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To: The Department of Justice and  
Constitutional Development

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**EELC COMMENT**  
**ON THE DRAFT NATIONAL ACTION PLAN TO COMBAT RACISM,  
RACIAL DISCRIMINATION, XENOPHOBIA & RELATED  
INTOLERANCE 2016 - 2021**

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## **A. Introduction**

1. This is a submission by the Equal Education Law Centre (EELC) on the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (the National Action Plan). The EELC is a public interest law centre and South Africa's only public education specialist law clinic. EELC works in pursuit of a quality and equal education system for all learners. We focus on using litigation and advocacy as a tool for achieving an equal and quality basic education for all.
2. The Draft National Action Plan currently lists the "*role of key actors*" in combating the social ills of racism, xenophobia and connected intolerance.<sup>1</sup> These are listed as: Government, Chapter Nine Institutions, Civil Society, the Private Sector, Labour and Media. The inclusion of non-governmental role players is a positive step toward making the elimination of discrimination a collective effort. However, nowhere in the National Action Plan is mention made of the role of School Governing Bodies (SGBs) in achieving the goals of the Plan.
3. The purpose of this submission is to focus on the need for School Governing Bodies, as well as teachers, to be recognised as central role-players in the implementation and success of the National Action Plan.
4. EELC welcomes this opportunity to provide input on the Draft National Action Plan which has the potential of serving as a solid platform from which to elevate collective action aimed at addressing intolerance, racism and xenophobia in South Africa.
5. As part of EELC's work we have assisted in instances of discrimination against learners on the basis of pregnancy, culture, religion, disability and other grounds within the schooling context. EELC therefore has first-hand knowledge of the discriminatory conduct and prejudice which pervades the schooling system, its impact upon victimised learners and the urgent action required in order to properly address this intolerance.

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<sup>1</sup> The Draft National Action Plan at page 38.

## **B. The statutory and Constitutionally designated role of the School Governing Body**

6. The SGB is an institution established by the South African Schools Act (SASA).<sup>2</sup> SGBs occupy a unique position in the schooling system as an interface between the community and the school, their membership comprising educators, learners, parents, the school principal, and others.<sup>2</sup> This position, and the SGB's social responsibilities – which include adopting a constitution and deciding on the community's use of the school for non-school purposes – gives them significant power over the day-to-day experiences of learners and the community as a whole.
7. SASA places the responsibility for the governance of every public school in its SGB.<sup>3</sup> SGBs are empowered to determine language and admissions policies at schools, which must be in line with the Constitution and any other laws.
8. SASA also unequivocally proclaims that “*a public school must admit learners and serve their educational requirements without unfairly discriminating in any way.*”<sup>4</sup> More particularly, section 6 of SASA prohibits racial discrimination in the implementation of school language policies. SGBs must also go beyond this by taking positive steps to encourage and affirm diversity and respect for difference within the schooling context.<sup>5</sup>
9. These obligations are reinforced by the Preamble to SASA which states that South Africa requires a public education system that “*advance(s) the democratic transformation of society*” And which “*combat(s) racism and sexism and all other forms of unfair discrimination and intolerance*” and “*protect and advance our diverse cultures and languages*”.
10. This vision is echoed in the National Education Policy Act (NEPA). Section 4(a) of NEPA provides that national education policy should be directed towards the advancement and protection of the fundamental rights and applicable international law, in particular the right of every person to be protected against unfair discrimination on any ground whatsoever and the right of every person to basic education and equal access to education institutions.
11. The laudable goals and objectives enumerated in SASA and NEPA are reflected in the National Action Plan. It is imminently sensible that these three instruments

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<sup>2</sup> The South African Schools Act 84 of 1996 (SASA.)

<sup>3</sup> Section 16(1) of SASA.

<sup>4</sup> Section 5(1) of SASA.

<sup>5</sup> *MEC for Education: Kwazulu-Natal and Others v Pillay* 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC).

should align and serve as a collective framework for challenging racism, xenophobia and all forms of intolerance in education. It would be incompatible with, indeed contrary to, these legislative objectives should the National Action Plan fail to take cognisance of and make provision for the role of SGBs in ensuring the success of the Plan.

