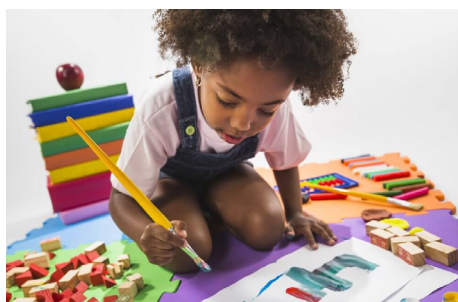


# Newsletter



## EELC contributing to ECD Regulatory reform



**B**etween November 2022 and July 2023, the EELC has worked on a project commissioned by UNICEF and the DBE to consider reform of the regulatory framework for ECD in South Africa.

South Africa has long recognized the importance of ECD. Reforming the regulatory framework to create an enabling environment for ECD has become one of the Department of Basic Education (DBE) priorities since they took over the ECD function from the Department of Social Development (DSD) in April 2022. In the shorter term, the DBE is pursuing reform of the Children's Act, to make it easier for ECD programmes to register and access state funding. In the longer term, it may be that more comprehensive reform of the laws and policies relating to ECD is needed, to ensure universal access to quality, inclusive ECD services.

The aim of the work we undertook was to consider what more comprehensive regulatory reform should look like. The EELC was responsible for drafting two chapters in the report. One was a mapping of the existing regulatory framework, including the responsibilities for ECD at different levels of government and in different government departments, as set out in the Constitution and in key legislation like the Children's Act and the National Health Act.

The other chapter then drew on the mapping to analyse the extent to which the existing regulatory framework is comprehensive; consistent and coherent; clear, intelligible, and accessible; and context-sensitive. This chapter also set out possibilities for reform and considered the relative merits of a stand-alone ECD Act as compared to piecemeal amendment of existing legislation.

This was a significant piece of work which will be used to inform the DBE's deliberations and consultations to determine reforms for the ECD regulatory framework going forward.

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EELC and EE activists alongside each other at the march

***"It was an invaluable experience for my personal and professional development within the movement lawyering and activism space."***



Malixole, Ebrahiem & Yolisa



## Young EELC activist lawyers at forefront of Youth Parade



Tshego & Ebrahiem

Thousands of South African youth marched to the Union Buildings in Pretoria to hand over a memorandum of demands to the Presidency on the 16th of June. The march was organized by the National Youth Coalition (NYC) where two of the EELCs young activists sit on the steering committee. As members of the steering committee and education working group of the NYC, Junior attorney, Ebrahiem Daniels and candidate attorney, Yolisa Piliso were part of the core team responsible for the planning and logistical coordination of the march.

"To see the youth gathering in such large numbers from different provinces across the country and united under one cause to fight for a brighter South Africa is a memory I will carry with me in the struggle going forward," reflected Yolisa.

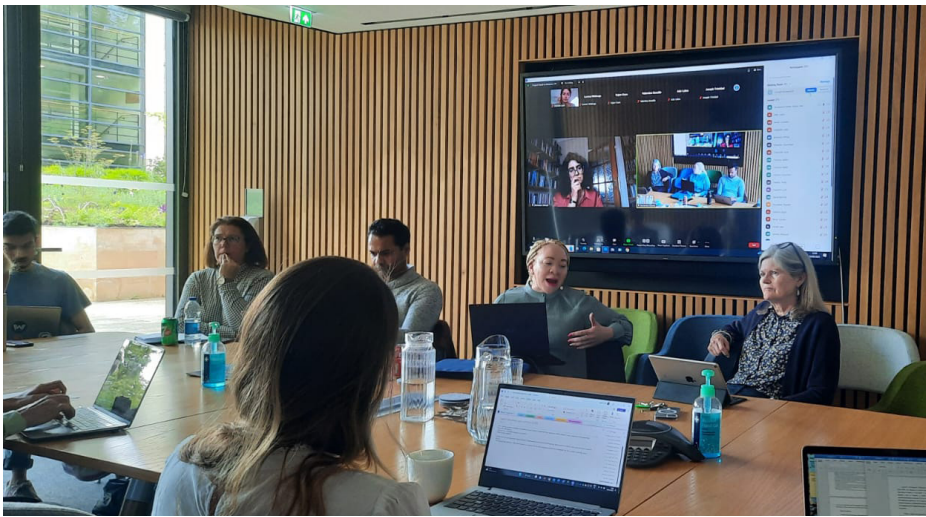
Together with candidate attorney, Malixole Sikhungu they led the drafting of the memorandum of demands to the president. The memorandum called on the President to meaningfully engage with the youth of South Africa and made demands on a range of issues impacting young people, such

as equitable and quality education, sustainable and meaningful economic opportunities for South Africa's youth, crime reduction, food security and climate justice.

