

6 March 2023

**Attn: Mr Malesela Leso**

Director: International Legal Relations

Department of Justice and Constitutional Development

329 Momentum Building, Pretorius Street

Pretoria

By email to [MaLeso@justice.gov.za](mailto:MaLeso@justice.gov.za)

Dear Mr Leso,

**Re: South Africa's 3<sup>rd</sup> Periodic Country Report on the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

### Introduction

1. Equal Education Law Centre (EELC) is a registered law clinic whose staff of social justice lawyers specialise in education policy, legal advocacy, community lawyering and public interest litigation. The EELC engages in strategic litigation regarding major issues surrounding long-term educational reform, as well as working on individual cases arising from experiences of learners, parents and teachers, such as access to schools amongst others. The EELC provides legal services and representation free of charge to persons who would not otherwise be able to afford them. The legal processes pursued by the EELC seek to create systemic change in the education sector.

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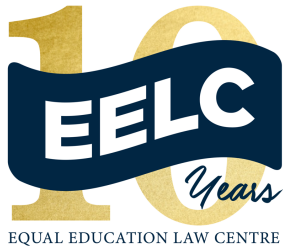
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2. Given EELC's status as an organisation dedicated to educational reform, our written submission to the Department of Justice and Constitutional Development (DOJCD) will be limited to violence in schools.
3. In this respect, EELC is aware of the numerous issues that learners face in respect of their safety in schools, including in the form of corporal punishment and other forms of assault, sexual violence, psychological abuse, threats of violence and bullying. South Africa's 3<sup>rd</sup> Periodic Country Report (Draft Report) to the Committee Against Torture (the Committee) therefore plays a crucial role in ensuring compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) and therefore also plays a crucial role in eliminating violence in schools. We therefore commend the DOJCD on the consultative manner within which it has drafted its Draft Report. We would also like to thank the DOJCD for the consultative workshop which we attended, in which the final draft of the report was presented.
4. Our comments on the Draft Report are contained below.

### **EELC's comments on the Draft 3<sup>rd</sup> Period Country Report**

#### *Article 16 – Prohibition of Corporal Punishment*

5. The 2023 List of Issues (LOI) to South Africa requested South Africa to identify the measures taken by the State Party to prohibit corporal punishment of children in all settings.<sup>1</sup> In turn, the Draft Report has provided information on the legal prohibitions which have been put into place in respect of corporal punishment in school.

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<sup>1</sup> Pp 6 of LOI.

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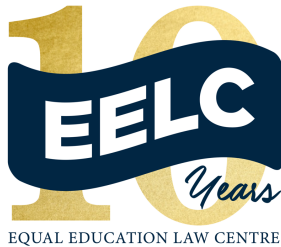
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6. However, the report should interpret the LOI broadly to include not only feedback on the legal prohibitions in place, but also feedback on the eradication of corporal punishment in school in spite of the legal prohibitions in place. This is so because:
- a. Although corporal punishment is illegal in the school setting, it continues to plague children in school, it is normalised, and it is very widely used. It therefore does not present the Committee against Torture (the Committee) with an accurate picture of the challenges relating to corporal punishment in South Africa if the Draft Report does not contain information on the extent of the continued use of corporal punishment at school and the measures that South Africa is taking to eradicate it; and
  - b. The LOI requires South Africa to provide information on “other issues”<sup>2</sup> and “general information”<sup>3</sup> which supports our proposition that South Africa must, in addition to reporting on the legal prohibition of corporal punishment at school, also report on the measures being taken to eradicate the continued use of corporal punishment.
7. As such, the Draft Report ought to provide the following information to the Committee for it to obtain an accurate picture of the South African context and make relevant recommendations:
- a. A summary of information on the extent to which corporal punishment continues to be used at schools (both ordinary and special schools). In respect of the extent to which it continues to be used at school, the Draft Report should reference the recently released report from Statistics South Africa which contains comprehensive data on the extent to which corporal punishment continues to be used, as well as any data that the Department of Basic Education (DBE) holds on incidents of corporal

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<sup>2</sup> Pp 7 LOI.

<sup>3</sup> Pp 7 LOI.

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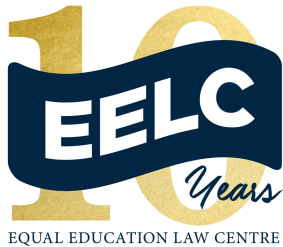
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punishment at school – including, but not limited to the number of complaints made to the DBE and the South African Council of Educators (SACE). The Statistics South Africa report, which is entitled “[Child Series Volume 1: Children Exposed to Maltreatment](#)” provides shocking statistics on the widespread use of corporal punishment in schools even though it has been illegal to do so for over 20 years.<sup>4</sup> The report states that the most common form of violence experienced by children at school was corporal punishment with close to 84% of children experiencing this type of violence in 2019.<sup>5</sup> This information is essential for the Committee to be aware of if it is to make meaningful assessment of South Africa’s compliance and respective recommendations.

- b. Information on all measures which South Africa is taking to eradicate the continued use of corporal punishment in schools – for instance charging educators who are guilty of grievous assault as well as ensuring that they are removed from the roll of educators, ensuring that all educators receive training on the use of positive discipline and ensuring that educators are vetted for their suitability to work with children.
- c. Information regarding the litigation against SACE.<sup>6</sup> If successful in favour of the appellants, the litigation could constitute a measure which is geared towards eradicating corporal punishment in school. The appellants are the Centre for Child Law and the parents of the learners. Together they seek to judicially review and have set aside the lenient sanctions that SACE handed down to two educators who severely assaulted two young learners in separate incidents in different schools. In addition to

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<sup>4</sup> “Child Series Volume 1: Children Exposed to Maltreatment” by Statistics South Africa:  
<https://www.statssa.gov.za/publications/92-02-01/92-02-012021.pdf>.

