

Introduction:

1. This submission is made by the Equal Education Law Centre (“EELC”) for inclusion in a consolidated list of issues to be submitted to the Committee on the Rights of the Child by the South African National Child Rights Coalition in order to identify priority issues that the South African government should report on in its periodic report in respect of the United Nations Convention on the Rights of the Child (“UNCRC”)¹. The EELC is a public interest law centre, using legal advocacy, research, and litigation to advance the struggle for equal and quality education in South Africa.
2. In this submission, the EELC considers the right to education contained in the UNCRC and the obligations of the South African government as a State Party to the UNCRC.
3. This submission will provide a current situational summary of the challenges being experienced by children in South Africa with reference to the right to education and general measures of implementation. Against this context, it will propose a list of questions/issues to be addressed by the South African government toward fulfilment of its obligations in terms of the UNCRC. The following rights contained in the UNCRC will be considered in this submission:
 - (i) Article 23(3) - the right of children with disabilities to access education;
 - (ii) Article 28 - the right to education (this includes the right to access education on the basis of equal opportunity, the availability of free primary education, the provision of financial assistance, a reduction in drop-out rates and that school discipline be conducted in a humane manner); and
 - (iii) Article 29 - the right to education that is directed to a child’s holistic development.

¹ UN Commission on Human Rights, Convention on the Rights of the Child., 7 March 1990, E/CN.4/RES/1990/74. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

Nature of inequalities and exclusions	Current situational summary	Impact on the right	Cause of the issue	List of questions/issues
<p>(1) Lack of implementation of an inclusive education system</p>	<p>Inclusive education is defined as a learning environment that promotes the full personal, academic and professional development of all learners irrespective of race, class, gender, disability, religion, culture, sexual preference, learning styles and language.² It refers to the capacity of ordinary schools to respond to the needs of <i>all</i> learners, including those requiring extra support because of learning or physical disability, social disadvantage, cultural difference or other barriers to learning.</p> <p>Education White Paper 6: Special Needs Education (“White Paper 6”), introduced in 2001, established a 20-year inclusive education policy framework that was meant to enable an inclusive education system in South Africa. It specifically sets out, amongst other things, government strategy for systematically addressing and removing barriers to learning through establishing full service schools (mainstream institutions providing a full range of learning needs), converting special schools</p>	<p>Contrary to what is envisaged in White Paper 6, the DBE continues to approach inclusive education as a separate component of education provisioning, as opposed to seeing the entire education system itself as one which should be inclusive.</p> <p>The result has been that learners who require additional support or reasonable accommodation in local neighborhood schools do not receive this and are often even excluded from attending ordinary schools on the basis of their additional support needs or disability. There remains an over-reliance on support</p>	<p>The failure to comprehensively regulate inclusive education through binding legislation has resulted in the resourcing and provisioning of inclusive education going unchecked, unprioritised and underfunded.</p>	<p>a. When will binding legislation (through an Inclusive Education Act, for example) be developed to enable a system of inclusive education? What timelines and indicators for implementation will be put in place?</p> <p>b. What progress, if any, has been made on ensuring the functionality of existing full service schools?</p> <p>c. What steps will be or are being taken to address the issues raised by the AG in respect of full service schools and to</p>

² Department of Education 2007 *Quality education for all: Report of the National Commission for Special Needs in Education on Training (NCSNET) and the National Committee on Education Support Services NCESS.*

	<p>into resource centres, and training education managers and teachers.³</p> <p>However, with the timeline for the implementation of White Paper 6 coming to an end in 2021, there has been little progress in its effective implementation so far. The principles contained in White Paper 6 are also outdated and must be reconceptualised when developing legislation for an inclusive education system.</p> <p>In 2014, the DBE introduced its Policy on Screening, Identification, Assessment and Support (“SIAS”).⁴ The SIAS Policy makes clear that every learner has a right to receive reasonable accommodation in an inclusive setting. This approach towards inclusivity is also confirmed in section 7(5) of the SIAS Policy, which highlights that the system must shift away from merely referring learners to specialised settings, and move towards placing a learner in the nearest school to their home.⁵</p>	<p>provisioning in special schools.</p>		<p>assess the <i>viability</i> of full service schools in enabling a holistic, inclusive education system?</p> <p>d. What plan is in place to improve conditions generally, and the provision of specialists in particular, in special schools for their conversion into resource centres?</p>
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³ Department of Basic Education, 2001. Education White Paper 6: Special Needs Education- Building an Inclusive Education and Training System 5-8.

