

EELC

NEWSLETTER

2021



In this newsletter, we provide a snapshot of some of our key areas of work over the first half of this year.



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

ADMISSIONS

With the world grappling with the ongoing effects of the COVID-19 pandemic, the South African education system is straining under the weight of learning losses and continued disruption. When the 2021 school year got underway on 15 February 2021, thousands of pupils were still waiting to be placed in schools, sadly, 7 months later some still are.

School admissions are a concerning issue every year with hundreds of parents seeking assistance from our law clinic. The admission of Grade 1 and 8 pupils is a countrywide struggle, with parents fighting to have their children placed in schools. The provinces experiencing this challenge most keenly include Gauteng and the Western Cape.



EELC NEWSLETTER

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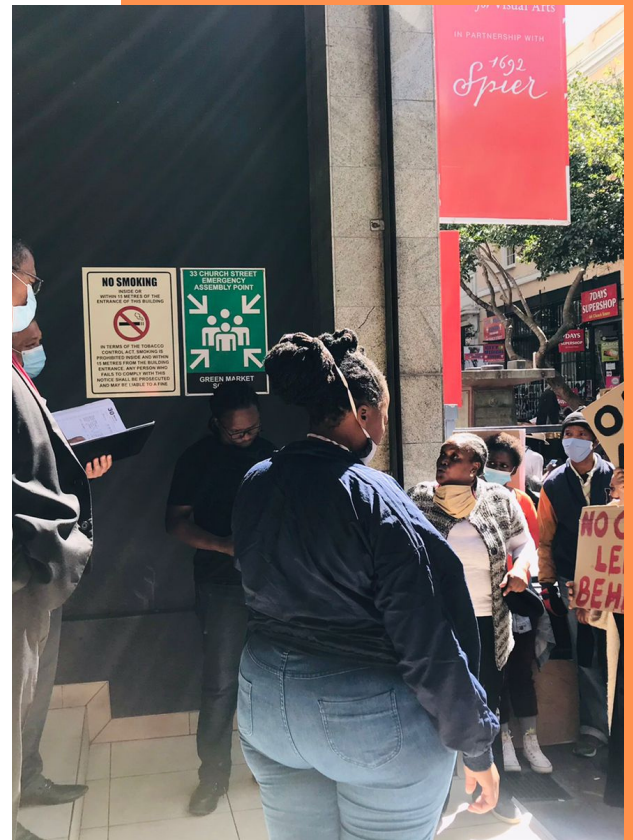
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ADMISSIONS CONTD.

On 12 March 2021, Equal Education and the EELC submitted joint comments on a revised Draft Admission Policy, published by the DBE for public comment. In the joint comment, the organisations highlight the concerning trend of ongoing high numbers of unplaced learners, particularly for Grade 1 and Grade 8, and the failure of districts to assist parents and guardians with learner placement. The organisations further make suggestions to help address the current crises. It is hoped that many of our recommendations will be taken on in order to address the current challenges.

The EELC further had an engagement with the DBE aimed at discussing and identifying ways to address the crises.

The reality is that whilst the demand for learning places at schools continues to grow annually, there has been a failure to increase school capacity to match this demand. Spatial injustice and other inequalities informed by the legacy of apartheid also continues to inform the admissions crises.



It is the responsibility of the Education MECs to ensure that there are enough places for all the children in their province to attend a suitable school. In our submission, we recommend that, in order to ensure proper accountability of MECs and proper oversight by the DBE, and to protect the best interests of learners in line with the Constitution, this obligation placed on MECs, must be clearly stated in the amended admission policy.

Due to intersecting issues such as spatial injustice, barriers to medium of instruction, non-placement of children and over subscription of schools, residents at Forest Village had taken to teach their children under trees. The makeshift school was operated by community members and volunteer teachers. The parents demanded that a new school be built to accommodate the children. EELC provided initial support to the community through various engagements with the WCED.

The Forgotten Sector

ECD and the Children's Amendment Bill



Children's Amendment Bill:

A draft version of planned changes to the existing law protecting children in the Children's Act. This Bill was drawn up by the Minister of Social Development and tabled before Parliament for consideration.

The ECD Sector has been severely affected and almost completely forgotten during the COVID pandemic. Negligible support has been offered to the sector and the process of reopening has been characterised by extremely poor management and onerous and confusing directions. The EELC has actively engaged in a number of advocacy activities calling for support for the Early Childhood Development (ECD) sector and for the reopening of ECD centres and programmes that were forced to close due to COVID-19. See our call for solidarity and support for the ECD sector [here](#).

The EELC is also a founding member of the [Real Reform for ECD campaign](#) which was launched in response to the problematic amendments in the Children's Amendment Bill, 2020. The campaign aims to raise awareness about the challenges with the Bill and to empower members of the public to make their voices heard by making submissions to Parliament on the Bill. In order to support the achievement of the campaign goals, the EELC assisted with the development of submission templates and campaign materials, and has reached out to the Chairperson of the Portfolio Committee, urging him and the members of the committee to consider the key challenges with the Bill more closely.