12. The SGB therefore has an enormous responsibility but also wields significant strength in combatting racism, xenophobia and related intolerance within the school grounds. However, its influence is so much greater when viewed against the vital role played by education in eliminating ignorance and fostering appreciation for difference within the mind-set of South African children.
13. Schools are a microcosm of society. SGBs in fulfilling their role towards learners and the community are meant to serve, at this micro-level, as “*a beacon of grassroots democracy*”.<sup>6</sup> Therefore if the constitutional vision of a South African society “*united in its diversity*” is to be achieved, it is imperative that SGBs are brought in the fold to ensure, at this very early stage, that the manner in which our schools are run and our children raised reflect this constitutional vision.<sup>7</sup>
14. Many SGBs instead of participating in this transformative democratic project, perpetuate the problem through racist, xenophobic and intolerant attitudes and practices. In the section that follows we elaborate on a few instances in which intolerant behaviour manifests itself at school level. These examples are cited so as to illustrate the need not only to ensure that SGBs are included as key players within the National Action Plan but also that the necessary information and training is provided to them so that they can best effect their role.

### C. Foreign Learners

15. For many learners entering the South African education system, having to navigate a new social environment can be overwhelming. For learners born outside the country, whose families have fled to South Africa to escape civil war, famine and poverty, the obstacles are even greater. These foreign learners are in an especially vulnerable position, as highlighted by the Constitutional Court:

*“Refugees are unquestionably a vulnerable group in our society and their plight calls for compassion...Very often they, or those close to them, have*

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<sup>6</sup> *Head of Department : Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another* ZACC 32; 2010 (2) SA 415 (CC) ; 2010 (3) BCLR 177 (CC) at para 57.

<sup>7</sup> Preamble to the Constitution.

*been victims of violence on the basis of very personal attributes such as ethnicity or religion. Added to these experiences is the further trauma associated with displacement to a foreign country.”<sup>8</sup>*

16. Although the Constitution and the United Nations Convention Relating to the Status of Refugees guarantees everyone the right to basic education regardless of nationality, this is not always a reality for foreign learners seeking to access South African schools. In South Africa learners with asylum-seeker papers are allowed to study and non-citizens may be admitted provisionally to a school, provided their parents can show that they have made an application for residency or asylum to the Department of Home Affairs. Worryingly, this is often not an accessible process.
17. Access to schools is regulated through SASA and NEPA. Through this framework SGBs are empowered to determine school policies including language and admissions policies. Provincial Education Departments (PEDs) may develop guidelines to assist SGBs in creating lawful and constitutional policies. However, almost across the board PEDs have failed to fulfil their responsibilities in this regard. As a result SGBs continue to create and implement discriminatory policies that impact harshly on foreign learners. This is often due to ignorance or prejudice or both.
18. The 2008 and 2015, xenophobic attacks across the country highlighted the effect that these atrocities have on school-going children. Many of the learners affected were left without transport from transit camps to schools, or were displaced and seeking refuge with their families in other parts of South Africa. Some were unable to return to their school or felt unsafe to return.
19. Such xenophobic attacks infringe on the rights to dignity, equality, safety and security, and education of foreign nationals. However, the condemnation of violence of this nature and the implementation of emergency measures to calm the situation is not enough.
20. Xenophobia cannot simply be reduced to incidents of heightened violence and the looting of businesses owned by foreign nationals. Government and all relevant stakeholders must be cognisant of the everyday occurrences of discrimination and xenophobia that foreign nationals, especially foreign learners, face.
21. The EELC has experienced a number of cases of foreign learners who face obstacles to accessing and enjoying their right to a basic education as a result of discriminatory conduct. This manifests itself through foreign learners’ interaction with their peers and teachers and also as a result of the application of

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<sup>8</sup> *Union of Refugee Women and Others v Director: Private Security Industry Regulatory Authority and Others* 2007 (4) BCLR 339 (CC) at para 28.

discriminatory school admissions and school fee policies. In many instances foreign learners are prevented from obtaining fee exemptions, and are barred from registering for school based on the status of their permits. Examples of fee exemption issues encountered by EELC include schools that are either non-responsive or frustrate refugee parents attempts at accessing fee exemptions.