⁴ Department of Basic Education, 2014. Policy on Screening, Identification, Assessment and Support. Available at: <https://www.education.gov.za/LinkClick.aspx?fileticket=2bB7EaySbcw%3D&tabid=617&portalid=0&mid=2371>.

⁵ Ibid at 14.

	<p>Despite these policy undertakings, inclusivity as envisaged in White Paper 6 and SIAS has not been forthcoming.</p> <p><u>Full service schools</u></p> <p>Originally, full service schools were established as a model for the way in which <i>all</i> ordinary schools should become inclusive schools. However, this has not been the case.</p> <p>A report was issued by the Attorney General of South Africa (AG) which stated that after Guidelines for Full Service Schools 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. Further, the AG notes, Provincial Education Departments did not adequately guide the designation/conversion of full-service schools.</p> <p>On 24 August 2019, in response to the report issued by the AG, 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 to “ensure that those that have been designated are adequately capacitated to fulfil their roles and responsibilities...’ The circular also contained</p>		<p>The failure to adequately</p>	
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	<p>guidance for provinces on what should be done to ensure that the AG's recommendations for full-service schools are implemented.⁶</p> <p><u>Conversion of Special Schools into Resource Centres</u></p> <p>The goal of White Paper 6 was to convert all existing special schools into resource centres to provide outreach support to neighbouring ordinary schools accommodating learners with disabilities. The aim was to promote access to education for learners with disabilities in the general education system by using the existing specialist skills at special schools to support ordinary schools.⁷</p> <p>Only a few special schools have been converted into resource centres. Most remain poorly resourced, dysfunctional schools providing a poor quality of education to the learners who attend the special schools often without specialists of any kind and no programme to support ordinary schools.</p>		<p>regulate full service schools has resulted in them being inadequately designated and established. Moreover, the original intention of establishing full service schools as a model for the way in which all ordinary schools should become inclusive schools has not been achieved.</p>	
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⁶ Department of Basic Education (2019) 'Temporary Suspension of the Designation of Full-service Schools' Available at: <https://www.education.gov.za/Curriculum/Circulars/tabid/587/Default.aspx>.

⁷ Department of Basic Education, 2001. Education White Paper 6: Special Needs Education- Building an Inclusive Education and Training System at pg. 47.

		Learners with disabilities continued to be segregated in special schools with little support provided to ordinary schools to accommodate learners with disabilities.	Funding for the strengthening of special schools to be converted to resource centres has not materialised.	
(2) Lack of funding for an inclusive education system	Draft National Guidelines for Resourcing an Inclusive Education System were developed, but	Underfunding of inclusive education results in children not being accommodated in ordinary schools and instead	Amongst other things, this can be attributed to the failure to publish binding and costed norms and standards	a. When will binding norms and standards for resourcing inclusive education be published?

	<p>never finalised.⁸ They were intended to provide guidance on the equitable and efficient provision, distribution and use of infrastructure, personnel and non-personnel funding for an inclusive education system, in line with the prescripts of White Paper 6.⁹</p> <p>Regrettably, guidelines do not have the legal status of norms and standards, and are not legally binding, and in the case of the Draft Resourcing Guidelines, they remain in draft form.</p> <p>Despite the critical role of public, ordinary schools in advancing an equitable, quality all-inclusive education, schools appear to receive no additional financial support for the reasonable accommodations that must be made in terms of the SIAS Policy in order to accommodate learners with barriers to learning in ordinary schools:</p> <ul style="list-style-type: none"> • In terms of financing low levels of accommodation, these should be accommodated through the school's budget and "the norms and standards of ordinary schools are to be expanded to accommodate a standard allocation 	<p>being segregated in special schools.</p>	<p>for resourcing inclusive education.</p>	
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⁸ Department of Basic Education, 2018. Draft National Guidelines for Resourcing an Inclusive Education System. Available at: <http://www.thutong.doe.gov.za/ResourceDownload.aspx?id=49853&userid=-1>

⁹ Department of Basic Education, 2018, Draft National Guidelines for Resourcing an Inclusive Education System.