In November 2020, the EELC, alongside over 1200 other individuals and organisations, submitted written comments on the proposed amendments to the ECD-related provisions in the Children's Act. In addition, in May 2021, in the lead up to the oral hearings on the Amendment Bill, the EELC hosted a webinar aimed at organisations working in the ECD sector to facilitate Bill literacy and to outline the primary reforms the EELC is advocating for toward regulatory reform.

During the national hearings, the EELC took the opportunity to address the Portfolio Committee on Social Development on the importance of holistic, comprehensive regulatory reform for ECD and emphasised its support for the process of splitting the Bill and including all ECD related provisions in a Second Amendment Bill allowing for more consultation and consideration of reforms. The EELC contributed to various op-eds discussing the submissions made during the national hearings, the challenges experienced in the ECD sector, and the ongoing lack of support from the Department of Social Development. Read these op-eds [here](#) and [here](#).

In February 2021, the Department of Social Development announced the launch of the ECD Employment Relief Fund- an emergency relief fund aimed at providing income support to ECD workers. The EELC, alongside various other stakeholders, joined efforts in advocating for a more equitable and accessible application process for ECD workers to access relief funding. Read an op-ed by the EELC, detailing the challenges experienced in accessing relief funding [here](#).

"We are talking about stand-alone ECD centres that are in townships, suburbs, rural areas, informal settlements. We are everywhere throughout the country but we are still the forgotten sector." - Jennifer McQuillan (ECD Owners SA)

RESPONDING TO COVID-19

The EELC has responded to **urgent and emerging issues relating to COVID-19 and its impact on the education sector**. Significantly, during this period we have benefitted from extensive collaboration with various education justice and children's rights advocacy organisations.

We summarise the issues on which we have engaged below:

- The **delayed start of the school year**.
- The monitoring and **implementation of the National School Nutrition Programme** as per the court order of the North Gauteng High Court.
- The decision-making process in relation to the **return of primary school learners to traditional timetabling models**.
- The formulation of a proper **risk-adjusted strategy**.
- The education sector **vaccination programme**.

In addition to this, we have continued our involvement in commenting on and contributing to, the various directions released by the Department of Basic Education. The EELC will continue to monitor the implementation and reasonableness of these directions in order to ensure that learning losses are minimised- particularly for rural and underresourced schools.

We continue to pay particular attention to the implementation of the DBE's risk-adjusted strategy that is aimed at avoiding blanket school closures and minimise lost teaching time in schools and areas where COVID-19 numbers are low. It is discouraging that the DBE continues to fail in its implementation of this module.

Access to education has been extremely difficult for many learners over this COVID period, particularly where schools are forced to utilize rotational timetables because of a lack of space to safely accommodate all learners. It is therefore additionally encouraging that the DBE is taking active steps to acknowledge and mitigate against learning losses that have arisen as a result of lost teaching time by bringing all primary school learners back to school.



FEATURED ARTICLE

*Responding to
COVID-19 in 2021*



MOVEMENT LAWYERING

The EELC provides support for campaigns led by members of Equal Education (EE). Through Movement Lawyering, **EELC provides the power of the law as a tool for social change to the campaigns, strategies and advocacy of EE.** EELC lawyers are activists and remain actively engaged in the struggles of EE and are on hand to **provide legal materials and strategic litigation to advance the movement's goal of equal and quality education.**



#SCHOOLMEALSNOW

The National School Nutrition Programme (NSNP) is a national school feeding scheme that feeds over 9 million learners nutritious meals every day at school.

On 20 July 2021, The High Court of South Africa ordered the Department of Basic Education (DBE) and provincial education departments to develop new plans for the roll out of the National School Nutrition Programme (NSNP) which are practical and realistic and respond to the new realities of schooling during COVID-19, and for monthly reports to be submitted on the implementation of these plans.

This new court order comes after Equal Education (EE) and two Limpopo school governing bodies, represented by EELC and SECTION27, went back to court because of a failure to ensure that the NSNP reaches every qualifying learner, despite a judgment handed down last year that demanded that they fulfil this responsibility.

The situation became more and more urgent, with qualifying learners not being able to get meals because of barriers such as not having scholar transport and poor communication from education officials with school communities.



#LONGWALKTOSCHOOL

On 22 April 2021, EELC and EE learner members & post-school youth members marched to call out the KZNDOE for the lack of political will shown by not adopting a final provincial learner transport policy. This follows after EELC represented EE in court in 2019, where the state agreed to a timeline in relation to the publication of the policy which they failed to meet.

All learners should be free from the burden of walking exhausting dangerous routes to school! The final policy must be able to improve learners' access to education.

