

# BREAKING BARRIERS

**TO ACCESSING BASIC EDUCATION**

**KEEPING OUR LEARNERS SAFE IN SCHOOLS**

**LRC**

Legal Resources Centre

**A position paper on the legislative and Policy Framework governing  
Educators Sexual Misconduct in South Africa**

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# ABOUT THE LEGAL RESOURCES CENTRE

The Legal Resources Centre (LRC) is a public interest, non-profit law clinic in South Africa founded in 1979.

The LRC has, since its inception, shown a commitment to work towards a fully democratic society underpinned by respect for the rule of law and constitutional democracy. The LRC uses the law as an instrument for justice to facilitate the vulnerable and marginalised to assert and develop their rights; promote gender and racial equality and oppose all forms of unfair discrimination; as well as to contribute to the development of human rights jurisprudence and the social and economic transformation of society.

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## ABBREVIATIONS

Code of Ethics  
*Code of Professional Ethics for Teachers*

DBE  
*Department of Basic Education*

DSD  
*Department of Social Development*

ELRC  
*Education Labour Relations Council*

EEA  
*Employment of Educators Act*

LRA  
*Labour Relations Act*

LRC  
*Legal Resources Centre*

NCPR  
*National Child Protection Register*

NRSO  
*National Register for Sex Offenders*

NSSF  
*National School Safety Framework*

PED  
*Provincial Education Department*

SACE  
*South African Council for Educators*

SADTU  
*South African Democratic Teacher Union*

SAPS  
*South African Police Services*

SGB  
*School Governing Body*

SMT  
*School Management Team*

WCSSF  
*Western Cape Provincial School Safety Framework*



# INTRODUCTION

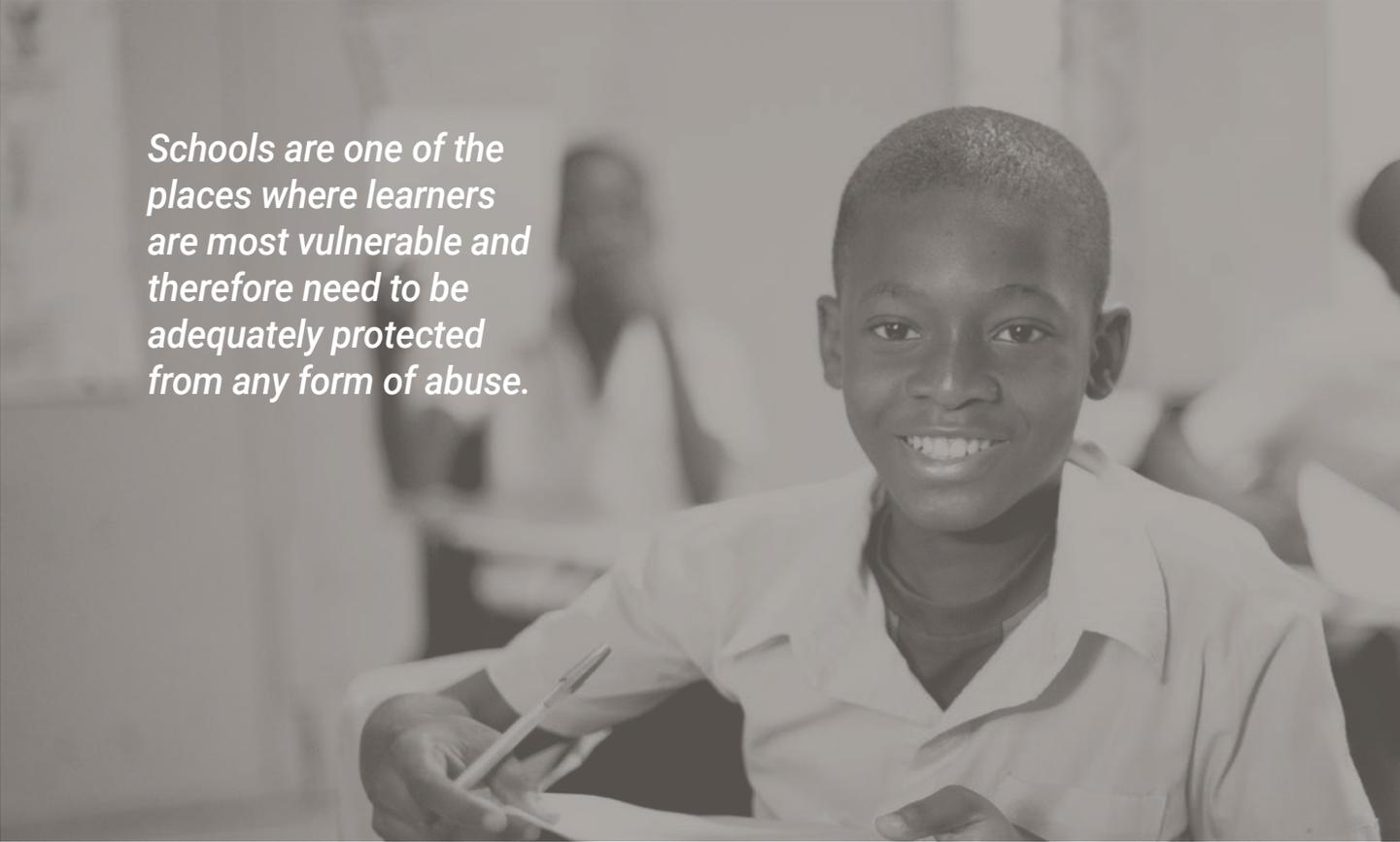
Sexual misconduct perpetrated by educators against learners is a serious human rights violation that is widespread across the globe, and the South African education system is no exception. This violation has wide-ranging consequences for learners' physical and psychological well-being, school performance and attendance. Schools are one of the places where learners are most vulnerable and thus need to be adequately protected from any form of abuse, including sexual violence and sexual harassment. Sexual misconduct by educators against learners has an impact on learners' right to basic education.

In South Africa, the legislative framework that promotes the right to access basic education provides that educators have an obligation and a legal duty to protect learners while in their care and to conduct themselves in a manner that is in the child's best interests<sup>1</sup>. This requires educators to refrain from harming learners in any way, including sexual misconduct against learners. Nonetheless, educator sexual misconduct is prevalent in South Africa despite its legislative prohibition and criminalisation.