	<p>for all schools to address care and support needs for learning”.¹⁰</p> <ul style="list-style-type: none"> • Where moderate levels of accommodations are concerned, the SIAS Policy indicates that these costs are to be recovered from the school’s “Inclusive Education allocation”. However, in practice, it does not appear as if schools receive an additional allocation dedicated solely to inclusive education.¹¹ • In terms of high-level accommodations, the SIAS Policy suggests that “standard specialised funding and HR norms and standards related to specific support programmes are required”.¹² <p>In addition, no mention is made of how reasonable accommodations made in schools must be financed.</p>			
(3) Access to education for children with disabilities	In 2015, Human Rights Watch reported that children with disabilities continue to face enormous challenges when accessing education, including discrimination, when	Where it is necessary for learners to access special schools (for instance, where high levels of support are	The lack of accurate enrolment data makes provisioning impossible.	a. What steps will be taken to put adequate data collection and analysis systems in place

¹⁰ Department of Basic Education, 2014. Policy on Screening, Identification, Assessment and Support. Available at: <https://www.education.gov.za/LinkClick.aspx?fileticket=2bB7EaySbcw%3D&tabid=617&portalid=0&mid=2371> at pg. 19.

¹¹ Ibid at 20.

¹² Ibid at 21.

	<p>accessing all types of public schools.¹³ In 2019, Human Rights Watch also reported that an estimated 600 000 children with disabilities were not attending any type of school in South Africa, but that accurate government data on this did not exist.¹⁴</p> <p><u>Fee exemptions in special schools:</u></p> <p>The Convention on the Rights of Persons with Disabilities (CRPD) recognises payment of school fees as a potential barrier for learners with disabilities to accessing education. For this reason, the CRPD requires State Parties to take practical steps aimed at ensuring free primary and secondary education for learners with disabilities. Regrettably, the existing legal framework on inclusive education in South Africa does not make provision for free education for learners attending special schools.</p> <p>The 2015 Human Rights Watch report notes that among the factors that impede the ability of children with disabilities to access education</p>	<p>required), the cost of schooling remains a barrier to access.</p>		<p>regarding enrolments?</p> <p>b. What steps will be taken to ensure free quality education for learners with disabilities?</p> <p>c. What legislative and policy measures are being taken to ensure that the full range of issues relevant to the rights of children with disabilities are taken into account in all aspects of planning, resourcing, and provisioning? What timelines and indicators for implementation will be put in place?</p>
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¹³ Human Rights Watch, 2015. “Complicit in exclusion”: South Africa’s failure to guarantee an inclusive education for children with disabilities. Available at: https://www.hrw.org/sites/default/files/report_pdf/southafricaaccessible.pdf.

¹⁴ Human Rights Watch, 2019. South Africa: Children with disabilities shortchanged. Available at: <https://www.hrw.org/news/2019/05/24/south-africa-children-disabilities-shortchanged>.

	<p>are prohibitive costs associated, in particular, with...school fees.¹⁵ It notes further that although 80 percent of mainstream schools have been declared as “no fee schools”, there are no special schools currently listed as “no fee schools”.¹⁶ This problem prevails despite the fact that the majority of learners attending special schools are coming from similar poverty stricken communities.</p>			
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¹⁵ Human Rights Watch, 2015. “Complicit in exclusion”: South Africa’s failure to guarantee an inclusive education for children with disabilities. Available at: https://www.hrw.org/sites/default/files/report_pdf/southafricaaccessible.pdf. Pg 26.

¹⁶ Ibid at pg 27.

<p>(4) Charging of contributions in no-fee schools, discrimination against learners applying for fee exemptions, especially for children with single parents, and funding schools below the national threshold amount.</p>	<p><u>Requiring payment of voluntary contributions:</u> No fee schools are not permitted to charge fees but they may raise additional funds through <i>voluntary</i> contributions. There are ongoing reports of parents and guardians being forced to pay donations in spite of this being prohibited.¹⁷</p> <p><u>Regulations pertaining to the exemption of parents from payment of school fees:</u> A judgment handed down in 2017 permitting a single parent to apply for a partial or full fee exemption, even in the case of the other parent failing or refusing to provide their particulars¹⁸ (“Saffer judgment”) was an important victory for single parents, however the regulations relating to the exemption of parents from payment of school fees in public schools¹⁹ have yet to be amended to implement this ruling.</p>	<p>The fee exemption provisions are important in ensuring access to education for vulnerable groups in society. Without access to fee exemptions, by being forced to make voluntary contributions and provincial departments of education failing to fund schools in accordance with the national threshold amount, learners and schools who are in desperate need of financial assistance to ensure access to education are compromised.</p>	<p>The South African government has failed to amend existing regulations giving effect to the <i>Saffer</i> judgment.</p> <p>There are insufficient monitoring processes to ensure compliance with the fee exemption regulations and the South African Schools Act regarding voluntary contributions.</p> <p>There is an ongoing failure to prioritise payment of per learner amounts.</p>	<p>a. How will the South African government ensure schools comply with the requirements for voluntary contributions?</p> <p>b. When will the South African government amend regulations giving effect to the <i>Saffer</i> judgment?</p> <p>c. How will the South African government ensure that all provinces fund schools in accordance with the nationally determined per learner amounts?</p>

