech Roma lawyers and education activists. Precillar presented on the work of the EELC and how we have built a unique relationship of lawyering in support of our sister organisation, Equal Education, and how we focus our movement lawyering efforts on opening spaces for activists to organise and campaign.

EMBRACING INCLUSIVE APPROACHES

In July 2018 DISES hosted an International Conference framed as 'Embracing Inclusive Approaches'. The conference was held in Cape Town, and the EELC's Chandre Stuurman co-presented a paper on inclusive education.

STATEMENT OF FINANCIAL POSITION

	2018 R	2017 R
ASSETS		
NON-CURRENT ASSETS		
Property, plant and equipment	112,234	126,554
CURRENT ASSETS		
Trade and other receivables	495,651	65,038
Cash and cash equivalents	12,602,847	9,687,807
	13,098,498	9,752,845
TOTAL ASSETS	13,210,732	9,879,399
TRUST FUNDS AND LIABILITIES		
TRUST FUNDS		
Accumulated funds	3,149,450	3,747,042
Sustainability Capital Reserve funds	3,524,556	-
Trust Capital – Initial donation	500	500
	6,674,506	3,747,542
LIABILITIES		
CURRENT LIABILITIES		
Trade and other payables	1,994,818	59,326
Provisions	59,260	65,086
Deferred Income	4,482,148	6,007,445
	8,536,226	6,131,857
TOTAL TRUST FUNDS AND LIABILITIES	13,210,732	9,879,399

STATEMENT OF COMPREHENSIVE INCOME

	2018 R	2017 R
REVENUE		
Grants earmarked for use during the year	10,479,585	6,601,176
OTHER INCOME		
Trade and other receivables	747,545	503,081
Sundry Income	372,339	309
	1,126,884	503,390
OPERATING EXPENSES		
Accounting fees	59,873	9,870
Advertising	6,324	32,319
Annual Report	10,000	40,300
Auditor's remuneration	15,359	22,800
Bank charges	18,597	12,462
Board Meetings	26,318	9,205
Cleaning	15,251	13,796
Computer expenses and website design	49,114	39,867
Conference costs	23,676	10,000
Consulting and professional fees	1,732,509	175,898
Depreciation	48,099	45,346
Donations	2,250	1,600
Electricity	67,147	63,829
Employee costs	5,216,346	4,364,121
Events material	33,168	-
Insurance	30,437	27,303
Lease rentals and operating lease	266,075	238,868
Legal material and resources	18,500	18,148
Office expenses	14,478	11,497
Payroll fees	10,786	9,703
Penalties and interest	59	405
Postage	124	6,491
Printing stationery	30,785	47,891
Project litigation costs	467,917	261,190
Recruitment fees	22,430	-
Relocation costs	-	5,000
Repairs and maintenance	5,697	7,056
Small assets	2,598	-
Staff welfare	48,455	24,163
Subscriptions	20,606	23,243
Telephone and fax	55,939	46,524
Training	13,940	12,400
Travel	346,648	162,143
	8,679,505	5,743,428
Surplus for the year	2,926,964	1,361,138
Other comprehensive income	-	-
Total comprehensive income	2,926,964	1,361,138

The supplementary information presented does not form part of the annual financial statements and is unaudited

Thank you to our supporters

Allen and Overy Foundation

Bertha Foundation

Sigrid Rausing Trust

Claude Leon Foundation

Open Society Foundation SA

Cameron Schrier Foundation

Ford Foundation

Heinrich Böll Stiftung

Raith Foundation

The European Union

RB Haggart Trust

Foundation for Human Rights



THANK YOU TO THE BOARD OF TRUSTEES FOR THEIR SUPPORT AND GOOD GOVERNANCE

Catherine O'Regan

Achmat Toefy

Itumeleng Mahabane

Janice Bleazard

Ursula Hoadley

Ntshadi Mofokeng

Yoliswa Dwane

Zukiswa Kota

Halton Cheadle

Sindiswa Lingela

The Equal Education Law Centre is managed
By the Equal Education Law Centre Trust.

Isivivana Centre
3rd Floor
8 Mzala Street
Khayelitsha, 7784

Public Benefit Organisation
(Exemption No: 930038683)

Trustees:
Adv Janice Bleazard
Itumeleng Mahabane
Dr Ursula Hoadley
Ntshadi Mofokeng
Yoliswa Dwane
Achmat Toefy
Zukiswa Kota
Justice Catherine O'Regan

T +27 21 461 1421/3551
F +27 86 572 4675
info@eelawcentre.org.za
www.eelawcentre.org.za

NPO No: 099-658-NPO
Trust Certificate No. IT2966/2011

The Equal Education Law Centre
Trust is a registered Trust.

BANKING DETAILS:
Business Account
Account number: 62338566584
Branch code: 201409
Branch: Adderley St. Cape Town 026
Swift code: FIRNZAJJ
Date opened: 2011-12-15