According to the South African Council of Educators (SACE), sexual offences committed by educators towards learners are one of the top three types of cases reported consistently to them over the last five years. In August 2021, SACE presented a report to the Parliamentary Committee on Basic Education on Gender Based Violence in the teaching profession. It reported on sexual harassment, sexual abuse, rape, and improper relationships, including sexual relationships, indicating that a total of 585 cases have been reported over the last five years<sup>2</sup>. Considering the SACE report, educator sexual misconduct is on the rise. Of particular concern is the revelation that some educators were reported for using their position of power over learners to coerce them into having sexual relations with them for higher marks or for the pupil to progress to the next grade.

<sup>1</sup> Constitution of the Republic of South Africa, 1996; Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007; Children's Act 38 of 2005; South African Schools Act 84 of 1996; Employment of Educators Act 76 of 1998; South African Council of Educators Act 31 of 2000.

<sup>2</sup> SACE 'Sexual Gender-Based Violence in the Teaching Profession: Presentation to the Portfolio Committee on Basic Education.' Available at: [210817SACE\\_Genderbased\\_Violence\\_in\\_the\\_Teaching\\_Profession\\_SACE\\_Presentation.pdf](https://www.sace.org.za/Portals/0/210817SACE_Genderbased_Violence_in_the_Teaching_Profession_SACE_Presentation.pdf).



*Schools are one of the places where learners are most vulnerable and therefore need to be adequately protected from any form of abuse.*

Schools are supposed to be places of safety for learners. Instead, they have become one of the places where learners are most vulnerable to abuse. As a result, it is necessary that adequate steps be taken to protect learners from any form of abuse, including sexual violation and harassment. Sexual misconduct by educators against learners, particularly girl learners, creates barriers for learners to access basic education fully and effectively. It creates a marginalised experience in access to quality basic education for learners.

The purpose of this position paper is to provide an overview of the legislative and policy framework that applies to educators' sexual misconduct in South Africa. It does so by identifying the national legislative and policy framework, as well as the available mechanisms through which educators who have been found guilty of sexual misconduct can be held to account. Against the backdrop of the applicable legal framework, this position paper also considers the gaps in legislation and makes recommendations for reform, looking at how existing legislation and policies can inform an amendment of the South Africa Council of Educators Act that imposes appropriate and proportionate penalties for educator sexual misconduct.

It is envisaged that this paper will inform the development of advocacy aimed at much needed legal reform to establish a coherent, binding legislative scheme that addresses sexual misconduct perpetrated by teachers against learners, one that is sufficiently strict and is focused on protecting and promoting the child's best interests.

# I. NATIONAL LEGISLATIVE FRAMEWORK

## CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

### Section 28: Children's Rights

Section 28 of the Constitution is dedicated to the protection and promotion of children's rights.

Through this provision, the Constitution provides special protection to children and their well-being.

Importantly, Section 28(2) provides that the child's best interests are of paramount importance in every matter that concerns them. Moreover, section 28(1)(d) provides that every child must be protected from any abuse, maltreatment, and degradation. It provides that children should not be exposed to conduct that is inappropriate for their age or that put their well-being, education, physical, mental, and social development in jeopardy.

**Child/children:**  
Means a person aged  
under 18 years.

For example, in *De Reuck v Director of Public Prosecutions*, the Constitutional Court held that the ban on child pornography – which is in the child's best interests – justifiably limits the right to freedom of expression and the right to privacy<sup>3</sup>.

Where children's rights conflict with other rights, the child's best interests will prevail in most circumstances.

### Section 29: Right to Education

The right to basic education is envisaged in section 29(1)(a) of the Constitution which provides that "everyone has the right to access basic education..."<sup>4</sup>. The state is required to protect, promote, respect, and fulfil this right<sup>5</sup>, and must do so through the passing of laws, regulations and policies that are developmental and progressive in nature. The state must also establish relevant programmes. The right to access basic education is a justiciable right and therefore the shortcomings of the state in effectively implementing its constitutional obligation regarding this right, can be challenged using various mechanisms.

<sup>3</sup> 2004 (1) SA 406 (CC) para 55.

<sup>4</sup> Section 29(1)(a) of the Constitution.

<sup>5</sup> Section 8(2).

Socio-economic rights such as the right to housing or health require that the state, must always, through reasonable measures, make the right progressively available and accessible. The right to basic education, however, is distinct in that it is immediately realisable. This was confirmed by the Constitutional Court in *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* where it was noted that:

*"Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be 'progressively realised' within 'available resources' subject to reasonable legislative measures. The right to a basic education in section 29 (1) (a) may be limited only in terms of a law of general application which is 'reasonable and justifiable in an open and democratic society based on human dignity, equity and freedom'."*<sup>6</sup>

Section 29 provides that education rights are extended to both children and adults. "Learner" includes any person, whatever age, in any basic educational institution up to the 12th grade. Learners in school who are no longer considered minors (over 18 years old) are also protected by this section and thus their rights as learners are also envisaged in this section.

The right to basic education includes a safe learning environment, free from sexual violence and abuse. Exposure to sexual violence in any form is traumatic and disruptive to learning. The duty on the state to guard the right to access basic education is not only of paramount importance at a national level but so too internationally. South Africa is a state party to various international conventions which compel the provision of adequate access to basic education.<sup>7</sup>

## **Section 12: Freedom and Security of the Person**

Section 12(1) provides that all persons have the right "to be free from all forms of violence" and "not to be treated in cruel, inhuman or degrading way".

Section 12(2) adds that "[e]veryone has the right to bodily and psychological integrity, which includes the right ... to security in and control over their body".

In this regard, attention should be drawn to *Media 24 v Grobler*, where the Supreme Court of Appeal emphasised the effect of sexual harassment on the psychological integrity of victims.<sup>8</sup>

In the context of this paper, Section 12 should be read together with Section 10, which enshrines the right to human dignity.

These provisions read together can be used in support of an argument that teachers and any other person at school may not interfere with the bodily integrity of any learner as this constitutes a violation of their bodily and psychological integrity, as well as their dignity.

<sup>6</sup> (CCT 29/10) [2011] ZACC 13.

<sup>7</sup> Article 26(1) & (2) of Charter of the United Nations (1945); Article 13 of the International Covenant on Economic, Social, and Cultural Rights (1966); Article 19 of United Nations Convention on the Rights of the Child (1990); Article 17 of the African Charter on Human and Peoples' Rights (1986); Article 11 & Article 19 of African Charter on the Rights and Welfare of the Child (1990); Article 22 of Southern Development Community Protocol on Gender and Development (2008).

<sup>8</sup> 2005 (6) SA 328 (SCA) para 67.

## CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) ACT 32 OF 2007

The Act provides comprehensive protection to children against sexual offences. Chapters 3, 6 and 7 are of particular relevance to this paper.