¹⁷ Section27. Basic Education Rights Handbook: Education Rights in South Africa. 2017. Available at: <https://section27.org.za/basic-education-handbook/>

¹⁸ *Head of the Department: Western Cape Education Department and Others v Saffer* (Women’s Legal Centre as Amicus Curiae) 2017. (1209/2016) SCA.

¹⁹ The Regulations relating to the exemption of parents from payment of school fees in public schools published under Government Notice No.1052 of 18 October 2006 in terms of the South African Schools Act, 84 of 1996 (“**Fee exemption regulations**”).

	<p><u>Funding schools below the national threshold:</u></p> <p>The South African government has determined that schools are funded at nationally determined per learner amounts, which must be paid by provincial departments of education. In a recent meeting of the Portfolio Committee of Basic Education, the Financial and Fiscal Commission noted that various provincial departments of education have been funding schools below the nationally determined per learner amount since 2014.</p>			
<p>(5) Lack of appropriate infrastructure and sanitation</p>	<p>The Regulations Relating to Minimum Uniform Norms and Standards for public School Infrastructure²⁰ (“Infrastructure Norms and Standards”) regulate, amongst other things, when schools must be built or upgraded, specify appropriate school building materials and deal with the provision of water and sanitation.²¹ Despite clear deadlines in the Infrastructure Norms and Standards, the National Education Infrastructure Management System (“NEIMS”) report reveals that there remain a number of schools with pit latrines and</p>	<p>The conditions under which teaching and learning take place have a bearing on learner performance. Learners who are forced to learn in conditions that are unsafe and which expose them to the elements cannot be expected to perform well academically. Poor learner performance perpetuates inequality as learners’ are left without the tools to access</p>	<p>One of the contributing factors to a lack of appropriate infrastructure and sanitation are sector wide budget cuts. In addition to this, a lack of capacity of provincial education departments, under expenditure and irregular or wasteful expenditure have contributed to the backlog in completion of infrastructure</p>	<p>How and according to what timelines will the South African government:</p> <p>a. Ensure effective oversight of education infrastructure spending and ensure that sufficient financial resources are allocated for the completion of infrastructure projects?</p>

²⁰ The Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure were published under Government Notice No R920 in Government Gazette No 37081 of 29 November 2013 in terms of the South African Schools Act, 84 of 1996.

²¹ Equal Education, 2018. “Implementing Agents: The Middlemen in Charge of Building Schools”. Available at: <https://equaleducation.org.za/wp-content/uploads/2018/11/Equal-Education-Implementing-Agents-Report-November-2018.pdf>.

	<p>with an unreliable water supply.²² In the latest NEIMS report, there are still 3164 schools across South Africa with pit latrines as their only form of sanitation.²³</p> <p>A lack of capacity in provincial departments of education has resulted in a reliance on implementing agents, that in many instances, have failed to deliver construction projects as planned.²⁴</p> <p>Maintenance of existing infrastructure presents another challenge. Schools have cited limited maintenance staff and maintenance budgets as one of the causes for the deterioration of infrastructure.²⁵</p> <p>Poor data collection which often results in poor planning across national and provincial</p>	<p>tertiary education or obtain adequate employment to break the cycle of poverty.</p>	<p>and sanitation projects.</p> <p>Furthermore, poor coordination between national and provincial education departments and other relevant authorities results in delays towards addressing infrastructure backlogs.</p>	<p>b. Build capacity in provincial departments of education to implement and manage infrastructure projects and prevent an over-reliance on implementing agents?</p> <p>c. Urgently address infrastructure backlogs and comply with the deadlines as contained in the Infrastructure Norms and Standards?</p> <p>d. Ensure universal compliance with norms and standards for school infrastructure,</p>
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²² Department of Basic Education. National Education Information Management System Standard Report. August 2020.

