



**JOINT ALTERNATIVE REPORT BY EQUAL EDUCATION LAW CENTRE &  
LEARNERS ON SOUTH AFRICA’S STATE PARTY REPORT TO THE UNITED  
NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD.**

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## 1. INTRODUCTION

1. This is a combined submission by Equal Education Law Centre (“**EELC**”) and Equal Education (“**EE**”) learner members (“**Equalisers**”). EELC is a registered law clinic that specialises in education law and policy, through conducting legal research and advocacy, movement and community lawyering and public interest litigation. Equal Education (“**EE**”) is a movement of learners, parents, teachers, and community members, advocating for equal and quality education.
2. In line with Article 12 of the CRC on giving due weight to the views of children in matters affecting them and aligning with our unique movement lawyering relationship with EE, EELC engaged with Equalisers in Gauteng, Western Cape, and the Eastern Cape to empower them to give voice to their own concerns and experiences of education. Although the views of the current learners are not exhaustive of all the issues faced by learners in the country, they reflect some of the lived realities and challenges that South African learners face daily in their schools.
3. This submission will consider whether the government of South Africa (“**GoSA**”) has fulfilled its obligations in terms of the UNCRC, taking into account the concluding observations of the Committee to GoSA in 2016.
4. This submission is based on the both the experiences of Equalisers (secondary school learners) and the EELC in assisting over 700 learners and parents through our law clinic annually.
5. The following rights contained in the UNCRC will be considered in this submission:
  - i. Arts. 2–3, 6 and 12 - Non-discrimination;
  - ii. Articles 7, 8 and 13-17 - Civil rights and freedoms;
  - iii. Articles 19, 24 (3), 28 (2), 34, 37 (a) and 39 - Violence against children;
  - iv. Articles 6,18(3),24,26,27 (1)-(3) and 33 - Basic health and welfare;
  - v. Article 23(3) - The right of children with disabilities to access education; and
  - vi. Article 28 - The right to education.

## 2. GENERAL PRINCIPLES (Arts. 2–3, 6 and 12)

[Non-discrimination: Racial discrimination; xenophobia; discrimination against LGBTQIA+ learners]

### 2.1 Documentation Status

1. We commend GoSA for initiating the programmes described in paragraphs 58, 74, 83-86. However, despite the commitment expressed by GoSA in para. 90, the EELC has received numerous cases of learners being turned away from schools based on their undocumented status. See further detail on this below under heading 7.3. One Equaliser noted, *“Teachers laugh at learners who are foreign nationals.”*
2. We also note concern at GoSA’s use of term ‘illegal foreign children’ throughout its country report.

### 2.2 Sexual Orientation and Gender Identity

3. Whilst we acknowledge the development of the SOGIESC Guidelines (GoSA in para. 95) and the willingness of the DBE to consider inputs from learners in the finalisation of these guidelines, we are concerned about the persistent discrimination and persecution of LGBTQIA+ learners in South African schools. Discrimination against members of the LGBTQIA+ community is a form of discrimination that is pervasive in Equalisers' schools. Gay and lesbian learners are often bullied and victimised by their peers and by teachers. Teachers often tell them that they need prayer to exorcise the demons they possess — Equalisers reported that learners’ sexuality is considered wicked by teachers.
4. Equalisers also reported that some of the learners who are part of the LGBTQIA+ community are forced to wear skirts. One of the Equalisers said that using the boys' or girls' toilets makes them feel uncomfortable and unsafe. They said that they do not use the school toilets at all, they would rather wait until they get back home to use a toilet. Another one said he felt unsafe, *“Every child, even if you are a member of [the] LGBTQIA+ [community], should be allowed to feel free wherever you are and not fear for your life. I’m a member of LGBTQIA+ and should also be free in school and in the community.”*
5. An Equaliser reported, *“I feel sad because other children commit suicide because of hate. The Government has not done enough as learners still get hate from people around them. Government should make all the learners aware that they are equal no matter what.”*

### 2.3 The Right to ECD Without Discrimination

6. Whilst GoSA in paragraph 94 speaks of the commitment to ensure access to ECD without discrimination, GoSA makes no mention of any plan to ensure ECD services are inclusive. The EELC continues to encounter parents of young children with disabilities who are turned away from ECD

Centres unwilling to include their children. GoSA provides no additional funding to centres who include children with disabilities. Early intervention programmes are poorly coordinated and, in some instances, entirely lacking. The result is that young children remain undiagnosed, without access to early intervention programmes, significantly hampering their progress and development.

## 2.4 EELC Recommendations

### 7. EELC recommends:

- a. More active oversight by government into schools' duties to prevent/combat discrimination, including monitoring as part of the national and provincial department's existing school inspection duties.
- b. Protective policies for LGBTQIA+ learners carry a stronger preventative focus, because prevention is more effective at tackling systemic (rather than interpersonal) discrimination and because response-based support often requires a learner to identify themselves as LGBTQIA+, which is often unsafe.
- c. Funding to support inclusive ECD services

## 2.5 Equaliser Recommendations

### 8. Equalisers recommended:

- a. Better implementation of LGBTQIA+ policies, quality training for teachers, school uniform policies that are non-binary and promotion of inclusivity.
- b. Principals take a lead in changing the status quo. For example, lead conversations on recognising LGBTQIA+ learners.
- c. Raising awareness about the LGBTQIA+ community be included in the curriculum. Equalisers said that LGBTQIA+ matters may already be a part of their curriculum, it is often ignored, and teachers who teach LGBTQIA+ work seem to feel uneasy.
- d. Schools have gender neutral toilets.