Ebrahiem gave an impassioned speech on the day of the march on behalf of the NYC, sharing the vision of the youth and highlighting the importance of listening to the voices of South African's young people. "We are legitimate stakeholders in the governance and development of South Africa. Our generation is filled with dynamic, innovative thinkers who possess the passion, creativity and fresh perspectives needed to shape a brighter future in this country," he said. Our young activists marched alongside post school youth members of our social movement partner Equal Education. For EELC's young activists, the NYC has played a key role in building solidarity and relationships across the social justice sector.

The team took a moment the day before the march to visit the grave of Hector Pietersen to draw inspiration and reflect on the struggle of those who have gone before. A tour of the Constitutional Court also served to reinforce their belief in the democratic transformation of South Africa. Malixole reflected that, "Being part of the team that visited Comrade Zolile Hector Petersen's grave gave rise to mixed reactions, some almost impossible to articulate. It was an invaluable experience for my personal and professional development within the movement lawyering and activism space. While the experience instilled high-spirited enthusiasm to take this activism baton further, it also made me realise how the state uses his name and commitment to social change but, at the same time, do the extreme opposite of what he stood and died for."





## Knowledge sharing and thought Leadership

In May, with the support of the Joel Joffe Charitable Trust and the Oxford Children's Rights Network Series in partnership with the Bonavero Institute of Human Rights, the EELC convened a **transnational learning exchange aimed at unpacking the role between the law and activism**. Chaired by Kate O'Regan, Director of the Bonavero Institute in Oxford, EELC Executive Director, Tshego Phala was joined on the panel by Shameem Ahmad, Director of the Public Law Project and Prof Tarunabh Khaitan, lecturer in Public Law and Head of Research at the institute.

The discussion highlighted the debates which have recently risen to the global stage on the interaction of legal practice and activism. Some argue that high-quality, ethical legal research or legal practice or both are incompatible with certain aspects of activism. Others emphasise synergy between the two. Others still say that law and activism – or at least law and politics – can never be fully separated and that it is disingenuous to suggest otherwise. The learning exchanged offered an opportunity to deepen these debates, where practitioners and academics in the UK and in South Africa can learn from the similarities and differences between their respective experiences.

Tshego shared EELC's perspectives and its strong belief on the need for a link between legal activism and grassroots mobilisation to bring about social change. A lively debate ensued and the value of sharing very different experiences of legal activism from the UK and South African perspectives provoked much food for thought.

**Transnational Learning Exchange**  
Law and Activism:  
Incompatible or Mutually Reinforcing?

**10 MAY 2023**  
**13:00 – 14:30**  
BONAVERO INSTITUTE OF  
HUMAN RIGHTS & ZOOM

REGISTER HERE

**SPEAKERS:**

**Tshego Phala**  
Executive Director of the  
Equal Education Law Centre

**Shameem Ahmad**  
CEO of Public Law Project

**Professor Tarunabh Khaitan**  
Professor of Public Law and Legal  
Theory, and Head of Research in the  
Bonavero Institute of Human Rights

**Chair: Professor Kate O'Regan**  
Professor of Human Rights Law, and  
Director of the Bonavero Institute of  
Human Rights

The relationship between law and activism is an issue that has recently risen to prominence on the global stage. The debates encompass both legal research and legal practice. Some argue that high-quality, ethical legal research or legal practice or both are incompatible with certain aspects of activism. Others emphasise synergy between the two. Others still say that law and activism – or at least law and politics – can never be fully separated and that it is disingenuous to suggest otherwise.

The Oxford Children's Rights Network Series in partnership with the Bonavero Institute of Human Rights has the pleasure of hosting Equal Education Law Centre's transnational learning exchange which is aimed at offering an opportunity to deepen these debates, where practitioners and academics in the UK and in South Africa can learn from the similarities and differences between their respective experiences.

Founded over 10 years ago in 2012, the Equal Education Law Centre (EELC) is a public interest litigation organisation established in order to further the struggle for education justice in South Africa. EELC was formed in recognition of the crucial link between social mobilisation and social change. Building the power of those who are social and economically disadvantaged within the schooling system is fundamental to the work of the EELC. Key to the EELC's way of working are the concepts of movement lawyering and legal activism.

The aim of this roundtable is to bring together students, legal practitioners and academics from South Africa and from the UK to exchange and learn from one another's experiences and perspectives on the relationships between law and activism.