### Chapter 3 deals with sexual offences against children. It prohibits:

- “Consensual sexual penetration” with and “consensual sexual violation” of children.
- Sexual exploitation and sexual grooming of children.
- Exposing or using children for child pornography.
- Exposing children to sexual offenses, sexual acts, or “flashing” them.

*Consent: A voluntary or uncoerced agreement that can be given through words or actions. A learner may never consent when it is in reference to the prohibited conduct of an educator.*

The Act criminalises certain sexual acts, including non-consensual sex and sexual relations with a person under the age of 16 years. It also sets out that an adult who commits sexual acts with a child under the age of 16 years has committed the offence of statutory rape or statutory sexual assault. The Act further outlines the ages of consent to engage in sexual relations.

A teacher who enters in a sexual relationship, even if its consensual, with a learner under 16 years can thus be found guilty of statutory rape.

Chapter 6 sets out provisions in relation to the National Register for Sex Offenders (NRSO). Importantly, it prohibits certain types of employment of certain persons who have committed sexual offences against children. A person who has been convicted of, or is alleged to have committed a sexual offence against a child, may not be employed to work with children under any circumstances and may also not be placed in a position of authority or supervision over children.<sup>9</sup>

An employer who, during the course of an employment relationship, ascertains that the employee has been recorded in the NRSO, irrespective of whether such an offence was committed during or before the course of his/her employment, must immediately terminate the employment of such an employee.<sup>10</sup>

*Employer: The department established by section 7(2) of the Public Service Act 103 of 1994 which is responsible for education in a province, i.e. the PEDs.*

Furthermore, an employer who knowingly retains or employs someone on the NRSO, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a maximum period of seven (7) years or to both fine and imprisonment.

It should be noted that the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill has been introduced in the National Assembly.

Section 41, which deals with the prohibition on certain types of persons who have committed sexual offences against children and persons who are mentally disabled, will be amended to refer to ‘persons who are vulnerable’ rather than children and persons who are mentally disabled.

This does not diminish the protection provided to children, as children are defined as a “person who is vulnerable” in the Bill. It simply seeks to expand the categories of persons protected.

<sup>9</sup> Section 41 of the Criminal Law (Sexual Offences and Related Matters) Act.

<sup>10</sup> Section 45(2)(b).

## CRIMINAL PROCEDURE ACT 51 OF 1977

The Criminal Procedure Act provides for the procedures and related matters in criminal proceedings.

The Act contains numerous provisions that seek to protect children who have been victims of sexual offences.

The possibility of instituting prosecution generally prescribes 20 years from the time that an offence was committed. However, section 18(f) and (i) lists the offences of rape, compelled rape, and the use of children for pornographic purposes as exceptions to this rule.

Section 153 regulates the circumstances in which criminal proceedings shall not take place in an open court. Where criminal proceedings relate to sexual offences, the court may, at the request of a minor's parent or guardian, direct that certain persons not be present at the proceedings.<sup>11</sup> Thus, this provision can protect children and learners who are victims of sexual violence in court proceedings.

Section 271B provides for the expungement of certain criminal records after 10 years. It should be noted that a person who has been convicted of a sexual offence against a child or whose name has been included in the National Child Protection Register (NCPR) does not qualify for the expunction of their criminal record unless their name has been removed from the NRSO.

The Act further provides that, where a police official needs to take a child's fingerprints, a body-print, a buccal sample, or ascertain a bodily feature, this should be done in a private area in the presence of a parent or guardian, or a social worker. The police official should ensure that they have due regard to the child's rights to privacy, dignity, and bodily integrity.<sup>12</sup>

## CHILDREN'S ACT 38 OF 2005

The Children's Act gives content to the rights of the child as provided for in the Constitution and sets out principles relating to the care and protection of children.

The Preamble of the Act recognises the importance of providing children with the "necessary protection and assistance so that they can fully assume their responsibilities within the community" and to ensure the "full and harmonious development of [their] personality."

It advocates for every decision made regarding children to be in their best interests and sets out comprehensive factors to be considered in this determination.<sup>13</sup>

<sup>11</sup> Section 153(3) of the Criminal Procedure Act.

<sup>12</sup> Section 36A (2).

<sup>13</sup> Section 7 of the Children's Act.

The Children's Act provides that persons acting in loco parentis must safeguard children's health, well-being, and development. In light hereof, it can be argued that teachers bear responsibility towards children in the same way parents do and should protect them from harm while under their care.<sup>14</sup>

*In loco parentis: Latin term for 'in the position of parents. Educators are expected to assume the role of the parents.*

It should further be borne in mind that children cannot consent to sexual relations with adults. The unequal power relationship between teachers and learners also means that there can never be a truly consensual sexual relationship between the two.

Section 110(1) of the Children's Act provides that there is a duty to report if there are reasonable grounds to believe that a child has been abused in a manner causing physical injury, sexual abuse, or deliberate neglect. Further, section 305(1)(c) states that a person is guilty of an offence if that person fails to comply with section 110(1). Educators are included in the list of persons who bear the duty to report sexual abuse.

*Educator: Any person employed by the provincial education or SGB who teaches, educates, or trains other persons or who provides professional educational services at any public or private school and who is appointed in a post on any educator establishment under the Employment of Educators Act 76 of 1998.*

Part 2 of the Children' Act establishes the NCPR. The purpose of the NCPR is to keep a record of all reports and charges of abuse of a child.

Section 120(4)(a) provides that persons who have been convicted of indecent assault, attempted rape, or rape, amongst others, of a child, must be listed as unsuitable to work with children.

Related to this, section 123 states that a person whose name appears in the NCPR, may not be employed to work with children or to carry out tasks in an institution providing any services to children. Moreover, a person whose name appears in the NCPR and who works with children must disclose this to their employer. Failure to do so constitutes a misconduct.<sup>15</sup>

Although access to NCPR is private, child protection services can access it.<sup>16</sup> However, due to lack of proper access to vital databases listing unsuitable teachers and due to unresponsive government departments, it has not been easy to vet educators before they are placed in schools by the Provincial Education Department (PED). In May 2021, in provincial hearings held in Limpopo by the South Africa Human Rights Commission, SACE's department of legal and ethics confirmed that there may be teachers in the system who are unfit to work with children. This is said to be caused by the lack of access by SACE to Part B of the NCPR to search for educators who apply for licences to teach.<sup>17</sup>

In addition, Section 126 provides that **employers must establish whether a person's name appears on the NCPR before employing them.**

<sup>15</sup> Section 124 of the Children's Act.