## 3. CIVIL RIGHTS AND POLITICAL FREEDOMS (Arts.7-8 and 13-17)

[Birth registration, name, and nationality]

### 3.1 Barriers to Birth Registration and Documentation

9. Many children, both South African nationals and migrants, often face barriers to obtaining birth certificates due to the requirements set out in the Births and Deaths Registration Act (BDRA).<sup>1</sup> The lack of documentation, in turn, creates significant barriers to accessing social services that children are entitled to. Despite the courts confirming that no documentation is required to access the right to basic education, in practice many undocumented children continue to face challenges when applying for admission and registration at schools. This issue will be further elaborated on below in section 7.4.
10. Barriers to birth registration and documentation include “a lack of clarity around the process for addressing issues of statelessness, the complexity of international migration, as well as geographical and cost barriers.”<sup>2</sup> There is inadequate monitoring and oversight of the implementation of existing laws and policies. We commend GoSA for acknowledging the SAHRC’s report at paragraph 129 of the State Report. However, given the significant challenges that undocumented children still face in accessing their human rights, we believe that GoSA is not acting with sufficient urgency. On the issue of birth registration, one learner stated, “I feel the government is not doing enough about the issue of birth certificates and is not aware of how it is difficult to get a birth certificate when birth happens at home.”

### 3.2 EELC Recommendations

11. We recommend that:
  - a. GoSA reform the BDRA, as well as other relevant laws, policies and procedures that may act as barriers to birth registration.
  - b. Ensure immigration enforcement mechanisms are not conducted through, in conjunction with, or near public service institutions. In this regard, we note with concern that GoSA reports that the Department of Home Affairs has set up ‘offices’ at major hospitals and clinics.

## 4. VIOLENCE AGAINST CHILDREN (arts. 19, 24 (3), 28 (2), 34, 37 (a) & 39)

[Freedom of the child from all forms of violence, including sexual exploitation and gender-based violence]

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<sup>1</sup> 51 of 1992. For example, a child who is applying for a birth certificate is required to present the identity documents of their parents. Where they cannot present their parents’ identity documents, which is often the case as many parents do not have them, the child is then unable to obtain their own birth certificate.

<sup>2</sup> South African Human Rights Commission (2019) *Position Paper: Access to a Basic Education for Undocumented Learners in South Africa*.

## 4.1 Corporal Punishment in Schools

12. As stated in paragraph 134 of GoSA’s state report, corporal punishment has been expressly prohibited in all settings as indicated in national policy<sup>3</sup> and confirmed by the courts.<sup>4</sup> We commend GoSA for its efforts to eradicate corporal punishment through various Protocols as described in paragraph 151 of the State report. However, despite this, a 2023 publication by Statistics South Africa reports that the most common form of violence experienced by children at school is corporal punishment – close to 84% of children reported experiencing corporal punishment in 2019.<sup>5</sup> This suggests that, despite criminalisation, the use of corporal punishment has not reduced between 2012 and 2023.<sup>6</sup>
13. Reliable data on the prevalence of corporal punishment in schools remains a challenge, specifically on the number of incidents, the severity, the recourse pursued by children, and the outcomes of that recourse. Information that is available through official government sources, when compared to the prevalence reported by Statistics South Africa, suggests that there is severe underreporting of incidents. In the few instances where cases were reported, our experience has been that responses have been either absent or inadequate.
14. Through EELC’s walk-in clinic, we have received numerous matters from learners and parents related to the use of corporal punishment in schools. In one such matter, five individual learners reported separate incidents in respect of the same teacher. EELC received no response when reporting the educator to the South African Council for Educators (“SACE”).<sup>7</sup>
15. Learners said they were aware of the prohibition of corporal punishment in schools and, notably, the same is known by teachers at these schools. Despite this, Equalisers reported that they were still subjected to corporal punishment in their schools. They noted that there are no alternative measures for disciplining learners in schools.
16. Learners were aware of reporting channels, but they were not prepared to report their teachers because they feared further victimization. They said it is painful and humiliating: *“Teachers punish us very painfully. Sometimes I feel like quitting school because of their punishment but I can’t because I want to fulfil my dreams.”* Equalisers spoke of frequent verbal abuse and demeaning and belittling comments in front of the class. One equalizer said that they understand teachers might get frustrated

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<sup>3</sup> National Child Care and Protection Policy, 2019.

<sup>4</sup> Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others [2019] ZACC 34

<sup>5</sup> Statistics South Africa (2023) *Child Series Volume 1: Children Exposed to Maltreatment*. Pg. 59. Found at <https://www.statssa.gov.za/publications/92-02-01/92-02-012021.pdf>.

<sup>6</sup> Burton, P. & Leoschute, L. (2013) *School Violence in South Africa: Results of the 2012 National School Violence Study*. Cape Town: Centre for Justice and Crime Prevention

<sup>7</sup> The South African Council for Educators (SACE) is the professional council for educators that is responsible for the registration of teachers as well as ensuring educators live up to a Code of Ethics, a duty that is inclusive of holding disciplinary hearings for educators.

and regret what they have said or done but they do not apologise. One Equaliser said, *“Teachers must stop punishing children in a cruel way. Some use their own hands when they beat the learners.”*

17. In addition, reports of abuse and neglect continue to be raised regarding the care and education of children at specials schools and special school hostels. For more information on this, see section 6.1.