REGISTER HERE TO JOIN



**LINK TO THE RECORDING / VIDEO:**

[https://www.youtube.com/watch?v=\\_trL\\_KfYwaw](https://www.youtube.com/watch?v=_trL_KfYwaw)



On the same day, the **Comparative and International Education Research Group at Oxford University** hosted a seminar where EELC's Deputy Director, Robyn Beere, joined Equal Education's General Secretary, Noncedo Madubedube to share our way of using action research to support youth-led activism and education advocacy in SA. Members of the audience, both in-person and virtual appreciated the way in which EE and the EELC ensure that research is both informed by the lived experiences of learners but also how recommendations from research findings in turn inform the work of youth led activism. Robyn also highlighted how "our research doesn't only look to identify challenges and lacunas in the regulatory framework but to provide recommendations and solutions for change, as we also see our research as a tool for capacitating government."







EELC attorneys with Mr James Ndlebe and Elijah Mhlanga of the DBE

## EELC joins DBE technical working group on disciplinary procedures in schools

Following on from engagements around our report which highlights some of the challenges with regards to disciplinary processes in schools, the EELC was invited by the DBE to join a technical working group to consider reforms. The task team is made up of National and provincial education department officials, the SAHRC and a senior lecturer from North West University, Dr Nicholas Mollo. The team met for a two-day working session to consider recommendations from the EELC's and a report undertaken by Dr Mollo based on research in schools in order to come up with a proposed way forward. See DBE statement [here](#).

The team is responsible for developing model provincial regulations for disciplinary procedures in schools, which the EELC has taken the lead in drafting. Pila-Sande Mkuzo, EELC's representative on the working group,

shares her thoughts on the value of the EELC being part of this process: "The EELC has been able to bring to the table the voices of learners and parents from our law clinic cases, combined with our legal expertise. This has placed us in a unique position to ensure policies developed by the DBE are informed by and alive to the issues on the ground."

*"I am really looking forward to the end-result of this engagement and hopefully it will be cascaded to the relevant education stakeholders to obtain further comments urgently"*

James Ndlebe

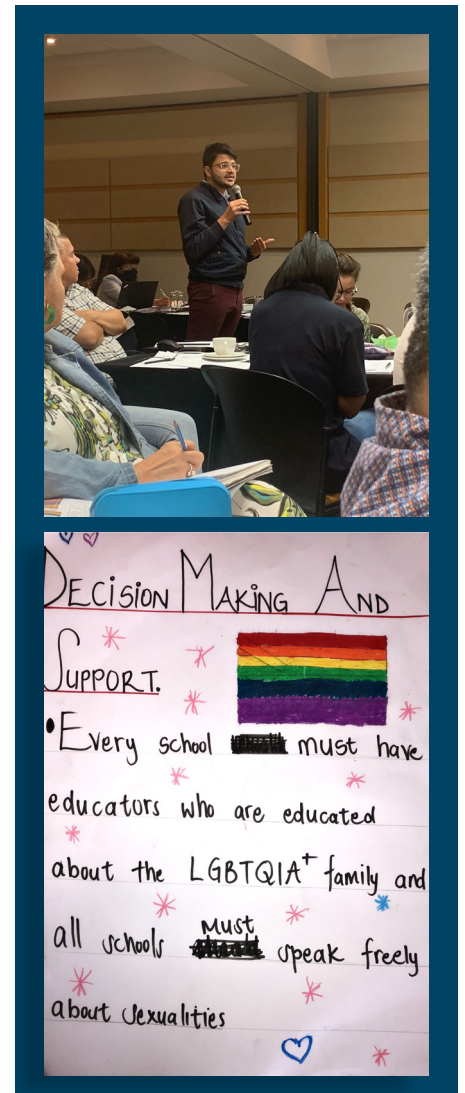


Technical working group team members

See EELC's Disciplinary procedures in schools report [here](#).



# Learner voices shape the development of the DBE's Sexual Orientation, Gender identity, Expression and Sexual Characteristics (SOGIESC) guidelines.



In recent years the EELC has engaged with the Department of Basic Education on its draft SOGIESC Guidelines and Discrimination Protocol. In 2023, we have been particularly invested in the consultation process for both documents which the DBE's Social Cohesion Directorate undertook in various provinces. We have been active in the DBE's provincial consultation process and have attended and given presentations in their Western Cape, Gauteng, Northern Cape and KZN consultations.