²³ Ibid.

²⁴ Implementing agents can support the governance of a provincial department of education and/or manage a school construction project. Equal Education, 2018. "Implementing Agents: The Middlemen in Charge of Building Schools". Available at: [httpEs://equaleducation.org.za/wp-content/uploads/2018/11/Equal-Education-Implementing-Agents-Report-November-2018.pdf](http://equaleducation.org.za/wp-content/uploads/2018/11/Equal-Education-Implementing-Agents-Report-November-2018.pdf).

²⁵ Equal Education, Breaking the Cycle: Uncovering Persistent Sanitation Issues in Gauteng Schools (2018). Available at: <https://equaleducation.org.za/wp-content/uploads/2018/11/Equal-Education-GP-Sanitation-Audit-Report-2018.pdf>

	<p>education departments has also had a bearing on the provision of school infrastructure. While there has been progress in addressing infrastructure backlogs, particularly after the promulgation of the Infrastructure Norms and Standards, there is, at times, a disconnect between the realities that learners face and the information reported by education departments.</p> <p>Concerningly, we have seen a decrease in the national Department of Basic Education’s (“DBE”) budget, which has resulted in cuts to school infrastructure grants, amongst other things.²⁶ While government has adopted austerity measures and reduced social spending, a partial reason for reductions to education budgets relates to the inability of education departments to spend their funding efficiently and effectively. Often, particularly with some infrastructure grants, money has been returned to National Treasury because it was not spent.</p>			<p>appropriate sanitation and access to water and electricity?</p>
<p>(6) Lack of access to scholar transport</p>	<p>In 2015, the Department of Transport published the national Learner Transport Policy. There are ongoing concerns regarding the lack of</p>	<p>A failure of government departments to cooperate, a lack of dedicated funding and</p>	<p>The national Learner Transport Policy contains significant gaps which have</p>	<p>How will the South African government:</p>

²⁶ Budget Justice Coalition. Submission to the Select and Standing Committees on Finance on the 2020 Medium-term Budget Policy Statement, pg 43-44. 3 November 2020. Available at: <https://iej.org.za/submission-by-the-budget-justice-coalition-in-response-to-2020-medium-term-budget/>

	<p>stakeholder co-operation between the provincial departments of education and transport and the failure to allocate roles and responsibilities to national and provincial departments of education and transport.²⁷</p> <p>Scholar transport is funded through revenue received nationally that is unconditionally (Equitable Share) allocated to provinces for the supply of services. Departments are permitted to exercise discretion as to how to spend this allocation, which has resulted in scholar transport being un-prioritised or inadequately funded.²⁸ For over three years, National Treasury and the Department of Planning, Monitoring and Evaluation (DPME) have stated that they would look into developing such a conditional grant (ring-fenced money) to fund the provision of scholar transport.</p> <p>A lack of accurate data on the number of learners requiring transport has impacted on proper planning, budgeting and costing of transport provisioning.</p>	<p>a lack of accurate data on the extent of the need for scholar transport is impacting on the extent to which learners who require transport are able to access it. A lack of scholar transport affects learner attendance at school and places their safety at risk, which affects learners' ability to realise their right to education.</p>	<p>hampered the effectiveness of the policy. These include a lack of clarity on how multi-stakeholder coordination as envisaged by the policy is to be facilitated, a lack of guidance on how planning for learner transport provisioning would be implemented, gaps in ensuring effective monitoring and implementation of the policy and an absence of mechanisms to ensure adequate funding.</p> <p>Further contributing factors to the lack of access to transport include a lack of stakeholder cooperation, inconsistent and inadequate funding for scholar transport across provinces and a lack of reliable and consistent data.</p>	<ul style="list-style-type: none"> a. Ensure scholar transport is adequately funded across provinces? b. Exercise oversight to ensure that all provinces publish adequate, comprehensive scholar transport policies? c. Ensure accountability and transparency of spending on scholar transport? d. Ensure there is accurate data on the extent of the need for transport? e. Ensure that learners attending schools of parental choice are not excluded from this service?
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²⁷ Equal Education Law Centre. A Report on the State of Education: Trends and issues characterising the education sector over the last 5 years (2014-2019), pg 35. Available at: <https://eelawcentre.org.za/wp-content/uploads-report-on-the-state-of-education-pdf/>