Common problems include:

- a. Poor living conditions and physical and emotional abuse of children in hostels
- b. Abuse, corporal punishment, and neglect in special school hostels

## 4.2 School Safety

18. We commend GoSA for the numerous interventions aimed at addressing issues of school safety, as described in paragraphs 58, 135, 140, 143, 148, 151 and 152. However, we are concerned about the efficacy of these interventions and whether they translate into reduced instances of violence against children. The issue of safety in schools was the most prevalent issue brought up by learners across all three provinces. They reported the presence of gangs in their schools, threatening both learners and teachers. They said that security guards in schools were not fully trained to protect them from gunmen.

19. Importantly, learners noted that safety in schools must include safety during the school commute. Due to lack of transportation, some learners must travel on foot to and from school. One learner submitted that she was robbed on her way to school. A learner said, *“On my way to school there is a gang of some adult men smoking crystal meth, they harass girls at my school by chasing them with knives if they refuse to walk or talk with them.”* Equalisers also reported being exposed to drug-related violence.

## 4.3 Bullying in Schools

20. We note the campaigns and interventions in schools to combat school bullying by the GoSA, as described in paragraphs 135 and 58. However, in 2020, statistics indicated that 345 assaults with the intent to cause grievous bodily harm and 546 common assault cases were opened as result of bullying in schools.<sup>8</sup> In 2022, it was reported that more than 58% of learners had experienced bullying.<sup>9</sup> LGBTQIA+ learners continue to face victimisation in the form of bullying and discrimination, both from teachers and fellow learners.

21. Bullying from teachers in the form of name-calling was also cited by most as a concern. Cyber bullying was highlighted by many Equalisers as highly problematic – they spoke of a WhatsApp group that was

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<sup>8</sup> The Sunday Times 31 July 2020 at <https://www.timeslive.co.za/news/south-africa/2020-07-31-crimestats-school-bullying-sees-murdershundreds-of-serious-assaults/>.

<sup>9</sup> IOL 16 December 2022 at <https://www.iol.co.za/lifestyle/health/mind/more-than-58-of-south-african-students-have-encountered-bullying-27b382cf-3e39-4029-b4c2-2fcfa34a0c68>



created where children can anonymously post disparaging comments and photos of other children. Equalisers also spoke of secondary victimization where learners get victimised by teachers for reporting bullying by fellow classmates. A learner said, *“People with ancestral callings are being bullied, in such a way that some children call them by names saying they are witches.”* Another learner added, *“[We are] being humiliated by the teacher in front of school learners and the teacher will start calling you by names in front of school learners”*.

#### 4.4 Sexual Assault

22. We note the measures put in place by GoSA in paragraph 58(d), 135(b) and 148. However, it is unclear whether these interventions are translating into reduced instances of sexual violence. In the 2019/2020 Annual Crime Statistics report, more than 24,000 children were sexually assaulted in South Africa. Statistics are not readily available for schools and there is significant underreporting, but it is estimated that 22.2% of school children have been victims of violence.<sup>10</sup> In April 2019, the EELC was approached by a Community Advice Office based in the Western Cape, seeking legal assistance for parents whose minor children were victims of a traumatic rape incident that took place at a primary school on 19 November 2018. In this matter the school and the relevant provincial education department not only failed to follow the proper procedures in terms of reporting but failed to provide the learners with adequate psychological, medical, and academic support services.
23. In the Eastern Cape, 13 of 20 Equalisers reported that sexual violence was an issue in their schools, having either been victims themselves or knowing of others that have been exposed to sexual violence. Two girl learners reported having been victims of rape and attempted rape. One was raped in school by a classmate: *“I experienced rape last year and the matter was reported at school. Some children knew about this and he (the rapist) started talking bad about me to his squad. We need support!”* The other was also almost raped: *“I was almost raped by my classmate, but the Deputy Principal didn’t follow my case, until now nothing has happened to that male classmate.”*
24. Despite the development of the Management and Reporting of Sexual Abuse and Harassment in Schools Protocol as described in paragraph 148 of GoSA’s report, learners reported that teachers continue to pursue sexual relationships with them and that learners rarely report sexual-related issues because they are not taken seriously. Some learners are often afraid to disclose these issues because they fear bullying and victimisation. Learners also reported that they do not know how or who to report sexual offences by teachers to, and they noted that principals did not always believe them. One learner remarked, *“It is extreme at my school. Children-educator relationships which often lead to pregnancies and children are thrown out of school because of them not wanting the truth to be*

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<sup>10</sup> Kreifels, I. & Warton, G. (2017) “Addressing Violence in South African Schools Understand Schools” <https://www.saferespaces.org.za/understand/entry/school-violence-in-south-africa> (Accessed 30 March 2022).

*revealed.*” Another learner reported that a lack of sanitation infrastructure left them vulnerable to sexual violence, *“Since we don’t have toilets, I think sexual violence will happen in any time because we go to the bushes to pee.”*

#### 4.5 Drug Use

25. Equalisers spoke of high rates of use and easy access to drugs in their schools, including marijuana, crystal meth, and prescription medication. Equalisers said there was a lot of peer pressure to use drugs and “seem cool”. Equalisers said that some learners use their lunch money to buy drugs, which are easily available in schools. There are programmes in school to educate drug use, but Equalisers said these have a very limited impact.