Concerned that there were no learner voices in the consultation process and in order to ensure that learner voices were represented and considered, the EELC facilitated two engagements in Khayelitsha, Western Cape, and Daveyton, Gauteng with Equalizers (learner members of Equal Education). We also facilitated a joint child consultation with the Western Cape Children's Commissioner and Triangle Project. The joint consultation comprised an in-person engagement on 27 May, and a virtual consultation with learners following the in-person consultation.

In order to make these guidelines more accessible to young people, we produced child-friendly guides to the documents and have used them at each engagement, as well as publishing them on our [website](#) and social media.

We have made written submissions to the DBE, incorporating the input of learners, on both draft documents. This has included a [standalone submission by the EELC](#) on both the Draft SOGIESC Guidelines and Discrimination Protocol, as well as a [joint submission by the EELC, WCCC and Triangle Project based on our joint consultation](#). In addition, the EELC was invited onto the DBE's Social Inclusion in Education Working Group.



Through one of the EELC's law clinic matters we learnt that our material assisted a group of LGBTQI learners who were uncomfortable with using the boy's bathroom at their school. One learner came across EELC's pamphlets and then raised some of the information relating to gender neutral bathrooms in an SGB facilitated meeting. Subsequently the learners put in a request through a letter to the SGB to use a bathroom that neither male nor female learners were using, as a gender-neutral bathroom. The school contacted us to seek our guidance. The material legally empowered the learners and the school community to engage through a human right centered lens.

## EELC makes submissions to influence education law and policy reform

One of the key objectives of our work is to inform and influence education law and policy reform to ensure our regulatory framework promotes and protects the right to equitable, quality education for all children, makes provision for adequate accountability mechanisms and addresses the inequalities in our education system. To this end the EELC regularly makes submissions on various laws and policies that are in the process of review and development.

In 2023 we have made significant input into the drafting of provincial regulations for disciplinary procedures in schools, proposals for the reform of the ECD regulatory framework and child led submissions into the DBE SOGIESC and discrimination guidelines.

In addition, we also make submissions to international bodies to shape the development of international obligations on states to uphold and protect human rights. In 2023 we have submitted an alternative report

on South Africa's 3rd Periodic Country Report to the [United Nations Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#).

We also gave input to the UN Committee on the Rights of the Child on the Draft General Comment on Children's Rights and the Environment with a Special Focus on [Climate Change](#). Here we highlighted the impact of environmental disasters and climate change on education in South Africa.

## Legal Empowerment and capacity building

Legal empowerment lies at the heart of our community and movement lawyering work. Our first objective is to empower learners and parents of their education rights and the responsibility of duty bearers in relation to those rights. To this end we have had regular empowerment workshops with EE learners and parents throughout the first half of the year covering topics such as admissions, undocumented learners, withholding report, fee exemptions and disciplinary processes. Over 430 equalisers and parents have been reached through these workshops.

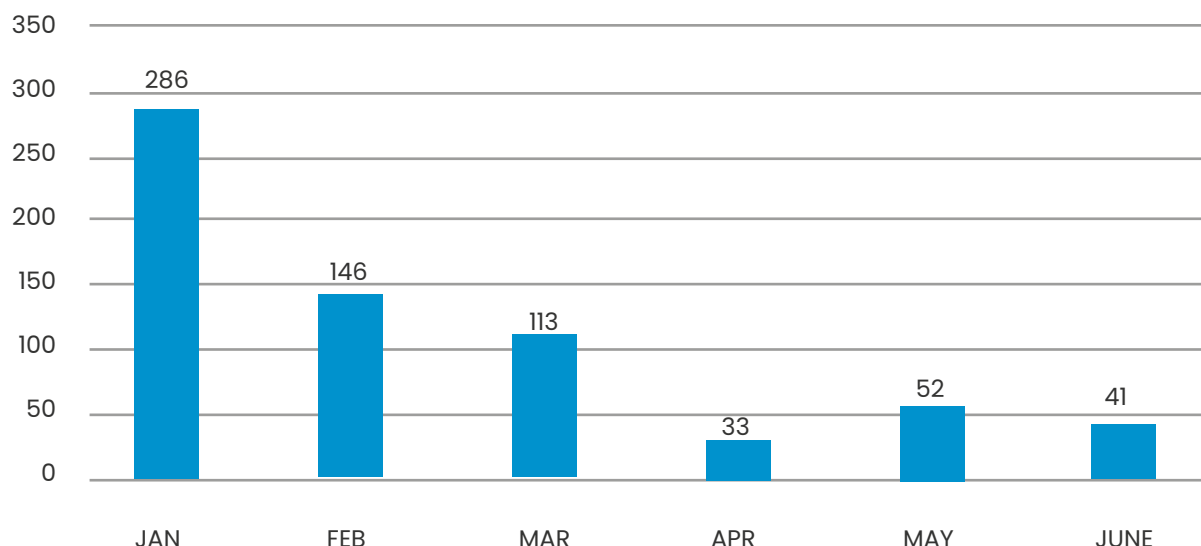
In addition, we aim to build the capacity of paralegals to provide quality advice to their clients on a range of education related topics. In March we were able to train 12 Eastern Cape paralegals from King Williams Town and surrounds. The paralegals appreciated the hands on practical nature of the training and the manual and resources that were shared with them.