²⁸ Equal Education Law Centre. A Report on the State of Education: Trends and issues characterising the education sector over the last 5 years (2014-2019), pg 37. Available at: <https://eelawcentre.org.za/wp-content/uploads-report-on-the-state-of-education-pdf/>

	<p>The limitation that learners can only access scholar transport if they attend their nearest school, excludes learners. The national policy states that transport will not be provided if a learner attends a school of parental choice, but there are various circumstances which can determine a learner attending a school further away.²⁹</p> <p>The Learner Transport Policy acknowledges that the current system of provisioning does not adequately consider children with disabilities and requires provincial departments of education to select learners who qualify for transport, giving priority to learners with disabilities. Many provincial learner transport policies contravene this requirement.³⁰</p>			<p>f. Ensure that learners with disabilities are given priority when considering learners who qualify for transport?</p>
<p>(7) Lack of access to universal, quality early</p>	<p>The majority of children in South Africa do not have access to quality early childhood development (ECD) services. Currently, 3.2</p>	<p>Supporting young children in their early years is crucial to reducing poverty and</p>	<p>The current regulatory framework (in particular, the Children’s Act, 2005) does</p>	<p>a. What measures will be taken and according to what timeframes to</p>

²⁹ Equal Education and Equal Education Law Centre. Submission on KwaZulu-Natal Draft Scholar Transport Policy (2020), pg 3. Available at: <https://eelawcentre.org.za/wp-content/uploads/kzn-learner-transport.pdf>

³⁰ Deochand, E and McLaren, D, 2019. “Children with disabilities left behind by learner transport policy”, Mail & Guardian, 29 January 2019. Available at: <https://mg.co.za/article/2019-01-29-00-children-with-disabilities-left-behind-by-learner-transport-policy>. Equal Education Law Centre. A Report on the State of Education: Trends and issues characterising the education sector over the last 5 years (2014-2019), pg 38. Available at: <https://eelawcentre.org.za/wp-content/uploads-report-on-the-state-of-education-pdf/>

<p>childhood education</p>	<p>million children are not accessing any ECD programmes and only 626 574 or 25% of the children who need it are obtaining subsidised learning.³¹ Of the children who are able to access some form of ECD programme, 2.9 million children are in unregistered programmes,³² which fall outside the regulatory net.</p>	<p>inequality, and is a fundamental and universal human right. Children are significantly influenced by their environments and are more likely to thrive if their physical, social, emotional and cognitive influences are positive. Children who have access to quality early learning opportunities are also more successful in their educational and professional futures.</p>	<p>not create an enabling environment to ensure equal access to quality early childhood education. Amongst other things, the Act:</p> <ul style="list-style-type: none"> ● Fails to enable implementation of the National ECD Policy. ● Imposes a complicated dual registration process on ECD programmes and partial care facilities. ● Does not recognise the need for different types of ECD programme provisioning. ● Requires compliance with excessively burdensome and unattainable requirements, making registration and access to funding almost 	<p>ensure that the ECD regulatory framework adequately addresses current challenges?</p> <p>b. When will government make its detailed plans for the imminent migration publicly available for engagement?</p>
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³¹ Ilifa Labantwana’s analysis of the Stats SA *General Household Survey 2018*. Available at: www.statssa.gov.za/publications/P0318/P03182018.pdf.

³² Ibid.

			<p>impossible.</p> <p>The proposed amendments to the Children’s Act introduced through the Children’s Amendment Bill in 2020 fail to address core challenges facing the ECD sector, and in some cases, exacerbate existing challenges. Moreover, the Bill also fails to respond to the imminent shift of responsibilities in respect of ECD services from the Department of Social Development to the DBE.</p>	
<p>(8) High drop-out rate and exclusion of pregnant learners.</p>	<p>Findings presented during a recent meeting of the Portfolio Committee on Basic Education, cite teenage pregnancy as one of the contributing factors for school drop-out.³³ There are ongoing reports of pregnant learners being excluded from school due to inconsistent school policies.</p>	<p>Teenage learners who fall pregnant are less likely to complete their schooling. This has a discriminatory effect. When learners do not complete their schooling, they are less likely to access meaningful employment.</p>	<p>The draft National Policy on the Prevention and Management of Learner Pregnancy in Schools was published for public comment in 2018 (“draft policy”). There are concerns that the draft policy does not provide sufficient information to facilitate effective implementation. Amongst other things, the</p>	<p>1. When will the South African government finalise the draft policy, including finalising and publishing the accompanying proposed Implementation Plan?</p>