#### 4.6 EELC Recommendations

26. We recommend:

- a. A comprehensive training programme for educators on positive discipline techniques is required, as well as training for district and provincial education officials.
- b. Amending the DBE’s model code of conduct from a punitive to a restorative justice approach to school discipline.
- c. Greater oversight, monitoring and evaluation of the efficacy of current sexual violence, bullying and school safety interventions

#### 4.7 Equaliser Recommendations

27. Equalisers made the following recommendations:

- a. Government must make schools safe by making communities safe, specifically tackling issues of drugs, unemployment, alcohol and gangsterism.
- b. The creation of a platform for learners to report sexual offences and the provision of psychosocial support for victims.
- c. Better implementation of sexual violence policies in schools.
- d. Government officials must inspect classrooms randomly and that learners should be interviewed randomly to find out if they are being subjected to corporal punishment by their teachers.
- e. That workshops be held for educators on how to deal with learners who have problems.
- f. That learners be made aware of the reporting channels available to report corporal punishment.

## 5. BASIC HEALTH AND WELFARE (Arts. 6,18(3),24,26,27 (1)-(3) and 33)

## 5.1 Early Childhood Development & Nutrition

28. In paragraph 182, GoSA reported that high impact nutrition interventions for children under 5-years are being promoted. For many children under 5 years old, Early Childhood Development (ECD) Centres are the main access points for adequate nutrition. However, most young children do not have access to ECD programmes. There are nearly 7 million young children in SA who are of ECD going age, about 60% of those children live in poverty. Of these 7 million, 3.2 million are not in any form of ECD programme. In addition, the per-child-per-day subsidy has not increased in nominal terms since 2019 - it still stands at only R17 per child per day for ECD Centres and R6 for non-centre-based programmes, and only 50% of this subsidy can be used for food (R8.50).<sup>11</sup> Due to strict registration requirements, only 33% ECD programmes receive this subsidy.<sup>12</sup> Importantly, the right to nutrition as part of ECCE/ECD is still unconfirmed. The Department of Basic Education (DBE) has taken steps toward piloting a nutrition scheme for children in Early Learning Programmes. This impact of this intervention is limited due to the small-scale nature of the pilot programme.

## 5.2 National School Nutrition Programme

29. At paragraph 185, the GoSA reports that special measures were taken to resume the National School Nutrition Programme (NSNP) during COVID-19 lockdown, irrespective of whether learners were attending school or learning from home. It, however, must be noted that GoSA initially halted the NSNP programme during lockdown, and it was only resumed because EE, represented by EELC, obtained a court order whereby it was mandated that the DBE resume the feeding scheme.<sup>13</sup>

30. Moreover, when the NSNP was resumed learners reported that, while they received the meals, the quality of food was poor, and sometimes provided with undercooked or expired food.

31. For many of the 9 million children who access the NSNP on a daily basis, this meal is the only meal they receive. Equalisers report numerous issues about the implementation of the NSNP, namely:

- a. The food does not come on time;
- b. There is insufficient food;
- c. The food is unhealthy;
- d. Too much meal repetition;
- e. Learners get food poisoning from expired/contaminated food.

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<sup>11</sup> Wills, G., Kotze, J., & Kika-Mistry, J. (2021) 'A Sector Hanging in the Balance: Early Childhood Development and Lockdown in South Africa'. RISE Working Paper 20/055. Found at [https://riseprogramme.org/sites/default/files/2020-11/RISE\\_WP-055\\_Wills\\_Kotze\\_Kika-Mistry.pdf](https://riseprogramme.org/sites/default/files/2020-11/RISE_WP-055_Wills_Kotze_Kika-Mistry.pdf). Many children stay at ECD centres throughout the full working day, and thus the R8.50 subsidy, in addition to covering other costs, must provide nutrition sometimes two to three times a day.

<sup>12</sup> Scholtz, K. & Selebalo, H. (2023) 'Limited State Subsidisation Remains a Key Challenge to Delivering Quality Learning Programmes'. Daily Maverick. Found at <https://www.dailymaverick.co.za/article/2023-03-20-limited-state-subsidisation-remains-a-key-challenge-to-delivering-quality-learning-programmes/>

<sup>13</sup> Equal Education and Others v Minister of Basic Education and Others (22588/2020) [2020] ZAGPPHC

32. Two learners from the Eastern Cape reported unreliable provisioning of nutrition, with one stating, *“Sometimes I got to school and when I get there, there will be no nutrition so we will starve all day. My opinion is that there must be breakfast and equal food in school. Teachers must not eat our food.”* The other reports, *“in my school they don’t give us food in time, sometimes we don’t eat at all. We don’t have enough food, sometimes we cannot eat until month end. The food is not good at all.”* Another learner reports, *“I come from a poor family and sometimes I got to school hungry. At school we only eat at 10am. We are given poor food quality.”*

### 5.3 Inadequate Social Support Grants & Child Nutrition

33. Paragraph 231 of GoSA’s report notes that GoSA is commissioning a study to review the Child Support Grant and child poverty. At paragraph 228, GoSA reports that poverty elimination remains one of its core commitments. One of the most important means to achieve this is the Child Support Grant (CSG). South Africa has an unemployment rate of 32.7% extremely high levels and extremely high levels of poverty.<sup>14</sup> This has a direct impact on food security for children, as many families rely heavily on the social welfare provided by the State, like the Child Support Grant (CSG). The CSG is supposed to cover the cost of food and clothing for a child, but in practice covers neither. There is an increasingly large gap between the CSG and the food poverty line (the minimum nutritional requirement) - with the CSG at R500 per month and the food poverty line at R663 per person per month, even if the subsidy was entirely spent on food, it is still below the line.<sup>15</sup>

### 5.4 EELC Recommendations

34. We recommend that:

- a. GoSA reduce austerity measures in the budget, specifically for spending related to children;
- b. GoSA increase subsidies for ECD centres to allow for sufficient nutrition provisioning, and ease strict requirements to qualify for subsidies; and
- c. At the very minimum, the CSG should meet the food poverty line and should increase at the same rate as inflation.