<sup>16</sup> Section 126.

<sup>17</sup> Bongekile Macupe "SAHRC hearings: The lies and incompetence behind bullying and crimes in schools" (5 June 2021) Mail & Guardian, available at: <https://mg.co.za/education/2021-06-05-sahrc-hearings-the-lies-and-incompetence-behind-bullying-and-crimes-in-schools/>

## **SOUTH AFRICAN SCHOOLS ACT 84 OF 1996**

The Schools Act provides a uniform system for the organisation and governance of schools and gives content to state obligations to create a secure environment for learning.

It does not explicitly deal with educator sexual misconduct and, as such, is not of particular relevance to this issue.

## **EMPLOYMENT OF EDUCATORS ACT 76 OF 1998**

The Employment of Educators Act (EEA) was developed to regulate the relationship between the PEDs and the teachers they employ. It sets out disciplinary procedures to follow when a teacher commits an offence.

The Act differentiates between "misconduct" and "serious misconduct." It does so by listing which acts constitutes a "misconduct" and which acts constitutes a "serious misconduct." Section 17(1) of the Act lists what constitutes a serious misconduct, which includes sexual assault of learners as a serious misconduct warranting dismissal. In the absence of defining what type of sexual assault is included, it is unclear which sexual violations against minors in the Criminal Law (Sexual Offences and Related Matters) Act constitute serious misconduct for purposes of the EEA. For example, sexual touching, sexual harassment, grooming, exposure to pornography, are all regarded under Criminal Law (Sexual Offences and Related Matters) Act as serious criminal transgressions, but it is unclear whether this is the case under the EEA.

Section 18(1) lists educators' conduct that will constitute a misconduct which may result in a breakdown of employment relationship with the employer. It is imperative to note that rape and statutory rape are common law or statutory offences and can thus be interpreted as misconducts under Section 18 and not serious misconduct under Section 17 of this Act.<sup>18</sup> Furthermore, section 18(5) provides that an educator found guilty of rape may be dismissed.<sup>19</sup> A sexual offence such as rape warranting a perpetrator to be put on a NSRO must and should be treated as a serious misconduct warranting summary dismissal.

Moreover, Section 17(1)(c) only regards a sexual relationship between a teacher and a pupil who attend the same school as a serious misconduct<sup>20</sup> It could then be read that a teacher is permitted to have a sexual relationship with a learner from a different school in clear contravention of the Sexual Offences Laws as well as our Constitution and the Children's Act. This provision is problematic in a sense that it finds educators guilty of serious misconduct only when such an act has been committed against a learner at a school the educator is employed at. The protection and punishment embodied in this section only protects learners on a limited scale. This provision suggests that educators are exempted from accountability when they commit the same sexual misconduct against a learner from another school.

<sup>18</sup> Section 18(1) (dd) of the Employment of Educators Act.

<sup>19</sup> Section 18.

<sup>20</sup> Section 17(1)(c).

**WHERE THERE ARE ALLEGATIONS OF MISCONDUCT AGAINST A TEACHER, THE FOLLOWING STEPS HAVE TO BE TAKEN:**

1. The Head of the Department or principal must give written notice to the teacher, calling for a disciplinary hearing. The hearing must be held five days after notice was given and not more than 10 days later.
2. When found guilty of an offence, the employer must decide on a sanction, depending on the 'seriousness' of the offense – sanctions can range from compulsory counselling to suspension, demotion, or dismissal. An employer may dismiss a teacher who conducts themselves in an improper, disgraceful, or unacceptable manner, or where they intimidate or victimise learners.
3. Together with the victim, any learner who was a witness must give evidence against the teacher at the disciplinary hearing.
4. An intermediary must be appointed through whom a learner's evidence may be communicated.

If the panel finds the teacher guilty of sexual misconduct, the teacher must be dismissed.

**A teacher who is found guilty of serious misconduct including sexual misconduct can appeal the decision and suspension.<sup>21</sup>**

The suspension will be lifted pending the finalisation of the appeal hearing where the learner may have to undergo more cross-examination or give further evidence.

This is problematic as the learner must relive their traumatic experience. Moreover, the onus rests solely on the child to prove the guilt of the perpetrator who is a teacher and an in loco parentis.

The procedure of suspension is that in cases of misconduct, the employer may suspend or transfer an educator to another school for the duration of the investigations. This may be done when an employer believes that the educator may jeopardise any investigation.<sup>22</sup>

According to the procedure envisaged in this Act, **teachers who filed a notice of an appeal may continue teaching despite being found guilty of a dismissible offense by a panel.** Appeals are conducted within 45 days following receipt of a notice of appeal.

In terms of section 26, an employer shall furnish the SACE with the record of the proceedings of a hearing and all other documents relating thereto. This is only applicable when the employer and the panel makes a decision other than a reprimand or a caution. While not currently a requirement, recordings of the proceedings of a sexual misconduct hearing should be shared with SACE, regardless of the outcome of the panel to give them an opportunity to do their own independent investigations.

<sup>21</sup> Section 25(2).

<sup>22</sup> Schedule 2, Item 6(2).

**Moreover, it should be noted that section 14(1)(c) and subsection (1)(d)(ii) provide that:**

*"14 (1) (c) when an educator is appointed in a permanent capacity who while suspended from duty, resigns or without permission of the employer assumes employment in another position; or (d) while disciplinary steps taken against the educator have not yet been disposed of, resigns or without permission of the employer assumes employment in another position, shall, unless the employer directs otherwise, be deemed to have been discharged from service on account of misconduct, in the circumstances where-*  
*(ii) paragraph (c) or (d) is applicable, with effect from the day on which the educator resigns or assumes employment in another position, as the case may be."*

The employer may also refer the matter to the Educators Labour Relations Council (ELRC) for dispute resolution.

It is worthy to note that on 9 April 2021, the Minister of Department of Basic Education (DBE) introduced amendments to the EEA. These amendments deal primarily with the re-employment of educators who were discharged or deemed discharged for contravening section 17(1) and section 18(1) of this Act. The amendment provides that an educator who was discharged or deemed discharged for committing sexual misconduct against a learner is prevented from being re-employed by the PED, indefinitely. These are progressive steps towards prevention of sexual abuse of learners in public schools.

However, these amendments are applicable only to educators who have already been found guilty of sexual misconduct and dismissed and who may seek re-employment by the state in the future. Arguably, these amendments only provide for employment of educators by the state and school governing bodies (SGB), and not independent schools.