22. Additionally, asylum seekers from across the country need to travel to Pretoria, Musina or Durban to renew their papers. This has often resulted in the obstruction of a number of learners seeking to be enrolled at school or registered to write their Matric Exams.
  
23. The National Action Plan makes special mention on the impact that xenophobia has primarily on business and the economy. Section 119 of the National Action Plan mentions some of the interventions government has made with regard to xenophobia. These include the review of the implementation of Labour Relations policies which affect foreign nationals; the implementation of the laws that govern business licenses and the country's border management and migration policies, generally.
  
24. While interventions at the business and labour relations level are commendable, government must pay careful attention to the impact that xenophobic conduct has on access to education.

**An example of a discriminatory school policy:**

Grace\* and her mother live in South Africa as asylum seekers for about 10 years, periodically renewing their asylum-seeker permits. Grace completed primary school in South Africa and applied timeously for grade 8 at her nearest high school, the same school that her cousin Jeffrey\* attended. His own application to the school was initially rejected, with the school citing a number of reasons, including that Jeffrey lived outside of the school feeder-zone (which was incorrect) and that as a foreign national Jeffrey would likely struggle with the school's dual medium language policy. In truth Jeffrey, like many other young asylum seekers who completed primary schooling in South Africa, was able to understand and speak Afrikaans at his grade level.

At the time of Grace's application, she had a valid asylum-seeker permit. Her permit expired while her application to be admitted to the school was being considered. Her permit was, however, subsequently renewed. Several months after lodging her application, Grace received a letter of rejection from the school, citing her expired asylum-seeker papers as the reason.

#### **D. Racially integrated and diverse schooling**

25. The National Action Plan acknowledges that one of the “*biggest challenges*” facing our public education system is our lack of fully integrated schools.<sup>9</sup> The Plan declares that “*we need to address the legacy of segregated education and to address attitudes and prejudices responsible for the persistence and continued existence of racism.*”<sup>10</sup>
26. Whilst the National Action Plan speaks in broad strokes about dismantling our grossly unequal education system, it is important that the Plan takes heed of the institutionalised racism which permeates the education system. SGB admissions and fee exemption policies are often used as a tool to reinforce class, race or nationalistic prejudices. In certain instances these actions are cloaked in credibility by discriminatory fee exemption policies. Indigenous school language policies are also invoked as a barrier to access.
27. It bears emphasis that the concept of a “*feeder zone*” is currently common place within the schools admissions process and is institutionalised in many SGB policies. Schools often rely on geographical boundaries as a sifting mechanism when processing admissions applications. However, in South Africa the question of geography is inevitably inter-wined with issues of race and racially based discrimination. The inadequacy of the schooling conditions for the majority of black children in our country is notoriously well documented. Also, is the systematic perpetuation of de facto segregation and inequality through an unjust and inequitable education system. A system that SGBs play a significant role in further entrenching.
28. The creation and application of feeder zones further exacerbates the problem. Whilst proximity as admissions criteria appears neutral, closer examination reveals the disparate racial impact. By and large black learners live in historically ‘black areas’. Schools in these areas are invariably poor, under-resourced and overcrowded. By virtue of the use of feeder zones many black learners are left choice-less as to the kind of school they are able to attend.
29. In turn, their white counterparts will find themselves in a far more favourable position by virtue of living in more affluent and historically “white

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<sup>9</sup> The Draft National Action Plan at page 21.

<sup>10</sup> Same as above.

neighbourhoods”.<sup>11</sup> Often privileged schools invoke feeder zones as a conscious mechanism for race based exclusion. Regardless of intent though, through the application of feeder zones in the admissions system racial discrimination is both perpetuated and entrenched.