### 5.5 Equaliser Recommendations

35. Equalisers recommend that:

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<sup>14</sup> Mukherjee, P. (2022) ‘South Africa’s unemployment drops again after years of job gains’. *Reuters*.

<sup>15</sup> StatsSA Consumer Price Index Tables, April 2022 & January 2023 (Calculations by Katherine Hall, Children’s Institution, University of Cape Town), as referenced by Budget Justice Coalition, ‘FOA Submission on the 2023 MTEF’. Found at <https://budgetjusticesa.org/media/bjc-foa-submission-on-the-2023-mtef/>.

- a. In addition to school lunches, nutrition programmes should provide breakfast.<sup>16</sup>
- b. Food must be equally shared amongst learners.
- c. Nutrition must be provided if learners are required to attend mandatory classes after school.
- d. GoSA must reimagine the current menu.
- e. GoSA must allow for flexibility to cater for learners who have allergies.
- f. There should be random visits by health inspectors.
- g. Monitoring of those who cook the food.

## 6. CHILDREN WITH DISABILITIES (art. 23)

### 6.1 Inhumane Learning Conditions

36. GoSA reports at paragraph 178 that measures have been taken to investigate abuse at school hostels for children with disabilities and refers to successful interventions. GoSA fails to give a detailed account of its progress in implementing the systemic recommendations made in the SAHRC report, which remain woefully inadequate. In stark contrast to GoSA claims in para. 179 that deliberate policy strides were taken to address special school hostel safety concerns, on 3 September 2023, journalists [exposed the inhumane conditions at Ikhwezi Lokusa Special School](#), an Eastern Cape boarding school for learners with physical and intellectual disabilities between the ages of 6 and 12 years old. The report showed a school without running water, with broken toilets, children sleeping on brick beds, insufficient supervision with children left alone to wash and care for themselves for hours on end. In addition, there had been multiple accounts of emotional, physical, and sexual abuse. Concerningly, the report was a follow up from a previous investigation in 2018 at the same school. Conditions had only worsened since 2018, despite the National and Provincial Education Department being aware of the egregious rights violations at the school.

### 6.2 Lack of Legislation

37. Paragraph 171 of GoSA's report notes the measures it has taken to develop a comprehensive law and policy on children with disability. However, none of the developments have included the enactment of new or amended legislation. All reforms have remained at the policy level lacking the enforceability of legislation. Much of the policy framework regulating the right to education for children with disabilities remains fragmented and outdated.<sup>17</sup> There is a need for clear legal entitlements and rights

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<sup>16</sup> It must be noted that GoSA did not include in its report that it intends to extend the NSNP to provide breakfast. We commend this. At least one province has already implemented this.

<sup>17</sup> The 20-year implementation plan in White Paper 6 came to an end in 2021 and many of the targets remain unmet.

protecting mechanisms. Without legally enforceable obligations to adequately protect, promote and fund an inclusive education system, children with disabilities will remain segregated, excluded, and marginalised by our education system.

### 6.3 Reasonable Accommodation

38. Despite some references to the necessity of reasonable accommodation in policy documents such as White Paper 6, without a clear obligation and the provision of funding, ordinary schools remain reluctant to include learners with disabilities into their schools and to provide them with reasonable accommodations. Where this is provided it is often at the expense of parents<sup>18</sup>. The SIAS policy envisages a shift from the system in which learners are referred to a specialised setting other than the schools nearest to their homes.<sup>19</sup> However, it is not enough to simply admit a learner with disabilities into a school and believe that unfair discrimination has been circumvented. Reasonable accommodations must be provided to ensure learners are able to meaningfully participate in learning.

### 6.4 Insufficient Budget for Inclusive Education

39. Funding for inclusive education is conflated with funding for “special schools”. The persistent lack of funding for the implementation of inclusive education in general and SIAS in particular is one of the most significant barriers to the effective implementation of inclusive education.

### 6.5 Statistics and data collection

40. Despite concluding observations from both the UN CRC and UN CRPD, there is still no accurate disaggregated data on the number of children with disabilities in schools and those not in school, thus there is no effective planning for the inclusion of all children in education.

### 6.6 District Based Support Teams (DBSTs)

41. Effective support structures at both a school and district level are essential components in ensuring support for inclusive education is available to mainstream schools. However, a 2018/19 report by the Auditor-General’s revealed that ‘77% of the selected Inclusive Education directorates and DBST’s at the education districts did not adequately support the educators and SBST’.<sup>20</sup> Deficits have been identified in relation to the availability of personnel, transport, and other necessary resources. Only

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<sup>18</sup> Equal Education Law Centre (2021) *“Let in or Left Out? A 20-year review of the regulatory framework for inclusive education and its implementation in South Africa”*. Pages 38,78 & 92. Found at <https://eelawcentre.org.za/full-report-let-in-or-left-out-a-twenty-year-review-of-the-implementation-of-inclusive-education-in-south-africa/>