Despite the applicability of the legislation to SGBs, the reality is that the responsibility is on the SGB making the appointment to ensure that educators appointed have not been found guilty of serious misconduct or are subject to a pending investigation in this regard. In the absence of a reporting mechanism that places an obligation on the appointed educator and the school to submit information on their SGB appointments to the PEDs, before being allowed to finalise the appointment, there is no way to determine the degree of compliance.

In respect of independent schools, because the amendments only regulate state or SGB employment, it might not be binding and or applicable to re-employment of educators by private education institutions. It has been reported that due to 'systematic gaps' teachers found guilty of misconduct and struck off SACE's register are still practicing in the profession.<sup>23</sup>

<sup>23</sup> Bongekile Macupe "Sexual misconduct rife in schools, with teachers as leading perpetrators" (17 August 2021) CityPress, available at: <https://www.news24.com/citypress/news/sexual-misconduct-rife-in-schools-with-teachers-as-leading-perpetrators-20210817>.

## THE SOUTH AFRICAN COUNCIL FOR EDUCATORS ACT 31 OF 2000

The South African Council for Educators Act (SACE Act) requires SACE to compile a Code of Professional Ethics for Teachers (Code of Ethics).

The SACE Act makes provision for the registration of educators with SACE. Teachers must not be employed unless registered with SACE. This Act also seeks to maintain and protect ethical and professional standards for educators.

This Act applies to all educators appointed in terms of the EEA and those appointed in independent schools. The duties of educators to uphold professional ethics and not engage in prohibited acts such as sexual misconduct applies to both educators employed by the state, SGBs, and those by independent schools. All educators in the Republic of South Africa are held liable by the provisions applicable to them and those of the Code of professional ethics. All educators must be registered to practice and teach in both public and independent schools.

In terms of the EEA, the records of decisions taken by the employer of educators shall be furnished to SACE. These records include hearings of allegations of misconduct and serious misconduct as per section 17 and section 18 of the EEA. It is worth mentioning that only records deemed to have a more "serious" outcome may be shared with SACE.

Importantly, teachers may be removed from SACE register of educators if found guilty of breaching the Code of Ethics.

**It is imperative to note that any form of sexual misconduct perpetrated by an educator against a learner is a breach of the Code of Ethics. This includes sexual abuse, improper physical contact, sexual harassment, and consensual relationships with a learner.**

The SACE Act also provides for the composition and functions of a disciplinary committee. One of its functions is to ensure that an alleged breach of code of professional ethics is investigated.



## II. NATIONAL POLICY FRAMEWORK

There are various mechanisms developed by the DBE and PEDs to combat sexual violence in schools including educator sexual misconduct.

### THE NATIONAL SCHOOL SAFETY FRAMEWORK

In 2015, the DBE adopted the National School Safety Framework Policy (NSSF) as its primary strategic response to school-based violence, including school related gender-based violence and sexual violence in schools. The NSSF is located within a number of international and national legislative and policy frameworks that recognises the safety of learners as a prerequisite for quality and effective learning. The framework provides a systematic approach in ensuring that schools, educators, school administrative staff, school governing bodies, parents and communities play their roles in ensuring that schools are safe spaces for learners. It also provides a comprehensive instrument through which minimum standards for safety at schools can be established, implemented, and monitored. PEDs and districts can be held accountable in terms of this framework.

Notably, this framework affirms the importance of the protection of children's rights to access quality education in South Africa and doing so in a manner that is equitable and free of violence and abuse. The NSSF is designed to acclimate with other departmental policies and strategies addressing sexual violence and sexual misconduct in schools. In summary, the framework provides school management with management tools to effectively formulate, implement and monitor school safety plans.

The framework does not necessarily introduce a radical new approach to prevent school violence but rather aims to consolidate other school safety and violence prevention strategies that existed before the adoption of this framework. The framework is applicable to all schools and its tools have to be implemented by the schools according to the demographic and needs of each school.

The NSSF has been designed specifically to focus on the high rising levels of violence in schools by (i) managing the school to be a safer place; (ii) making sure the enabling policies, structures and enabling environment are in place; and (iii) directing school management and all within school towards appropriate remedial and preventative interventions.

It is imperative to note that even though the framework exists and is binding on all PEDs and districts, the implementation of this framework in schools must be evaluated and monitored to ensure its goals and objectives are achieved. The DBE adopted this framework six years ago as a preventative mechanism and currently educator sexual misconduct is increasing rather than decreasing. On 17 August 2021, the DBE reported that out of 275 reported cases of sexual misconduct in 2019, only 166 cases have been finalised and 92 are still pending. Out of the finalised cases, only 50 educators have been dismissed.

Furthermore, SACE reported that it received 167 cases of sexual assault by educators between 01 April 2020 to 31 July 2021. Fifty-five of these cases are sexual harassment of learners, 49 of sexual assault of learners and sexual relationships with learners. These were committed by educators and the provinces with the highest rates of sexual misconduct against educators is Gauteng with 39, Free State with 33, and KwaZulu Natal with 22. It was reported that during the first quarter of the 2021/2022 financial year, SACE received 132 cases of sexual misconduct. The provinces with the highest number of reported cases are Free State, KwaZulu Natal and Gauteng.<sup>24</sup>

According to SACE, in the past five years the most reported cases of sexual misconduct committed by educators against learners are sexual harassment, abuse and assault, rape and improper relationships. These are prevalent generally between male educators on female learners, male teachers on male learners (prevalent in single-sex schools), female teachers on male learners (abuse of high school boys) and taking advantage of learners in special needs schools (deaf, autism, physical disability, amongst others).

Even in the presence of this preventative and remedial tool which complies with legislative and policy frameworks, there are various challenges in its implementation, and its effectiveness is illusory. Sexual misconduct and school gender-based violence is, moreover, not listed in the DBE's 2021/2022 annual performance plan. As such, one may argue that DBE is not taking the issue of sexual misconduct against learners as seriously as it should considering the impact on learners' well-being and their right to education.

In the formal sense, the NSSF aligns with both national and international legislative frameworks. The NSSF as a toolkit assists schools in becoming environments that are safe and secure. The implementation and the education of teachers and learners on the NSSF and relevant legislation and policies must be prioritised. Addressing educator sexual misconduct can only be attained through on-going research and evaluation of school safety and violence prevention strategies, and engagement with the DBE, PEDs and other stakeholders on how to best protect learners.

## **GUIDELINES FOR THE PREVENTION AND MANAGEMENT OF SEXUAL VIOLENCE AND HARASSMENT IN PUBLIC SCHOOLS, 2008**

This policy is an instrument developed by the DBE. It requires each school to develop its own programme and guidelines for responding to sexual offences perpetrated by educators against learners and any sexual misconduct within the school and relations formed at school.