After substantive pressure and advocacy from EE and the EELC and ongoing monitoring of the delivery of learner transport across the province the policy was finally approved by provincial cabinet in June 2021 with an effective date of 1 July 2021, but has yet to be published. Extensive joint submissions were made on the draft policy due to its many shortcomings and the EELC will continue to provide support to EE by providing a critical analysis of the final published provincial policy to ensure that the provisioning of safe, accessible and adequate transport in KZN is extended to all learners who require it.

COMMUNITY LAWYERING

The EELC runs a daily advice clinic, servicing individuals and communities across the country. **We have continued to provide legal advice and assistance throughout the COVID-19 pandemic and have assisted over 300 clients across the country with education-related matters in the first half of 2021.** The start of every year sees an influx of enquiries related to unfair, discriminatory or administratively bungled admissions. Our attorneys work hard to secure placement for as many learners as possible. Some highlights are included below.

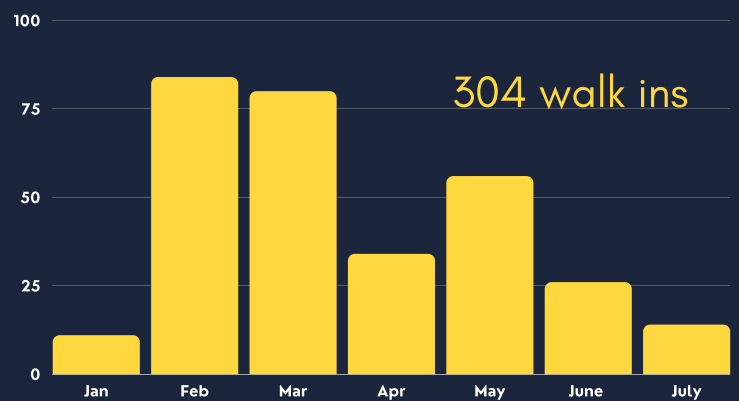
TRAINING & WORKSHOPS

The EELC has conducted **10 community workshops** with paralegals, school governing bodies, community-based organisations and law students in the first half of the year reaching over **250 participants**.

These have included workshops in Gauteng, the Western Cape and Eastern Cape as well as virtual workshops due to the Covid-19 national lockdown. Most recently we conducted an online education law workshop for ECD practitioners on Bill Literacy ahead of the oral presentations on the Children's Amendment Bill.

Over this period, the EELC also conducted workshops with Equalisers and EE organisers on litigation matters as well as changes to education laws and policies.

Law Clinic 'Walk-ins' 2021



As can be seen from the above, there was a sharp increase in numbers from January to February this year, which aligns with the opening of the school year. The numbers in terms of matters received per month can be broken down as follows: **Jan: 11, Feb: 84, Mar: 80, Apr: 33, May: 56, June: 26, July: 14**

The first half of 2021 has seen the EELC receive the most matters in that period since its inception!



LAW CLINIC SUCCESS STORIES

SIPHOKUHLE'S MATTER

This case concerns a 17 year old learner who was out of school for over two years due to difficulties in obtaining school placement following her relocation to another province because of family instability and abuse. The failure to place her was administratively flawed and in violation of the legislative framework guiding school placements. It was evident that she was being denied placement due to her being 'overage'.

The EELC receives many requests for assistance from the parents of learners who are deemed to be 'overage' and thus wrongfully denied admission to ordinary public schools. This is a systemic issue and is prevalent despite provisions to the contrary in the existing national framework for the admission of learners. In the EELC's experience, the barrier to admission of 'overage' learners at ordinary public schools, often results in learners dropping out and failing to complete their basic education.

The EELC assisted the learner by lodging an appeal with the Eastern Cape MEC. The appeal went unanswered for a substantial period of time, despite attempts made by the EELC to solicit a response and engage with the Education Department. The failure of MECs to respond to admission appeals in respect of unsuccessful placement of learners is an issue which parents routinely face.

The EELC launched urgent review proceedings against the MEC's failure to take a decision on the appeal. The EELC was ultimately successful, with the MEC settling out of court and agreeing to place the learner in a school along with an appropriate catch-up plan to assist her. We are currently monitoring implementation to ensure proper support for the learner.

**'HE' IS BEYOND EXCITED TO BE BACK
IN A LEARNING ENVIRONMENT WITH
HIS PEERS. WE ARE SO GRATEFUL
KAKHULU BHUTI FOR HELPING HIM
GET BACK TO SCHOOL'**



LIYABONA, BACK IN SCHOOL

After nearly a year of being denied the opportunity to learn, 17 year old Liyabona desperately wished to be granted access to any learning institution. He struggled to find placement at the schools in the Stellenbosch area mainly due to his age and grade level as he had had a disrupted education in the Eastern Cape.