<sup>19</sup> Screening, Identification, Assessment and Support Policy

<sup>20</sup> Equal Education Law Centre (2021) *“Let in or Left Out? A 20-year review of the regulatory framework for inclusive education and its implementation in South Africa”*. Found at <https://eelawcentre.org.za/full-report-let-in-or-left-out-a-twenty-year-review-of-the-implementation-of-inclusive-education-in-south-africa/>

'47% of principals reported [that] their schools had received a visit from a psychologist, therapist, members of the district-based support team, learning support official or health official in 2017'.<sup>21</sup>

## 6.7 School Based Support Teams (SBSTs)

42. Despite a requirement that all public schools (both ordinary and special schools) establish SBSTs, the 2018/19 Auditor-General's report found that '78% of School Based Support Teams at full-service schools audited were not established and/or did not adequately function to ensure that inclusive education is planned, implemented, recorded and reported'.<sup>22</sup> Challenges to the effective functioning of SBSTs include infrequent meetings and limited understanding of the extent of their role, lack of support from the DBST, lack of skills and training, and an overburdened workload. No data is collected to monitor the **effective functioning** of SBSTs – the only data collected is on the **number of SBSTs that have been established at schools**. The lack of adequate reporting data makes monitoring, accountability, and evaluation particularly difficult.

## 6.8 Full-Service Schools (FSS)

43. Paragraph 87 of the GoSA report states 832 schools have been designated as full-service schools (FSS). In 2019, the Auditor-General of South Africa issued a report on an audit conducted at full-schools across the country. The audit looked at a number of indicators aligned to the FSS Guidelines in order to assess the functioning of designated full-service schools. It found that the majority of such schools across all provinces were not functioning as they should and that, after the FSS Guidelines were issued in 2010, the DBE did not develop a national strategy to coordinate the designation and establishment of full-service schools in a consistent and viable manner across the provinces. The report found that 77% of education districts were not sufficiently resourced and/or did not properly plan to support FSS, and that 79% of schools lacked adequate resourcing in terms of infrastructure, assistive equipment and funding. On 24 August 2019, in response to the Auditor-General's full report, the Director General for Basic Education issued a circular on the *Temporary Suspension of the Designation of Full-service Schools*, asking provinces to consider suspending the designation of full-service schools for three years.

44. FSS were intended to serve as examples of good practice and to chart the way for all schools to ultimately become inclusive institutions. Given the Attorney-General's damning report, the value of continuing with the concept of full-service schools needs to be seriously reconsidered. It is evident

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<sup>21</sup> Nicola Deghaye, 'Disability support & accessibility in mainstream schools in South Africa' Research on Socioeconomic Policy (RESEP) Stellenbosch University (2021) 33

<sup>22</sup> Parliamentary Monitoring Group (PMG), 'Auditor-General's briefing to the Portfolio Committee on Basic Education on the Budgetary review and Recommendations Report: PFMA 2018–19', available at [https://static.pmg.org.za/191008AGSA\\_Presentation.pdf](https://static.pmg.org.za/191008AGSA_Presentation.pdf)

that the vast majority of the designated 848 full-service schools are not functioning as planned. In addition, with only 3.6 per cent of all ordinary schools being designated as full-service schools in 20 years, systemic transformation has not and will not take place. The perception of full-service schools as secondary 'special schools' has hindered rather than helped the development of an inclusive education system.

## 6.9 COVID-19 and the Right to Education for Children with Disabilities

45. Paragraph 5 of GoSA's report notes measures taken to limit the effect of COVID-19 on children with disabilities. However, the DBE failed to ensure that learners with disabilities were adequately supported during COVID-19 lockdown. Those limited learning and support materials for distance learning that were available, were inaccessible to learners with disabilities. Measures for the reopening of schools did not contain any additional measures to ensure the safety of learners with disabilities and their specific support needs. The Centre for Child Law, represented by the Equal Education Law Centre, filed an application against the DBE wherein a settlement agreement was reached and made an order of court. The EELC and CCL assisted the DBE in preparing and publishing amendments to the DBE COVID Directions aimed at the safe re-opening of schools; Guidelines for learners with physical disabilities, intellectual disabilities, epilepsy and severe to profound intellectual disabilities and the amendment of existing SOP's.

## 6.10 EELC Recommendations

46. We recommend that GoSA:

- a. Reform the legal and policy framework, creating clear legal entitlements and clarifying and strengthening the right to reasonable accommodation;
- b. The term "full-service school" should be abandoned. Existing designated full-service schools should continue to function as inclusive ordinary schools.
- c. All ordinary schools should be supported to function as inclusive schools.
- d. Develop plans and prioritise funding for reasonable accommodation and inclusive education;
- e. Ensure inter-departmental coordination to remove barriers to needed services;
- f. Effectively resource, monitor and evaluate DBSTs and SBSTs.

## 6.12 Equaliser Recommendations

47. Few learners with disabilities were among the Equaliser groups. One Equaliser noted that there was a learner who was excluded from school due to being epileptic. The learner remains out of school.



Another learner reported, “It makes me sad because I can see people with disability going through anxiety and losing their self-esteem.”

48. Some of the issues that Equalisers raised were that:

- a. Some schools did not have ramps.
- b. Learners with disabilities in their schools experienced discrimination and victimisation.
- c. There were no designated toilets for learners with disabilities.

49. Equalisers made the following recommendations:

- a. That government needs to reimagine and change how schools are built to ensure that schools are accessible.
- b. Government must ensure that all public schools are full-service school thus allowing all learners to receive equal education.