<sup>24</sup> Parliamentary Monitoring Group, available at: <https://pmg.org.za/committee-meeting/33373/>

## CODE OF PROFESSIONAL ETHICS FOR EDUCATORS

The Code of Professional Ethics was designed to protect the rights and the well-being of learners as well as ensure that educators uphold their ethical duties and obligations in exercising their duties and promote basic human rights embodied in the Constitution. Thus, an educator who commits sexual misconduct against a learner is in breach of his/her duty to uphold and protect the best interest of the child as per the Constitution.

The code of professional ethics also provides a model for how teachers must conduct themselves when undertaking their duties, within or outside school premises, in protecting, promoting, and respecting learners' basic rights.

**When teachers register to be members of SACE, they commit to abide by the Code of Professional Ethics and to act in accordance with the ideals of the teaching profession. Any behaviour that is inconsistent with the Code may result in deregistration of a teacher.**

**The Code of Ethics provides that educators must:**

- Refrain from improper physical contact with learners;
- Refrain from any form of sexual harassment (physical or otherwise) of learners;
- Refrain from any form of sexual relationship with learners from any school; and
- Refrain from exposing and/or displaying pornographic material to learners and or keeping same in his/her possession.

## THE PROTOCOL FOR THE MANAGEMENT AND REPORTING OF SEXUAL ABUSE AND HARASSMENT IN SCHOOLS (2019)

The protocol for the management and reporting of sexual abuse and harassment in schools, was developed to equip the PEDs at all levels, especially the School Management Teams (SMTs) District Directors and Provincial Managers with the necessary guidelines to manage and effectively report all incidences of sexual abuse and harassment as mandated by the Sexual Offences and Related Matters Act.

The Protocol further provides a guide for the management and reporting of sexual abuse and harassment, ensuring an appropriate and timely response to cases of sexual abuse and harassment perpetrated against learners. It responds to the need for a standardised response to allegations made by learners, of incidents of sexual abuse and harassment, whether they are committed by fellow learners, educators or by other persons.

## THE WESTERN CAPE SCHOOL SAFETY FRAMEWORK

The WCSSF was adopted in 2017 as the WCED's provincial policy in accordance with the NSSF and is to be read in conjunction therewith. The WCSSF seeks to set out issues that impede school safety, identifies the underlying causes of learners' and teachers' safety in schools, and provides a step-by-step process on managing these risks.

Importantly, the WCSSF echoes the NSSF in calling for a holistic and integrated approach to promoting safety in schools and encourages schools to adopt their own frameworks to address school-specific risks.

### **OF INTEREST IS THAT THE WCSSF PROVIDES A NINE-POINT SAFE SCHOOLS PLANNING PROCESS, WHICH DEALS WITH ASPECTS SUCH AS:**

1. The establishment of a safety committee;
2. How to make safety part of the school's vision;
3. The importance of conducting a safety audit and the gaps to look out for;
4. Selecting the role-players to achieve the safety objectives;
5. Developing a safety plan that deals with risks to safety, but also (i) emergencies such as diseases, natural disasters, arson, and gang violence; (ii) safety education on aspects such as suicide, abuse, sexual harassment, and abuse, bullying, trauma, first aid, and learners at risk; and (iii) the importance of community involvement by parents, municipalities, religious bodies, NGOs, neighbourhood watch, the SAPS, and Community Policing Forums;
6. Selecting and implementing strategies and developing performance indicators;
7. Doing an audit of service providers in the area to determine what resources exist in the community that can provide support when needed;
8. Creating cluster structures; and
9. Regularly evaluate and assess the school's progress with reference to the monitoring and evaluation framework in the NSSF.

The WCSSF also includes a list of legislative frameworks and other mandates that schools should take into consideration in designing and implementing their own framework.

No reference is, however, made to the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007, the Children's Act 38 of 2005, the South African Council of Educators Act 31 of 2000, the Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools, the Code of Professional Ethics for Teachers, and the Protocol for the Management and Reporting of Sexual Abuse and Harassment in Schools.

The WCSSF's primary focus is to address the risks of physical violence in schools by learners and outsiders. Where it speaks to educators, the WCSSF sets out how best to protect educators and their property against violence from inside and outside school.

The WCSSF does not afford adequate attention to the risk of sexual abuse of learners by either educators or other learners in the school environment. Rather, it speaks to sexual harassment and sexual abuse in a general sense.

For example, when speaking to gang violence, reference is made to increasing reports of sexual abuse. However, no clear connection is made in the text between gang violence and sexual abuse.

Step 5 of the nine-point safe schools planning process requires schools to develop a safety plan. Schools are recommended to implement safety education on sexual harassment and sexual abuse. The WCSSF does not set out guidelines on what the content should be. It is presumed that reference is to be made to the NSSF.

As part of the responsibilities of role-players in the aftermath of a crisis, the WCSSF indicates where sexual harassment, sexual abuse, or rape is involved, the Safe Schools Call Centre should be contacted. Without more context, the conclusion would be that this is required where educators or learners are involved.

Considering the above, the WCSSF displays a lack of preventative and remedial intervention in educator sexual violence. However, because the WCSSF provides an open-ended reference to implementing safety education on sexual harassment and sexual abuse, as well as recommends that schools reach out to the Safe Schools Call Centre where these cases arise, WCSSF may comply with the legislative and policy framework but there is room to prioritise sexual misconduct by educators and create clear guidelines on how schools should handle reporting and investigation of cases

### III. OTHER MEASURES

In 2019, the Educators Labour Relations Council together with the South African Democratic Teacher Union (SADTU), signed a Collective Agreement No 3 of 2018. This collective agreement provides for compulsory inquiries to arbitrators in cases of disciplinary action against educators charged with sexual misconduct in respect of learners. This agreement was adopted as a mechanism to ensure that cases of sexual misconduct are speedily resolved through a streamlined process as well as to provide a one-stop process through arbitration.

## IV. IDENTIFIED GAPS

**NOTWITHSTANDING THE EFFORTS OF THE STATE AND THE PROGRESS MADE IN DEVELOPING A LEGISLATIVE AND POLICY FRAMEWORK, THERE ARE SERIOUS GAPS WITH THE COORDINATION OF THE DIFFERENT SYSTEMS PUT IN PLACE TO PROTECT LEARNERS AND PUNISH ABUSIVE TEACHERS. WE IDENTIFIED THE FOLLOWING GAPS:**

### ISSUE 01:

In instances where there is an allegation brought against a teacher for sexual misconduct committed, the school principal must report the matter to the PEDs district office, as well as to the South African Police Service (SAPS). However, if the principal does not find the matter to be “sufficiently serious,” they may choose to investigate it internally.