30. For any school level action to be effective SGBs must be educated as to what is lawful and constitutional conduct and what types of policies encourage diversity as opposed to further embedding racism. This will go a long way towards achieving the National Action Plan’s goal of “*eradicating all the lingering negative legacies of apartheid and discrimination of our past.*”<sup>12</sup>

### **E. LGBTI learners**

31. Learners from the LGBTI community are also often victims of a culture of prejudice created in schools, a culture often exacerbated by teachers and SGBs who do not intervene.
32. LGBTI learners face serious challenges in schools around the world.<sup>13</sup> South Africa has recognized this and put in place progressive legislation that protects the rights of LGBTI persons. The Constitution guarantees equality before the law, and specifically says that the State may not unfairly discriminate on the basis of gender, sex or sexual orientation. The Promotion of Equality and Prevention of Unfair Discrimination Act<sup>14</sup> provides the framework within which a person claiming discrimination can vindicate their rights.
33. This legislation is invaluable, and theoretically protects LGBTI learners. However it is apparent that, despite constitutional protection, problems still exist on the ground. Research in other countries has shown that LGBTI youth report higher levels of victimization, bullying, and other negative outcomes than heterosexual youth.<sup>15</sup> These issues lead to tragic results for the community.

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<sup>11</sup> F Yamauchi (2011) *School Quality, Clustering and Government Subsidy in Post-Apartheid South Africa* Economics of Education Review 30: 146-156, 158 & p150.

<sup>12</sup> The Draft National Action Plan at page 25.

<sup>13</sup> Thabo Msibi, *Homophobia in South African township and rural schools: Understanding the nature and scale of the problem* (University of KwaZulu-Natal: 2012). Accessible online: [http://hearusout.org/modules/MDCatalogue/resources/81\\_homophobia\\_in\\_south\\_african\\_township\\_and\\_rural\\_schools.pdf](http://hearusout.org/modules/MDCatalogue/resources/81_homophobia_in_south_african_township_and_rural_schools.pdf)

<sup>14</sup> PEPUDA 52 of 2002.

<sup>15</sup> M Birkett et al, *LGB and queering students in schools: the moderating effects of homophobic bullying and school climate on negative outcomes* (Journal of Youth and Adolescence: 2009). Accessible online: <http://www.ncbi.nlm.nih.gov/pubmed/19636741>.

Learners who suffer from these negative interactions have higher rates of self-harm, depression, drug and alcohol use, and even attempted suicide.<sup>16</sup>

34. Government, and SGB's especially, have an obligation to work towards addressing negative attitudes directed at LGBTI learners. The National Action Plan discusses the steps that the government has previously taken to respond to incidents of homophobic discrimination, including the establishment of a National Task Team in 2011.<sup>17</sup> The National Action Plan does not, however, make provision for ensuring that teachers' obtain the necessary direction on how to address LGBTI issues arising at school. Structured guidance has been recognised as a necessary component in effecting change for LGBTI learners, and for the broader LGBTI community.<sup>18</sup>
35. Direction for teachers is important because the injustices suffered by LGBTI learners are often perpetrated by teachers. A study conducted in KwaZulu-Natal revealed that of incidents of victimization in schools, 22% were perpetrated by teachers, and 9% by principals.<sup>19</sup> A similar study found that when homosexuality was raised in class, it was demonstrated in a negative light 73% of the time.<sup>20</sup>
36. In a 2012 study, one gay learner described an incident where a teacher "... dragged me by neck ... He always says that he doesn't like 'izitabane' [derogatory word for gay in isiZulu]. Other teachers just laugh and do nothing ..."<sup>21</sup> Learners are strongly influenced by what and how teachers teach.<sup>22</sup> Because of this, the school system provides a powerful tool for social change. Teachers are often seen as role models, and the norms and mores that they present may be taken up by their learners.<sup>23</sup> "*When teachers are committed to teaching all learners, and when*

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<sup>16</sup> Sue Saltmarsh, Kerry Robinson, Cristyn Davies, *Rethinking School Violence: Theory, Gender, Context* at 133.

<sup>17</sup> The Draft National Action Plan, at para 132.

<sup>18</sup> Msibi, above note 13.

<sup>19</sup> Dennis Francis & Thabo Msibi, *Teaching about Heterosexism: Challenging Homophobia in South Africa* (Journal of LGBT Youth: 2011) at 161.