Social workers were made aware of the situation but they only made arrangements for him to attend a school in Klapmuts, which unfortunately closed due to COVID. When he tried to look for other options there were a few to consider including schools of skills, Adult Basic Education and Training ("ABET") centres and special schools but he had no luck!

We brought the issue to the Circuit Manager's attention and an agreement was reached that Liyabona should be placed at an ABET Centre closer to where he stays

After all of that work, Liyabona was finally assigned to the Community Learning Centre in Stellenbosch.

LAW CLINIC SUCCESS STORIES



'YOUR RESPONSE WAS THE ONLY THING THAT GAVE ME FAITH THAT MY SON WILL INDEED GET A SCHOOL'



LEGAL EMPOWERMENT

EELC was approached by a parent, who was in need of assistance with the placement of a learner who is of compulsory school-going age and was close to missing two consecutive academic years.

The EELC journeyed with the parent advising her to approach the district for assistance with placement and bring with her all the necessary documents. We supported her with follow ups and ultimately, the learner was placed in a school. **This matter is emblematic of the power of legal empowerment** – the parent did everything all by herself. She would contact the EELC to ask what the next step would be, in the event that the district did not respond.

She went **from being defeated and disheartened to taking initiative, based on the legal advice she received from EELC**. This is important because legal empowerment is key to the work that we do. To empower parents and provide instrumental guidance is as important and effective as litigation.

'NO ONE LEFT BEHIND'

A parent had applied to a school in Mpumalanga for admission into grade R for the 2021 school year. The parent was informed that there was space and the learner was invited for an interview.

The parent was later informed by the school that the school was oversubscribed and that they could not admit the learner because she had difficulty understanding and speaking English during her interview.

The school Principal maintained that he refuses to accept a learner who cannot speak English and noted it would be impossible to teach a learner English in one year, as such its decision was final.



EELC intervened on behalf of the learner and parent by engaging with the school and addressing a letter advising that the decision and actions **to exclude the learner based on language were discriminatory, unlawful, and contrary to SASA, the Educator Employment Act, and the Constitution**. The EELC requested the learner be placed within 5 days- the learner was accordingly immediately placed and provided with academic support.

ADVOCACY & ENGAGEMENT

PARLIAMENTARY MONITORING

The EELC continues to monitor national and provincial legislature meetings in relation to the basic education and early childhood development sectors. Over this period, **we have attended and monitored about 25 virtual meetings.**

Key parliamentary updates have been included in the EELC's monthly Education Monitoring Brief. Read the monthly briefs [here](#).

Through our consistent monitoring and engagements with parliamentary committees, we have established meaningful relationships with many Members of Parliament, allowing us to keep MPs informed and aware of critical issues in Education and to support them in carrying out their oversight responsibilities.

We have successfully engaged MPs on issues relating to the migration of ECD responsibilities from the Department of Social Development to the Department of Basic Education, the resourcing of inclusive education, and the provision of support by the government to learners during COVID-19.

KEY SUBMISSIONS



EELC joint submission on the **Department of Basic Education's draft amended National Admissions Policy for Ordinary Public Schools**

EELC response to the South African Law Reform Commission's (SALRC) **Issue Paper relating to the Domestication of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)**.

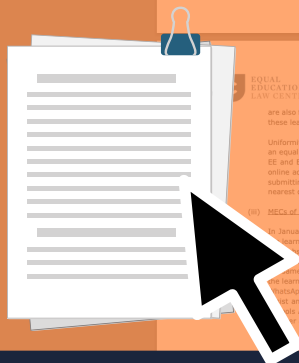


EELC comments on the **SARS Physical Impairment or Disability Expenditure**

EELC and the International Commission of Jurists submissions on the **Copyright Amendment Bill**



View all our submissions



[click here](#)

MEDIA ENGAGEMENT

The EELC has engaged the media on various education-related matters in the first half of this year. Follow articles about the EELC on our website [HERE](#).

In addition to general media engagement, **some op-eds by and interviews with EELC team members are highlighted below:**



Red tape trips up children's development

Op-ed published in Mail & Guardian print.
Written by EELC's Rubeena Parker, Tess Peacock (Equality Collective) and Nurina Ally (UCT).



Unattainable & Untenable: Hearings expose problems in the ECD sector

Op-ed published in Mail & Guardian Digital
Written by EELC's Rubeena Parker, Tess Peacock (Equality Collective) and Nurina Ally (UCT)



Plea for extension: Most workers in ECD will not benefit from government relief fund

Op-ed published in Daily Maverick
Written by EELC's Astrid Coombes and Yusrah Ehreinrech (CECD)



EELC on Legal Talk

EELC's Pila-sande Mkuzo on Cape Talk's *Lunch with Pippa Hudson* discussing briefly the Phakamisa judgment and the right to basic education for undocumented learners

Quick Links



[ARTICLES BY EELC](#)



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