It should be borne in mind that there are various key role-players in acting against sexual misconduct of educators. These key-role players include the SAPS, SACE, Department of Social Development (DSD) and the PEDs (employer).

There is currently no reciprocal obligation on any of the key role-players to inform one another of a complaint of sexual misconduct against a learner. Incidents reported to only one key role-player often do not result in investigations by the others. Moreover, the party to whom the matter was reported may opt not to investigate the matter or decide to manage it internally.<sup>25</sup> Thus, there is no coherence in the system of holding teachers accountable.

The secretary of the South African Principal Association (SAPA) recently reported to the South African Human Rights Commission some principals do not have the skills required to file a report to the PEDs on complaints of educator sexual misconduct that are reported to them. It was further admitted that some principals do not attempt to report these cases with others ignoring complaints out of fear of the perpetrators.<sup>26</sup> It could be argued that in some instances ignoring complaints could also be out of loyalty to perpetrators.

In the context of reporting an allegation, the absence of a definition of what constitutes a “sufficiently serious” matter gives discretion over what constitutes a “sufficiently serious” matter. As such, the matter may not reach SACE and/or the SAPS. A learner who gave evidence or reported sexual misconduct against a teacher may continue to be exposed to that teacher while an internal investigation is taking place and until such time that a decision is made.

The current system perpetuates further traumatising of learners who must provide testimony at various hearing processes. This system is arguably detrimental to the psycho-social well-being of the learners who are victimised by their educators. Sexual misconduct is a traumatic experience that interferes with the learner’s development and may also have negative repercussions for their physical and psychological well-being in both the short and long term.

<sup>25</sup> Susan Coetzee “Forms of educator-on-learner sexual misconduct redefined” (2011) *Child Abuse Research: A South African Journal* 12(1) 51-64.

The processes currently followed are disjointed, requiring learners to relive and repeat their experiences. Thus, these learners are re-traumatised at each step, which exacerbate the effects on their mental and physical health. There is a need to ensure collaborative processes to reduce the number of times a survivor of sexual misconduct must give direct evidence.

Lastly, because of the absence of clear reporting guidelines and a lack of a collaborative process, principals are not required to report to the district office and to SACE at the same time they report to the SAPS (should they choose to report the misconduct). This means that three different hearing processes may start at three separate times, and SACE may not hear of the incident at all.

## ISSUE 02:

There is no link between the procedures that should be adhered to by key role-players involved, i.e. SAPS, PEDs, and SACE. This suggests that a learner may have to give evidence in numerous hearings and at various stages.

A teacher could resign before a case of sexual misconduct against him/her reaches SACE, and such teacher could find work in other schools undetected. The lack of a coherent system minimises accountability on perpetrators. The discretion given to principals as what constitutes a “sufficient serious” claim may also give rise to instances where a teacher resigns before the claim is fully investigated, if at all; enabling a potential sexual predator to remain in the education system.

## ISSUE 03:

Non-educators also have access to learners at school. Schools employ administrative and maintenance staff, coaches, and choir teachers to name but a few. Unlike teachers, these non-educators are not registered or regulated by any professional body. They are not registered with SACE because they are not classified as educators. Nonetheless, they work with learners.

Non-educators pose an enormous danger to the safety of learners, especially since there are no systems available to thoroughly check their credibility to work with children. Although staff should provide police clearances, it only indicates whether an individual was prosecuted by courts and found guilty of an offence. In instances where a person was never prosecuted, nothing will appear on their police clearance certificate.

Legislation is also silent on a procedure to be followed when a member of school staff resigns when an allegation of sexual misconduct is reported or under investigation. When a member of school staff resigns before a disciplinary hearing, there will be no record of the allegation. Thus, they will not go through the process and procedure of a disciplinary hearing and will not be held accountable. They can easily be employed by another school who will not have the information because the member of school staff was not formally charged.

<sup>26</sup> Bongekile Macupe “Sexual misconduct rife in schools, with teachers as leading perpetrators” (17 August 2021) CityPress, available at: <https://www.news24.com/citypress/news/sexual-misconduct-rife-in-schools-with-teachers-as-leading-perpetrators-20210817>.

## ISSUE 04:

Section 17(1)(c) of the EEA limits accountability on educators who commit sexual misconduct. Only educators who have sexual relations with a learner at the school they are employed at may be found guilty of committing a serious misconduct. This suggests that educators who commit the same act with learners from a different school may not face the same consequences.

The new amendments have not rectified this loophole. There is no rationale in differentiating between sexual relationships with learners from the same school and learners of a different school as an educator. This contradicts the protections offered to children in the Criminal Law (Sexual Offences and Related Matters) Act which prohibits all forms of consensual sexual relationships with minors and may give educators the impression that they are permitted to have sexual relationships with learners from a different school.

## ISSUE 05:

Employers in public schools must apply to the Department of Justice and Correctional Services for a certificate confirming that a prospective teacher is not registered as a sex offender. They must check Part B of the NCPR which is under the administration of DSD and provides names and details of people who are found guilty of crimes against children and those found guilty by the court as unsuitable to work with children.

Although the Criminal Procedure Act requires this, it does not guarantee that when the school is employing an educator, they will check the NCPR. Recently, SACE admitted that they only started to ask educators applying to be registered as an educator for a police clearance certificate in 2018. SACE, moreover, only has access to the NRSO, which is administered by the Department of Justice and Correctional Services. They do not have access to the NCPR as only the PEDs, as employers, are authorised to access Part B.

There are, therefore, no checks and balances to ensure that schools and SACE consult these registers. Moreover, because SACE only started requesting police clearance certificates in 2018, there are possibilities that there are teachers who were employed by PEDs prior to 2018 who have criminal records. Alarming, the 2019/2020 annual report of SACE indicates that there are about 59 educators who are registered with SACE and were found to have criminal records.<sup>27</sup>

In other cases, even though SACE might strike educators off the roll, they cannot confirm whether those educators are no longer under the database of educators employed by the PEDs. It has been previously reported that a teacher who was struck off the roll in KwaZulu Natal went to teach in Mpumalanga and no check and balances were adhered to.<sup>28</sup>

Related hereto, teachers at both public and independent schools must register at SACE. However, schools might not have the capacity to check the registers and SACE has no access to the register administered by DSD.