<sup>20</sup> Same as above.

<sup>21</sup> Deevia Bhana, *Understanding and Addressing Homophobia in Schools: a view from teachers* (South African Journal of Education: 2012) at 308.

<sup>22</sup> Helen Timperley, *Teacher professional learning and development* (The International Academy of Education) at intro, online:  
<[http://www.ibe.unesco.org/fileadmin/user\\_upload/Publications/Educational\\_Practices/EdPractices\\_18.pdf](http://www.ibe.unesco.org/fileadmin/user_upload/Publications/Educational_Practices/EdPractices_18.pdf)>.

<sup>23</sup> Kerry Robinson & Tania Ferfolja, "*Anti-homophobia education in teacher education: perspectives from teacher educators in NSW, Australia*", (University of Western Sydney: 2003) online:  
<<http://www.gaylawnet.com/ezine/education/rob03308.pdf>>.

*they understand that through their teaching change can occur, then the chance for transformation is great.*<sup>24</sup>

37. Even teachers who do not hold such conservative views may be in need of a wider understanding of sexual diversity. A diversity which SGBs must encourage. For instance, teachers in the same study were found to not understand the difference between bisexuality and transsexuality.<sup>25</sup> These major gaps in knowledge, whether they are accompanied by stigma or not, demonstrate a need for teacher education in order to combat the problems that the LGBTI community face in schools.
38. If the aim is to create an inclusive environment for LGBTI learners, teachers and government must first gain a fuller understanding of the complex challenges facing these groups, before they can pass along lessons of tolerance and acceptance to their learners.
39. Some teachers claim to feel anxiety over teaching homosexuality. They have raised concerns over conservative parents who will oppose sexual education, and their lack of training on LGBTI issues.<sup>26</sup> But teachers, with the help of SGBs must overcome personal misgivings in order to help address the real day-to-day abuse that LGBTI children are facing. In this respect, teachers have been described as:

*“Guilty of working against the rights of gays and lesbians at school through denying its existence in the curriculum, through religious discourses and through sexual silencing working in the interests of heterosexuality. Teachers are part of the broader social context and the denial and restrictions to sexual freedoms noted here form part of the wider context where homosexuality is regulated and denied.”*<sup>27</sup>

40. Because of these widespread discriminatory attitudes in schools, the National Action Plan must recognize the role that teachers and SGBs play in creating, and preventing, homophobic violence. In order to do this, the Plan must harness the power of the SGBs. As stated, SGBs provide a link between the community as a whole and individual schools. In this sense, efforts to end discrimination of LGBTI learners at the school level can have a symbiotic effect on the community as a whole through the function of the SGB.

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<sup>24</sup> Bhana, above note 21 at 308.

<sup>25</sup> Bhana, above note 21 at 164.

<sup>26</sup> Bhana, above note 21 at 315.

<sup>27</sup> Bhana, above note 21 at 317.

41. Wider acceptance of LGBTI persons in schools has the potential to foster a more inclusive community. Inherent to their role as a governing body is the SGBs responsibility to ensure that schools are being run in alignment with nationally mandated objectives and standards. This includes adherence to the Constitution. In order to fulfil this role, it is necessary that SGBs use their power to create initiatives to educate from the top down—starting with teachers and principals themselves—on the dangers of discriminatory practices towards LGBTI learners and the value of an inclusive learning environment.

### ***F. Integration of learners with learning barriers into mainstream schools***

42. Institutionalised discrimination and marginalisation of learners with disabilities (learning barriers) continues in post-Apartheid South Africa. Whilst South Africa has taken significant steps towards creating a legal and policy framework to enable the creation of an inclusive education system for learners with learning barriers, implementation is failing.

43. White Paper 6, published in 2001, asserts that the Department of Basic Education carries, “*a special responsibility ... to ensure that all learners, with or without disabilities, pursue their learning potential to the fullest.*”<sup>28</sup> White Paper 6 is complemented by the *National Strategy on Screening, Identification, Assessment and Support (SIAS)* and the *Guidelines for Responding to Learner Diversity in the Classroom through Curriculum and Assessment Policy Statement*.