## 7. EDUCATION, LEISURE, AND CULTURAL ACTIVITIES (Arts.28-31)

### 7.1 Early Childhood Development

50. We welcome GoSA’s policy outlining plans to promote ECD provisioning.<sup>23</sup> However, ECD in South Africa is stifled by an incoherent regulatory framework and poor government funding. For a detailed description of the inadequacy of ECD subsidies, see section 5.1 of this report.

51. At paragraph 27 and 36, the GoSA report notes the detrimental impact of the “immediate temporary closure of all ECD programmes” during the COVID 19 lockdown but that subsidies for ECD centres continued to be paid. However, not only were ECD services halted during lockdown, but they remained closed long after other sectors has reopened, including schools. The ECD sector was only allowed to reopen after urgent litigation was pursued.<sup>24</sup> Apart from the Western Cape, government subsidies were not paid during lockdown, and this too had to be remedied by urgent litigation.<sup>25</sup>

52. In addition, “about 20% of [ECD] programmes surveyed (in 2020) had inadequate water, 25% were overcrowded, 74% of ECD practitioners did not have any qualification in early childhood development.”<sup>26</sup> ECD programmes that serve the poorest communities are often small-scale and operate out of private homes, community facilities, or rented venues and consist of a few staff members who earn subsistence stipends, often without a formal employment contract or any

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<sup>23</sup> National Integrated Early Childhood Development Policy 2015

[https://www.gov.za/sites/default/files/gcis\\_document/201610/national-integrated-ecd-policy-web-version-final01-08-2016a.pdf](https://www.gov.za/sites/default/files/gcis_document/201610/national-integrated-ecd-policy-web-version-final01-08-2016a.pdf) (Accessed 23 March 2022).

<sup>24</sup> Skole-Onsersteuningsentrum NPC and Others v Minister of Social Development and Others

<sup>25</sup> SA Childcare (Pty) Ltd & Others v Minister of Social Development & Others

<sup>26</sup> Rubeena Parker, “Education, inequality and innovation in the time of COVID-19”, (2020) 7

benefits.<sup>27</sup> Whilst progress has been made, GoSA is still far off from providing free and quality public ECD services to children.

## 7.2 Admissions Processes as a Barrier to Access

53. Every year there is a substantial number of learners who are unable to secure school placement within the first term of the academic year. In 2022, the EELC was approached by more than 237 parents requesting assistance with seeking placement for their children, particularly for Grade 1 and 8 learners. The issue of school admissions is driven by year-on-year growth in learner numbers, school overcrowding, a lack of adequate school infrastructure, and insufficient schools being built. These factors can be attributed to ineffective admission administration systems, inaccessible online application systems, budgetary constraints amplified by a reduction of social spending, and the lack of adequate, timeous, and effective planning and oversight. We also note exclusionary and discriminatory admission practices which often affect overaged learners, LGBTQIA+ learners and foreign nationals. Learners who are overage are victimized, humiliated, and discriminated against, and are vulnerable to dropping out.

## 7.4 Access to Basic Education for Undocumented and Migrant Learners

54. Lack of documentation has acted as a barrier to accessing education for thousands of children in South Africa. As referenced in paragraph 81 of GoSA's report, in 2019 a landmark ruling by the court<sup>28</sup> addressed the right of undocumented learners to access basic education. While GoSA reports on this as progress, it is disappointing that, instead of proactively protecting childrens' rights, GoSA refers matters like this to the courts and wastes limited funds on litigating. We note that this is a trend throughout GoSA's report.

55. Despite this judgment and the subsequent Circular issued by the DBE, discriminatory practices and barriers to accessing basic education still exist for both undocumented migrant and South African learners. One learner described being denied admission into a school because they only had a copy of the birth certificate. They said, *"I felt so little because I couldn't join that school that I wanted. The Government should adopt a law that says children can do whatever they want with or without a birth certificate"*. Another learner reported, *"It is an issued at my school because some of the learners are*

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<sup>27</sup> Ibid, page 7.

<sup>28</sup> [Centre for Child Law and Others v Minister of Basic Education and Others \[2019\] ZAECGCH 126](#): The case involved two separate applications. The first application concerned the lawfulness of a policy by the Eastern Cape Department of Education to withdraw funding for undocumented learners. In this regard, the Department issued Circular 6 of 2016 informing schools that they would be withholding funding for learners who did not have valid South African identity numbers or passport numbers. The result of the circular was that schools were now either unwilling to continue providing education to those learners who were already admitted to schools, or schools were no longer willing to admit these learners in the first instance. The second application concerned the lawfulness of clauses 15, and 21 of the Admission Policy and sections 39 and 42 of the Immigration Act.

*kicked out of school and the school refuses to print the report cards for other because of not having a birth certificate*". EELC has experienced that, on occasion, both schools and government officials believe that learners are unable to write matric without documentation. A learner notes that the government *"is not aware of how it is difficult to get a birth certificate when birth happens at home"*.

