

The Equal Education Law Centre (EELC) uses legal advocacy, research, and litigation to advance the struggle for equal and quality education and early childhood development in South Africa. The EELC Education Monitoring Brief is a digital newsletter highlighting key legal and policy developments in education and early childhood development and providing the latest updates from Parliament and our courts.

EDUCATION MONITORING BRIEF

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IN THE SPOTLIGHT:

CONSTITUTIONAL COURT HEARD APPEAL ON BINDING NATURE OF HUMAN RIGHTS COMMISSION DIRECTIVES

The Constitutional Court [heard arguments](#) on 25 November 2025 in a matter that could significantly strengthen the enforcement powers of the South African Human Rights Commission (SAHRC).

The appeal follows a Supreme Court of Appeal judgment in August 2024 that upheld a 2022 Mpumalanga High Court decision finding that the Commission's directives are not legally binding and must be enforced through the courts. The Commission is asking the Constitutional Court to interpret section 184 of the Constitution, which mandates the SAHRC to protect human rights and "take steps to secure appropriate redress" where rights have been violated.

The case originates from a May 2018 complaint by residents of De Doorn Hock Farm in Mpumalanga, who reported that farm owner had unilaterally restricted their access to borehole water. Following its investigation, the Commission found in September 2019 the farm owner had violated the occupiers' constitutional right to water under section 27(1)(b) and their rights under the Extension of Security of Tenure Act. The Commission directed the respondents to restore water supply within seven days and engage in good faith discussions about equitable water sharing.

When the respondents failed to comply, the Commission approached the High Court seeking both enforcement of these specific directives and a declaration that all directives issued under section 184(2)(b) are legally binding. Both the High Court and Supreme Court of Appeal acknowledged the importance of the Commission's work and stated its recommendations should be respected and implemented, but stopped short of declaring them binding without court orders.

The Centre for Applied Legal Studies (CALs) was **admitted** as *amicus curiae*, arguing that the Constitution should be interpreted broadly in line with international law governing national human rights institutions, and that the Commission plays a vital role in realising the right to access remedies when rights are violated.

The Commission sought clarity from the Constitutional Court on three key issues: the meaning of “take steps to secure appropriate redress” in section 184(2)(b), the legal effect of its findings after completing investigations, and the proper constitutional interpretation of its powers as a Chapter 9 institution. The outcome could have significant implications for the effectiveness of the SAHRC in protecting vulnerable communities and enforcing human rights, including the right to basic education.

I_MENSTRUATE AND EELC INTERVENE IN ACCESS TO WATER COURT CASE WATER ACCESS CASE HIGHLIGHTING IMPACT ON GIRLS’ EDUCATION



The Equal Education Law Centre (EELC), alongside I_Menstruate, was granted leave to intervene as *amicus curiae* in the Mthatha High Court in a matter concerning constitutional violations stemming from lack of access to water in rural Eastern Cape villages. The case, brought by the Centre for Applied Legal Studies (CALs) on behalf of eight individuals from the Toboyi-Komkhulu, Merelis and Kunene villages in the Amathole District, challenges the failure of the Mquma Local Municipality, Amathole District Municipality, and Eastern Cape provincial government to fulfil their constitutional and statutory

obligations to provide access to safe, sufficient water. The three villages, home to over 1,000 households, have no consistent or safe water supply, with some residents walking nearly 10 kilometres to access water from only two functional communal taps.

The EELC and I_Menstruate’s intervention highlights the gendered dimensions of water access failures and their specific impact on girls’ access to basic education and early childhood development. Girls are often expected to fetch water from distant sources, which increases their risk of gender-based violence and causes them to miss school. Menstruating learners struggle to attend school without access to water, as they cannot manage their periods safely or hygienically.

The submissions emphasise the distinct needs of girls, menstruating learners, and very young children, arguing that water scarcity undermines all five components of nurturing care essential for children’s holistic development and wellbeing: health, nutrition, safety and security, responsive caregiving, and early learning. For very young children, inadequate access to water affects their right to development as protected under international law.