44. Government’s ‘inclusive education plan’ envisages the creation of a three-tiered system that matches educational support with a learner’s level of learning barriers. Learners who require low-intensive support are to receive such support in ordinary schools, those requiring moderate support are to receive such support in full-service schools, and those requiring high-intensive support are to receive such support in special schools. At the crux of the plan is the creation of multi-level support teams—at the school level, district level, and special school level (primarily to serve as resource centers)—to provide support in curriculum, assessment and instruction in educating learners with disabilities.

45. It is proven that educating students with disabilities in separated settings “*minimize[s], rather than maximize[s], their potential*” and result in a general “*lack of learning outcomes.*”<sup>29</sup> A 2002 study found that students in inclusive

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<sup>28</sup> White Paper 6, p.11 (2001), Department of Basic Education.

<sup>29</sup> *About Inclusive Education*, Nevada Partnership for Inclusive Education.

programs received higher grades in language arts, mathematics, science and social studies than students in non-inclusive programs<sup>30</sup>

46. Despite the Department of Basic Education's commitment to provide all learners with an education, the government has floundered in implementing its inclusive education program. As a result, the government has perpetuated the "*apartheid-isation of inclusive education*."<sup>31</sup>
47. In May of 2015, 597,953 children with disabilities were out of school.<sup>32</sup> This is a shocking increase from the 280,000 disabled children that were estimated to be out of school in 2001.<sup>33</sup>
48. The lack of inclusion of disabled learners into mainstream schools can be attributed to, amongst others, problematic referrals at the school level. School officials often make arbitrary and unchecked decisions about which students can enroll in mainstream schools and which students must be referred to special schools.<sup>34</sup> This has led to the widespread practice of placing children in special schools based on an assessment of their disability rather than on an assessment of their learning needs and the mainstream school's ability to accommodate those needs.<sup>35</sup>
49. For example, a large number of students with Down Syndrome continue to be referred to special schools without an appraisal of the mainstream school's ability to accommodate their learning needs.<sup>36</sup> In addition, Human Rights Watch found that "*10 of 70 children interviewed who attended mainstream or full-service*

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<sup>30</sup> Rea, P.J.,McLaughlin,V.L.& Walther-Thomas, C. (2002). *Outcomes for Students with Learning Disabilities in Inclusive and Pullout Programs*. *Exceptional Children* 68 (2), 203-222.

<sup>31</sup> Ngwena, C., *A Case Study of Contradictions in Inclusive Education*, *African Disability Rights Yearbook* 2013, Ch. 7, 152.

<sup>32</sup> *Progress Report on Inclusive Education and Special Schools*, Portfolio Committee on Basic Education, 23 June 2015.

<sup>33</sup> Department of Basic Education., *Education White Paper 6: Special Needs Education: Building an Inclusive Education and Training System* (2001), 30.

<sup>34</sup> *Complicit in Exclusion*, South Africa's Failure to Guarantee an Inclusive Education for Children with Disabilities, Human Rights Watch, 2015, 2.

<sup>35</sup> Legal Resources Centre, *Submissions for the General Day of Discussion on the Right to Education for Persons with Disabilities*, 20 March 2015; The African Child Policy Forum, *Children with disabilities in South Africa: The hidden reality*, Addis Ababa: 2011; Dana Donohue and Juan Bornman, *The challenges of realising inclusive education in South Africa*, *South African Journal of Education*, vol. 34(2), (2014); Gerison Lansdown, *Disabled Children in South Africa: Progress in Implementing the Convention on the Rights of the Child*, Rights for Disabled Children, (2002), <http://www.daa.org.uk/uploads/pdf/SA%20Childrens%20report%20.pdf> (accessed August 5, 2015).

<sup>36</sup> *Complicit in Exclusion*, South Africa's Failure to Guarantee an Inclusive Education for Children with Disabilities, Human Rights Watch, 2015, 37.