## 7.5 Lack of/Inadequate School Infrastructure and Other School Resources

56. Paragraph 245 of the GoSA report notes the continuation of school infrastructure delivery. Schools in South Africa, and especially those in rural areas, continue to struggle with inadequate and insufficient school infrastructure. This impacts learners' ability to learn in schools effectively and with dignity. In 2023, Equal Education requested updated information on the state of school infrastructure from the Department of Basic Education (DBE). The DBE reported that 74.2% of public ordinary schools do not have libraries, 3932 schools have basic pit latrines and 1541 of those schools have *only* pit latrines, 8222 schools require additional classrooms and 17 683 schools have at least some inappropriate structures.<sup>29</sup>
57. The Uniform Minimum Norms and Standards for Public School Infrastructure ("**Norms and Standards**") sets deadlines for GoSA to provide the following to all government schools:
- a. **29 November 2016:** All structures in schools made from mud, asbestos, metal, or wood should be replaced. All schools are to have access to water, electricity, and toilets (not including pit latrines). This deadline was not met.
  - b. **By 29 November 2020:** all schools should have had an adequate supply of electricity, water and sanitation, as well as electronic connectivity and fences. This deadline was not met.
  - c. **By 29 November 2023:** libraries and laboratories should be provided for all schools. This deadline will not be met.
  - d. **By 29 November 2030:** all other norms requirements such as school halls, sports fields, walkways and parking lots.
58. Concerningly, not only have these deadlines not been met but GoSA is currently in the process of amending the Norms and Standards and the current draft amendment *removes all deadlines*.
59. In Gauteng and Western Cape provinces, Equalisers said that overcrowding was a concern, with some learners reporting class sizes of 60 learners. Equalisers highlighted that there are not enough schools in the communities they lived in. One Equaliser said, *"[a] shortage of teachers and textbooks lead to us failing. We are scared sometimes of being in a class because of poor infrastructure. When it's cold we are scared to even go to school because of the broken window."*

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<sup>29</sup> For example, schools that are built from mud or asbestos.

## 7.6 Learner Pregnancy

60. We commend the eventual publication of the National Policy for Prevention and Management of Learner Pregnancy, as reported in paragraph 243 of GoSA's report. In Gauteng, learner pregnancy was highlighted as a concern, but Equalisers all said they do receive sex education at school and girls are supported to come back to school. However, one learner stated, *"Teachers must stop bullying children who are pregnant, some children were raped and when we hurt them they will drop out"*. They also said that contraceptives are available at the local clinic, but it is not provided with dignity and so girls are reluctant to go. They also said there is peer pressure to have sex and to have sex without contraceptives. Equalisers in the Eastern Cape cited the need for comprehensive sexual education, with one learner reporting that they were not educated about pregnancy in their school. Another learner stated, *"Sexual education should be taught to learners at an early stage. Teachers should have good experience to make students understand more about teenage pregnancy or sexual education. Government should train teachers to be the best to provide knowledge to fellow learners."*

## 7.7 School Dropout

61. Most Equalisers knew of someone who had dropped out of school and cited it as a serious area of concern. Equalisers reported that, in their experience, reasons for dropping out of school included:

- a. Teenage pregnancy
- b. Learner victimization based on age and intellectual aptitude. Teachers do not encourage learners to stay in school.
- c. Having to take care of siblings at home
- d. Struggling academically and the teacher is unsupportive and verbally abusive
- e. Falling behind on schoolwork
- f. Abuse by teachers
- g. Grade repetition
- h. Poverty
- i. Emotional abuse at schools
- j. Fearing for their lives because of their involvement in gangsterism

62. Another learner notes, *"In my school there lots of drop-out because some get suspended, and they don't come back to school."* On the issue of school discipline, a learner describes how easy it is to be suspended and expelled from school, *"The normalization of teachers and principals expelling learners at school must stop because you can never be expelled at school for 2 weeks and skip lessons and then they expect good marks! They even expel learners for not wearing the full school uniform."* One learner reported that sometimes schools push learners out of school, *"Unfair treatment*

*between the learners who can afford and those who “don’t afford” is severe in my school. You find that during fundraising learners that cannot pay are being punished or kicked out of the school”.*

## 7.8 EELC Recommendations

63. EELC recommends that GoSA:

- a. Legislate for the right to free, comprehensive, inclusive, and quality ECD services for all children.
- b. In the interim, GoSA must ease registration requirements and provide adequate resources and support to ECD centres.
- c. Ensure that spending on basic education is prioritised.
- d. Enhance transparency around its planning for the placement of learners each year.
- e. Urgently prioritise timeous and effective planning and oversight of the school admissions process.
- f. Ensure the right to education for undocumented learners finds expression in practice and not just on paper.
- g. Keep the deadlines contained in the Infrastructure Norms and Standards and put in place systems whereby the public can monitor the implementation of school infrastructure projects.
- h. Improve the implementation of policies and training regarding learner pregnancy.
- i. Provide psychosocial support to learners to mitigate and identify learners who are at risk of dropping out of school.
- j. Put in place stronger protection and support mechanisms for overage learners.

## 7.9 Equaliser Recommendations

64. Equalisers recommend that GoSA:

- a. Must provide extra resources for learners living in poverty
- b. Create different education pathways/opportunities for learners with differing education and developmental needs
- c. Provide in school psychosocial support
- d. In collaboration between the Department of Basic education and Department of Health, conduct regular visits at schools and provide contraceptives to the learners
- e. Provide comprehensive sexual education
- f. Ensure safety in their school communities by addressing issues of drugs, unemployment, alcohol and gangsterism
- g. Ensure that teachers follow up on learners who are absent more than a few days

- h. Identify learners at risk of dropping out and provide them with additional support
- i. Supply sufficient textbooks
- j. Build schools with sufficient classrooms to address overcrowding
- k. Provide flushing toilets
- l. Fix roads to make it safe for learners to go to school
- m. Supply scholar transport
- n. Hire more educators in public schools in rural areas
- o. Provide safe school infrastructure
- p. Expand existing infrastructure – build more classes in existing schools
- q. A more equitable distribution of learners across schools.