The intervention underscores the interdependence between the right to water and education. Without water, there is no access to safe sanitation, and without sanitation, learners (especially menstruating learners) are denied dignity, safety, and the ability to learn. The submissions urged the Court to ensure that any order it issues fully considers these distinct needs, which are core to dignity, safety, and the right to education, and called for both a court order and a municipal plan that are not only effective, but also responsive, inclusive, and grounded in care.

HIGH COURT DECLARES OPERATION DUDULA’S CONDUCT UNLAWFUL AND XENOPHOBIC, ORDERS PROTECTION OF SCHOOL ACCESS

On 5 November 2025, the Johannesburg High Court handed down judgment in *Kopanang Africa Against Xenophobia & Others v Operation Dudula & Others*, declaring Operation Dudula’s conduct unlawful and affirming that “human dignity has no nationality.”



The matter was brought by Kopanang Africa Against Xenophobia (KAAX), the South African Informal Traders Forum (SAITF), the Inner City Federation (ICF) and Abahlali BaseMjondolo, represented by the Socio-Economic Rights Institute of South Africa (SERI), seeking relief against Operation Dudula and certain of its office-bearers for xenophobic and racist speech and conduct, as well as against relevant organs of state for failing to discharge their duties in relation to Operation Dudula's unlawful actions. SERI's media statement can be found [here](#).

The Court interdicted and restrained Operation Dudula from a range of unlawful activities, including making public statements that constitute hate speech on the grounds of nationality, social origin or ethnicity, and interfering with access of foreign nationals to healthcare services. Significantly for the education sector, the Court specifically prohibited Operation Dudula from interfering with access to schools, disrupting school operations, and intimidating and harassing learners, teachers and parents.

The judgment declared that only immigration officers or police officers have the power to demand that someone produce their passport or other identity documents, and can only do so in public places. No warrantless searches may occur at home, school, work or business. They may not detain, arrest or intimidate minors, except as an option of last resort. The Court also affirmed the duty of the state to take steps to prevent xenophobic harassment and violence, ordering the government to take reasonable steps to implement the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, including establishing an early warning and rapid response mechanism and making disaggregated data available regarding threats of xenophobic hate speech and the prosecution and conviction of persons who commit these offences.

The Chairperson of Parliament's Select Committee on Education, Sciences and the Creative Industries, Mr Makhi Feni, [welcomed](#) the judgment.

2025/26 MEDIUM-TERM BUDGET POLICY STATEMENT TABLED

The Minister of Finance tabled the Medium-Term Budget Policy Statement (MTBPS) and adjusted appropriations on 30 October 2025, announcing an intention to maintain a low expenditure outlook by anchoring a new, lower inflation target of 3 percent. The announcement drew criticism from civil society organisations (CSOs) for failing to adequately address chronic underfunding in the education sector.



CSOs cautioned that lowering the inflation target in the context of a severely underfunded public sector will not reduce the cost of living but will instead add pressure on the South African Reserve Bank to keep interest rates high, further constraining public spending on urgently needed social investments.

Equal Education [noted](#) that schools remain desperately underfunded, with no-fee schools in KwaZulu-Natal, Mpumalanga, and the Northern Cape subsidised far below the prescribed per-learner threshold of R1754, leaving them unable to afford basic necessities like water, electricity, cleaning supplies, and textbooks.

Equal Education welcomed some mid-year adjustments, including a R1.45 billion increase in consolidated spending on basic education, of which R443 million will be allocated to repair and rebuild schools affected by natural disasters. However, the organisation noted this remains insufficient given the scale of infrastructure needs.

In the lead up to the MTBPS, EELC released a [report on Grade R funding](#), highlighting that National Treasury has allocated nothing to universalise Grade R despite the Basic Education Laws Amendment Act making it compulsory and part of basic education. The report argues that approximately 200,000 children need to be integrated into the schooling system, with provinces expected to absorb these learners and improve quality to meet minimum standards without any additional support. The MTBPS provided no indication that Grade R universalisation would be funded in future budget cycles, effectively rendering the legislative provision unimplementable and placing provinces in an untenable position of having to divert funds from other essential education programmes. The report further argues that the absence of funding constitutes indirect unfair discrimination, as it disproportionately affects learners in under-resourced, predominantly Black and Coloured working-class communities, entrenching existing structural inequalities in access to quality basic education.