*schools, were waiting for a referral to a special school because their current schools could or would no longer accommodate them.*"<sup>37</sup>

50. Schools' reluctance to integrate learners with learning barriers contradicts *White Paper 6's* goal of allowing such learners to attend mainstream schools while addressing their learning needs through reasonable accommodation. If the current trend of simply referring children with learning barriers to special schools continues, it is estimated that 2,300 new special schools will have to be built to accommodate the 597,953 learners with learning barriers who are not enrolled in school.<sup>38</sup> The Department admits that because such an undertaking is not feasible, *"a radically different approach needs to be followed to meet the needs of children and youth with disabilities in an inclusive education system.*"<sup>39</sup>
51. Despite teachers' central role in an inclusive education system, most of the country's teachers are not capacitated to understand how a child's disability affects their ability to learn. NGO's providing teacher training in public schools report that *"teachers are not sufficiently qualified and equipped to teach children with disabilities, particularly in mainstream and full-service schools."*<sup>40</sup> Mambo Maligna, a professional who trains teachers on autism, said that she has *"never encountered someone who has the knowledge on autistic children."*<sup>41</sup> Without a basic understanding of a child's disability, it is unsurprising that teachers are unable to modify their curriculum to address a disabled child's unique learning needs.
52. A case study on the implementation of inclusive education in primary schools in the Lejweleputswa Education District found that both school-based and district-based support teams are generally ineffective.<sup>42</sup> School based support teams are designed to *"be involved centrally in identifying 'at risk' learners and addressing barriers to learning."*<sup>43</sup> However, school-based support teams in the Lejweleputswa District *"lack[ed] knowledge of policies and guidelines for inclusion."*<sup>44</sup> The support teams also did not receive support *"from fellow teachers*

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<sup>37</sup> Above note 36 at 34.

<sup>38</sup> Department of Basic Education, *Report on the Implementation of Education, White Paper 6 on Inclusive Education*, (2015), 21.

<sup>39</sup> Above note 38 at 13.

<sup>40</sup> *Complicit in Exclusion*, South Africa's Failure to Guarantee an Inclusive Education for Children with Disabilities, Human Rights Watch, 2015, 54.

<sup>41</sup> Above note 40 at 58.

<sup>42</sup> Above note 40 at 1.

<sup>43</sup> Department of Basic Education, *Education White Paper 6: Special Needs Education: Building an Inclusive Education and Training System* (2001), 33.

<sup>44</sup> Lebona, G.T., *The Implementation of Inclusive Education in Primary Schools in the Lejweleputswa Education District*, Central University of Technology, 2013, 22.

*who are supposed to take the responsibility for identifying learners with problems in his/her subject and collectively designing a support package for such learners.*"<sup>45</sup> As a result, the school-based support teams were unable to fulfill their purpose.

53. District-based support teams are intended to provide an additional layer of support to educators in implementing and maintaining an inclusive education system. The primary function of these support teams is *"to evaluate and through supporting teaching, build the capacity of schools ... to recognise and address severe learning difficulties and to accommodate a range of learning needs."*<sup>46</sup> However, the Lejweleputswa study found that the support offered by district-based support teams is minimal.<sup>47</sup> The district-support team took too *"long to monitor progress and offer support to both the SBST [school-based support teams] and referred learners"* for their support to be useful.<sup>48</sup>

54. SGBs and teachers need to be trained and effectively capacitated in order to properly accommodate learners with learning disabilities. It is imperative for effective training programmes to be implemented with adequate district-based support.

## **G. RECOMMENDATIONS**

55. EELC makes the following recommendations:

- That SGBs and teachers are included as key stakeholders in realising the goals of the National Action Plan.
- That elements of the National Action Plan concerning education be developed into a learning tool.
- That this learning tool be utilised to assist learners, parents, SGBs and officials involved in education delivery.

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<sup>45</sup> Same as above at 152.

<sup>46</sup> Department of Basic Education., *Education White Paper 6: Special Needs Education: Building an Inclusive Education and Training System* (2001), 47.

<sup>47</sup> Lebona, G.T., *The Implementation of Inclusive Education in Primary Schools in the Lejweleputswa Education District*, Central University of Technology, 2013, 115.

<sup>48</sup> Same as above.