³³ Portfolio Committee on Basic Education. Meeting summary: Zero-dropout Campaign. Available at: <https://pmg.org.za/committee-meeting/31112/>

			<p>draft policy does not contain detail on how the draft policy is to be funded, it does not detail the reasonable accommodations to be provided to pregnant learners before and after delivery, and the draft policy is silent on the protection of the rights of learner fathers.</p> <p>Concerningly, a final policy has still not been published and it is unclear to what extent the issues raised will be addressed in the final policy.</p>	
<p>(9) Ongoing incidences of corporal punishment in schools.</p>	<p>There are ongoing reports of learners being subjected to degrading and inhumane forms of punishment in schools despite the fact that corporal punishment is a criminal offence in terms of the South African Schools Act, 84 of 1996.</p>	<p>There are severe physical and psychological effects on learners subjected to degrading and inhumane forms of punishment in school.</p>	<p>Despite the publication of the Protocol to Deal with Instances of Corporal Punishment in Schools, there has been inadequate monitoring of implementation of the protocol.</p> <p>Ongoing training of educators is required to ensure schools are aware of</p>	<p>a. What monitoring mechanisms are in place to ensure implementation of the Protocol to deal with Instances of Corporal Punishment in Schools?</p> <p>2. What plans are in place to ensure educators, learners and parents are aware of the prohibition</p>

			the prohibition of corporal punishment and are educated on the effects of corporal punishment on learners.	on corporal punishment and the effects of corporal punishment on learners?
(10) Private involvement in public education	<p>The increasing involvement of private or non-state actors in the ownership and management of schools has brought with it a range of concerns relating to equity, access, quality and equality in education in South Africa.</p> <p>In its work, the EELC frequently assists clients in situations where independent schools withhold reports, refuse to provide transfer documents, or expel learners for the non-payment of fees. These steps are often taken without due process and with little regard for the learners' right to education.³⁴ Moreover, trends are emerging where schools require parents to enter into one year contracts to avoid the consequences of cancelling the contract.</p> <p>Evidence of the need for a clearer legal framework can also be seen in the Western Cape province, where last year, despite critical concerns previously raised by Equal Education</p>	The failure to properly regulate private involvement in education has resulted in an infringement of the right to education for learners' in independent schools.	<p>Poor regulation of private involvement in education results in failure to ensure adequate standards are implemented in schools owned and managed by private actors.</p> <p>In October 2018, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) adopted its concluding observations on the South African government's initial report to the CESCR, noting this uncertainty and the lack of guidance on the roles and responsibilities of private</p>	<p>a. What measures are being taken by government to implement the recommendations of the CESCR to regulate private involvement in education and to provide adequate guidance to provinces in their regulation of private actors?</p> <p>b. Has South Africa considered the Abidjan Principles. Will steps be taken to ensure their implementation?</p> <p>c. When will national legislation be published</p>

³⁴ The judgments in *A B v Pridwin Preparatory School* and *Mhlongo v John Wesley* heard in superior courts in South Africa considered a range of questions, including, how private involvement in education may potentially infringe the rights of learners, and therefore, how such involvement should be regulated by the state.

	<p>and the EELC, provincial education law was amended to introduce, as new “types” of public schools, “collaboration schools” and “donor-funded public schools”. In these schools, operating partners (in the case of collaboration schools) and donors (in the case of donor-funded schools) are afforded significant representation and governance powers in public schools, without adequate mechanisms of accountability and transparency.</p> <p>The Abidjan Principles, which were adopted in 2019, are guiding principles on the human rights obligations of states to provide public education and to regulate private involvement in education, in accordance with human rights obligations and standards. They offer promising guidance to states and other actors when navigating growing privatisation in education.</p>		<p>actors in education in South Africa. The Committee recommended that South Africa intensify its efforts to improve the existing regulatory framework to define the roles and responsibilities of private sector actors and its efforts to monitor the education provided by such actors.</p>	<p>to regulate private involvement in education?</p>
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