EQUAL EDUCATION AND EELC SUCCESSFULLY CHALLENGE WESTERN CAPE'S LEARNER ADMISSION POLICY

On 24 April 2025, Equal Education (EE) and the Equal Education Law Centre (EELC) returned to the Western Cape High Court to challenge the Western Cape Education Department's handling of late school applications.

This case, focusing on Part B of an ongoing constitutional challenge, sought to address systemic failures affecting learners from under-resourced communities who remain without school places at the start of each academic year. The issue is particularly acute in low-income areas such as Khayelitsha and Kraaifontein.

Following Judge Nuku's 2024 ruling in Part A, which established that access to education requires ensuring learners physically attend school, the WCED implemented interim measures including Standard Operating Procedures for late applications and admission pop-up stations. However, EE and EELC argue these have not adequately addressed the systemic challenges.

Part B sought declarations that:

- The WCED's failure to timeously place late applicant learners is unconstitutional
- Current admission policies unfairly discriminate based on race, poverty, and place of birth
- Admission policies permitting indefinite non-placement should be set aside

On 28 November, the Western Cape High Court declared that the Head of Department of the WCED and MEC of education for the Western Cape's failure to plan for late placement applications in, but not limited to, the Metro East Education District for the 2024 academic year constitutes a violation of sections 9, 10, 28, 29(1)(a) and 33(1) of the Constitution. The HOD and MEC were ordered to develop a management plan for late applications, extremely late applications and transfer requests in consultation with stakeholders and the public within 6 months of the date of the order.

It was further declared that Clause 13 of the WCED's Policy for the Management of Admission and Registration of Learners at Ordinary Public Schools ("WCED Admissions Policy") constitutes a violation of sections 10, 28(2), 29(1)(a) and 33(a) of the Constitution, to the extent that it excludes and fails to address certain categories of applicants, and in this instance permits late applicants to proceed unmanaged properly. The Court, *inter alia*, declared Clause 13, to the extent that it unfairly discriminates against late applicants on the basis of race, poverty level, place of birth, and social origin, and thereby constitutes a violation of sections 9(1) and 9(3) of the Constitution, is set aside.

The case highlights that the constitutional right to education should be immediately realisable for all learners, regardless of when applications are submitted. More information can be found [here](#).

CONFERENCE CALL FOR SUBMISSIONS

The South African Education Law Association (SAELA) has released a [call for abstracts](#) for its 30th Annual International Education Law Conference in 2026. The theme, *Pothole or Speed Bump? Balancing Rights, Resources and Responsibilities in Education* invites delegates to "explore the critical tension between what the law requires, what the system can afford, and what our learners deserve."

The conference will take place in the Eastern Cape, from 2 to 5 August, 2026. Abstracts should be between 300 and 500 words, and should be submitted on the SAELA [website](#) by **16 March 2026**.

Queries can be directed to saela2023@gmail.com.



LAW AND POLICY SUBMISSIONS

Call for Comments: Draft Regulations under the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023.

The Department of Justice and Constitutional Development (“the Department”) has called for written comments on the Draft Regulations under the Prevention and Combating of Hate Crimes and Hate Speech Act, 2023. The Draft Regulations address the duties and functions of the Director General of the Department to collect and maintain statistical data on hate crimes and hate speech that must be made available to the public. The Draft Regulations further outline, when an offence under the Act occurs, what information must be collected and the reporting duties of the South African Police Service; the Directors of Public Prosecutions; and the clerks of Court and Registrars of High Courts.

Comments can be submitted to Advocate M. Khosa at MaKhosa@justice.gov.za or Advocate LT Sebelemetja at LSebelemetja@justice.gov.za by no later than **Wednesday, 28 January 2026**. Enquiries can be made to Mr M Mokulubete on (021) 406 4753/4. More information can be found [here](#).