Providing access to justice and legal empowerment remains at the centre of our work. Our daily advice clinic received an unprecedented high number of matters in the first quarter of 2023.

## 2023 Law Clinic Cases



While we assisted clients from across the country, the majority of our cases came from the Western Cape and were primarily admission related cases. This follows the trend over the years where large numbers of parents in the Western Cape struggle to find placement for their children at the start of the school year – an issue our [current litigation](#) against the WCED seeks to address.

In the first four months of the year, we assisted over 200 clients with placement-related issues. In one matter, we assisted a learner who was last in school in 2016. His grandfather took over care of the learner upon finding out he was abused and reached out to us for assistance with school placement. Through support from the EELC, the learner was successfully placed in a school together with a commitment of support for his learning needs.

### Continued failure by schools to adhere to due process and to provide learners with support in cases of disciplinary processes

Matters related to disciplinary procedures in schools remained the second highest, indicating that our work with the DBE in trying to strengthen provincial regulations is still needed. In several of our matters we have successfully assisted learners to have charges against them dropped due to incorrect procedures having been followed. We have also assisted a learner to have the disciplinary charges against them dropped as they had not been provided with support before they were charged. The learner is now receiving support. The EELC intervened in another matter where a learner was being victimized. In this case the HOD dismissed the school's recommendation for expulsion and has referred the matter back to the school for an alternative sanction in

terms of their code of conduct. The HOD has also implemented two additional interventions that:

- ◆ the District Based Support Team must arrange for a restorative mediation between all the learners involved in the altercation; and that
- ◆ the District Based Support Team must draft an individual support plan for therapeutic support to our client.



### Unlawful fees related issues

School fee issues and unlawful withholding of report cards also accounted for many of the cases we received in the first half of the year. After having seen a trend of parents unlawfully being required to pay registration fee's and 'voluntary contributions' before being permitted to attend school and or before receiving the previous year's report cards, the EELC approached the HOD's in both the Western Cape and the Eastern Cape. Within the Eastern Cape we had a list of 16 schools where such practices were taking place while in the Western Cape, we had a list of 10 schools. After our intervention in the Western Cape the WCED noted our reports with great concern and had a district official visit each of the schools in order to ensure that schools understood and adhered to the law.

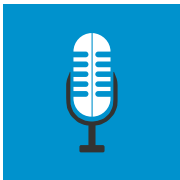
# Media Highlights

Our team of attorneys and researchers have contributed to current debates and have responded to emerging issues through a variety of media engagement activities.



## Press statements

- ◆ Equal Education Law Centre and Equal Education jointly welcome National Treasury's three year extension of the School Infrastructure Backlogs Grant to help tackle overcrowding in our schools. [Read here](#)
- ◆ Equal Education Law Centre and Equal Education join hands in their call for urgent intervention to resolve the collapse of the National School Nutrition Programme in KwaZulu-Natal and restore learners' access to food at school. [Read here](#).
- ◆ Comment on the 2021 Progress in International Reading Literacy Study (PIRLS) results with Equal Education. Results confirm a schooling system in crisis and the extent of learning losses created by COVID-19. [Read here](#).



## Op-eds

- ◆ Candidate Attorney, Yolisa Piliso, talks about decriminalising the use of dagga among learners and finding rehabilitative methods to prevent drug use instead. [Read here](#).
- ◆ Legal researcher, Tatiana Kazim and Junior Attorney, Pila-sande Mkuzo talk about the benefits of learning in your mother tongue and what the law says. [Read here](#).



## Twitter space highlight

- ◆ EELC hosted a conversation with civil society about the issue of undocumented learners: [ICYMI] [Here](#) is a link to the conversation. We were joined by the Centre for Child Law and the Legal Resources Centre.
- ◆ On 31 January 2023, we engaged the Department of Basic Education (DBE) Spokesperson, Elijah Mhlanga, in a Twitter Chat. This was an information sharing session where we asked him questions about admissions processes.



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