<sup>5</sup> Pp 59 “Child Series Volume 1: Children Exposed to Maltreatment” by Statistics South Africa:  
<https://www.statssa.gov.za/publications/92-02-01/92-02-012021.pdf>.

<sup>6</sup> Centre for Child Law and Others / South African Council for Educators and Others North Gauteng High Court Case No 61630/2020. The matter is on appeal to the SCA but we are not yet aware of what the case number is.

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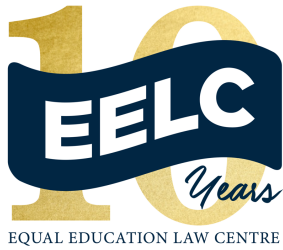
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reviewing and setting aside the decisions from SACE, the appellants seek relief that SACE's 2020 Mandatory Sanctions are reconsidered and revised in order to ensure that SACE pays due regard to:

- i. the need for corrective and rehabilitative sanctions such as anger management and training on non-violent child discipline techniques;
- ii. the need for mandatory removal from the educator's register in circumstances of serious assault of learners;
- iii. the need to recognise the best interests of the child and the rights of learners in the guiding principles; and
- iv. the need for a child-centred approach throughout the disciplinary proceedings, so that children and their parents/caregivers can participate throughout the entire process (such as being consulted on the appropriate sanction).

Unfortunately, SACE is opposing the relief. The opposition therefore stands in the way of what could constitute a positive step towards the eradication of corporal punishment. It is thus important for the Committee to be aware of the litigation.

- d. Information on the Basic Education Laws Amendment Bill (the Bill) which EELC welcomes to a certain extent. The definition states that corporal punishment is "any deliberate act against a child that inflicts pain or physical discomfort, however light, to punish or contain the child but is not limited to a) hitting, smacking, slapping, pinching or scratching with the hand or any object; b) kicking, shaking, throwing objects at, burning, scalding, biting, pulling hair, boxing ears, pulling or pushing

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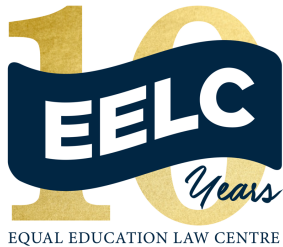
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children; and c) forcing children to stay in uncomfortable positions, forced ingestion, washing children’s mouths out with soap, denying meals, heat and shelter, forcing a child to do exercise or denying or restricting a child’s use of the toilet”. While this definition broadly aligns with the definition of corporal punishment provided for by the UN Committee on the Rights of the Child (CRC) in General Comment 8, the CRC’s definition also refers to, “other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.” The BELA Bill definition should extend its suggested definition to align with the CRC’s definition. It is important for the Committee to be aware of this information, so that it can make appropriate recommendations on this potentially positive legislative development.

e. Our submission that the BELA Bill definition of corporal punishment should be expanded to align with the CRC’s definition is also informed by our institutional knowledge, especially that obtained through our walk-in advice clinic practitioners and through the testimony of the clients we have assisted. We drafted a [report](#) in November 2022 on the use of disciplinary procedures in schools,<sup>7</sup> and several findings are particularly relevant to this submission on corporal punishment:

i. Our report found that parents of learners with additional support needs, especially those with learning difficulties or other behavioural or psychological challenges, are pressured to remove their children ‘voluntarily,’ often following a process of victimisation.<sup>8</sup>

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<sup>7</sup> “Disciplinary Procedures in Schools: Key issues and recommendations for reform” by Equal Education Law Centre (2022): <https://eelawcentre.org.za/disciplinary-procedures-in-schools-key-issues-and-recommendations-for-reform/>.

<sup>8</sup> Discipline Report, page 5.

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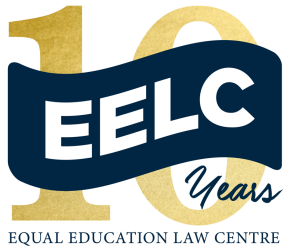
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Testimony such as this clearly demonstrates the need for an expanded definition of corporal punishment.

*Other issues / General information on other measures and developments relating to the implementation of the Convention in the State Party*

8. In addition to the above information, information on other forms of violence is also important to consider. This includes, but is not limited to, information (data/statistics) on sexual violence in schools, which remains a pressing issue for children, as well as the measures that South Africa is taking to eradicate it.

## **Conclusion**

9. Without information on the prevalence of corporal punishment in schools in spite of it being illegal, as well as information on sexual violence in schools (as well as other forms of violence not listed here) the Committee will not be in a position to adequately monitor South Africa's implementation of the Convention, nor will it be in a position to make accurate recommendations to South Africa in respect of eradicating violence in schools. The above information is therefore essential to ensure that the Committee is aware of.
10. Again, we thank you for your time and the consultative manner in which the Draft Report is being produced.

Yours faithfully,

**Equal Education Law Centre**

(Contact person Anjuli Maistry at [anjuli@eelawcentre.org.za](mailto:anjuli@eelawcentre.org.za))

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