INTERNATIONAL TREATY BODIES

CALL FOR INPUT:

Violence and Discrimination Experienced by Lesbian, Bisexual, and Queer Women

The United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity is seeking written submissions to inform a thematic report on violence and discrimination experienced by lesbian, bisexual, and queer (LBQ) women worldwide, to be presented to the 62nd session of the Human Rights Council in June 2026.

The call for input states that preliminary research suggests that LBQ women experience unique vulnerabilities that may not be adequately addressed within traditional women’s rights or LGBT rights frameworks. The report aims to centre LBQ voices and experiences to better understand how various systems (economic, social, cultural, political, and civil) impact their ability to live free from violence and discrimination.

The Independent Expert is particularly interested in hearing from local feminist collectives led by LBQ women, LBQ regional networks and grassroots organisations, organisations working at intersections where LBQ women are present but may not be centred (such as environmental justice, indigenous rights, land rights, economic justice, disability rights, racial justice, and migrant rights), service providers who work with LBQ women, academic researchers, individual LBQ activists and community leaders with lived experience, and allied organisations that have documented challenges facing LBQ women. The call for inputs seeks information on significant challenges and forms of violence and discrimination impacting LBQ women, how these experiences differ from those of other women or other LGBT individuals, systemic factors that contribute to these challenges, intersectional experiences shaped by race, ethnicity, class, age, disability, immigration status, gender identity, religion or other factors, laws and policies that create barriers or vulnerabilities, and community-generated solutions and strategies for change.

This consultation has particular relevance for South Africa’s education sector, as LBQ learners and educators often face compounded barriers to accessing quality education, from exclusion and bullying in schools to discriminatory attitudes within educational settings and inadequate support services.

Submissions of up to 2,500 words must be received by **15 January 2026 at 18:00** Geneva time and emailed to hrc-ie-sogi@un.org with the subject line “Input to IE SOGI report to HRC62.” More information can be found [here](#).



CALL FOR INPUT:

Curriculum, Pedagogy and Assessment at the Service of the Right to Education

The United Nations Special Rapporteur on the right to education is seeking written submissions to inform the annual thematic report to be presented at the 62nd session of the Human Rights Council, examining how curriculum, pedagogy and assessment can be aligned with the internationally recognised aims of education. It will analyse how curriculum content, pedagogical practice and assessment models can be aligned with the aims of the right to education, examine the political economy of curriculum design, the roles of teachers, learners and parents in decision-making, and the interactions between global frameworks and local cultural knowledge.

The Special Rapporteur is inviting input from States, United Nations agencies, national human rights institutions, academics, educators, business actors, and civil society organisations. Additionally, the Special Rapporteur will seek input from children and young people about their experiences in education systems and their vision of what education should be like in the twenty-first century.

Submissions of up to 3,000 words must be received by **25 January 2026** and emailed to hrc-sr-education@un.org with the subject line “*Contribution: curriculum, pedagogy and assessment.*” More information can be found [here](#).

CALL FOR INPUT:

Rights of Migrant, Refugee, Asylum-Seeking and Stateless Children Who Are Victims of Trafficking

The United Nations Special Rapporteur on trafficking in persons, especially women and children, is seeking contributions to inform her report to the 62nd session of the Human Rights Council on child trafficking and the rights of migrant, refugee, asylum-seeking and stateless children, with a focus on prevention, protection and accountability.

The report will analyse child trafficking in the context of mixed movements and migration, and offer recommendations to strengthen prevention, protection and accountability measures. The Special Rapporteur seeks information on current trends in forms and manifestations of child trafficking, prevention measures for unaccompanied and separated children, protection measures including guardianship and access to education and health services, identification and referral procedures, the non-punishment principle, child-friendly justice procedures, the impact of climate change on trafficking risks, and promising practices in combating child trafficking in the context of migration.

Submissions must be received by **30 January 2026** and emailed to hrc-sr-trafficking@un.org. More information can be found [here](#).