<sup>27</sup> SACE "Annual Report: South African Council for Educators" (2019/2020), available at: [https://www.sace.org.za/assets/documents/uploads/sace\\_60114-2021-01-25-SACE%20Electronic%202019-20%20Annual%20Report-compressed.pdf](https://www.sace.org.za/assets/documents/uploads/sace_60114-2021-01-25-SACE%20Electronic%202019-20%20Annual%20Report-compressed.pdf)

<sup>28</sup> Bongekile Macupe "Abusive teachers still slip through system, council for educators admits (24 May 2021) Mail & Guardian, available at: <https://mg.co.za/education/2021-05-24-abusive-teachers-still-slip-through-system-council-for-educators-admits/>.

## ISSUE 06:

There is no consistency with the definitions of terms such as 'learner' and 'sexual misconduct' in these interrelated legislative frameworks. Some of these laws do not define these terms or their definitions are not consistent with those of the sexual offence laws and or other relevant laws. The SACE Act does not provide a definition of who a learner is. However, we presume that the definition of 'learner' as provided for in the School's Act would apply.

## ISSUE 07:

An educator who commits a common law or statutory offence in terms of section 18 of the EEA 'may' be dismissed. This suggests that an educator who commits rape or statutory rape against a learner **may** be dismissed instead of "must" be dismissed. Rape and statutory rape are labelled as 'misconduct' and not as 'serious misconduct.' These acts are profoundly serious offences and should be classified as serious misconduct warranting dismissal.



## V. RECOMMENDATIONS

**Considering the gaps identified above, the following recommendations are made.**

### RECOMMENDATION 01:

Any allegation of sexual misconduct must be reported to the district office, and SACE, as well as SAPS. This must be done simultaneously, and regardless of whether the principal deems it to be “sufficiently serious.” There must be cooperation between all role players as the current system is obstructing the effectiveness of handling educator sexual misconduct matters. It should be made mandatory for all key role-players to inform one another when there is a complaint of sexual misconduct reported to one key role-player. There must be a system developed that will be collaborative and ensure that learners are not put in a position of re-traumatisation.

Moreover, if a matter is to be dealt with internally, a representative of SACE, as well as from the district office should be invited to the internal hearing.

A system should be implemented that facilitates liaison between the SAPS, the PED and SACE on the developments of their investigations. The proposed streamline process must ensure that the learners do not relive their experiences and that hearing processes are in the best interest of the learner.

### RECOMMENDATION 02:

In an instance where an educator resigns while under investigation for sexual misconduct or suspended, section 14(1)(c) and (d)(ii) must be invoked. Educators must be held accountable and there must be no loopholes to escape accountability. Educators who resign before a disciplinary hearing process is followed must be treated as being essentially dismissed for that case. This section should be used as means to manage the fact that educators resign while under investigation and before being held accountable.

The legislative framework needs to be clear that if an educator resigns while under investigation for committing sexual misconduct against a learner and there is a need for a reference to another school who seeks to employ that educator, the school the educator resigned from should provide knowledge on the allegations against that educator. There needs to be communication of the reference as reference checks are essential in prevention of continuation of educator sexual misconduct.

There must be collaborative systems in place that create a safety net query to thoroughly screen educators. The interviewing process must also establish reasons educators left the schools at which they were teaching. There must be an exploration if there has been any suspicion or doubt regarding the credibility of the educator’s professional status.

There must also be a referral made by the school to SACE where an educator resigns while there are suspicions that the educator committed sexual misconduct against a learner.

### **RECOMMENDATION 03:**

There must be a register or a body regulating persons employed as school staff who are not educators. Education institutions need a more rigorous platform for screening, and more tools need to be implemented. There needs to be a thorough screening of people and ascertaining their fitness to work with children before they are employed to work with learners.

### **RECOMMENDATION 04:**

The outcome of a hearing by the PED must be shared with the SACE regardless of the 'seriousness' of the allegations. There must be a streamlined and collaborative system between the stakeholders to ensure that the best interest of the learner/child is protected and promoted.

### **RECOMMENDATION 05:**

A whistle-blower safety mechanism must be created to ensure that those who report educator sexual misconduct are not threatened, harassed, or abused for reporting.

### **RECOMMENDATION 06:**

The PED and SACE must document learners' evidence to be shared amongst secure platforms of all relevant key role-players. This will ensure that learners only provide evidence once, and not have to relive their traumatic experience.

### **RECOMMENDATION 07:**

The onus must be on teachers to prove their innocence in their defence and onus to prove allegations of sexual misconduct should not be on the child who does not have the capacity to do so. The onus must be borne by the employer bringing the proceedings against the teacher as in criminal matters involving sexual offences. The records of the first hearing by either the PED or Court must be made available to the ELRC to assist them in reaching a decision to avoid secondary traumatisation of the learner.

## **RECOMMENDATION 08:**

According to the EEA, teachers who appeal a decision made against them in a hearing of sexual misconduct may continue teaching until the appeal is finalised.

We recommend that teachers whose matters are on appeal must be on paid suspension and not be allowed to work with children until the appeal is finalised.

In this regard, the best interests of the child principle should be borne in mind. It is vital that the well-being of the survivor be protected. A learner who must face their abuser on school premises daily may result in them reliving that traumatic experience. This may impact their ability to focus and benefit from their education.

The transfer of the teacher to another school or district is impermissible as this will expose other learners to an alleged sexual predator and contravenes the best interest of the child principle.

A teacher found guilty of sexual misconduct should not be allowed to teach or work with children until his appeal is finalised. A child's right to dignity, security of the person, access to education and their best interests must take precedence over the Educators right to due process. The provision in the EEA that prioritises an educator right to due process over the rights of learners is irrational and unconstitutional.

## **RECOMMENDATION 09:**

SACE should update its own register annually with reference to the NRSO and conduct screening of the educators already registered by SACE.

The register should be revisited when teachers renew their membership to SACE.

This is to ensure the protection of learners in the school environment.

## **RECOMMENDATION 10:**

The protocol for the management and reporting of sexual abuse and harassment encourages all schools to use the standard operating procedure for schools on reporting and addressing allegations of sexual misconduct committed by educators and other school staff.

Given the fact that many schools are under resourced, we recommend that, instead of schools formulating their own guidelines, the protocol for the management and reporting of sexual abuse and harassment in schools must be made binding and that the promotion and implementation thereof must be the responsibility of the PED's and district offices.

The DBE must raise educational awareness and training on the protocol by developing and adopting an approach that enables educators and employees of the PEDs to identify, intervene, report, and provide support to all learners and school staff who are sexually abused or harassed in school. These awareness programmes should also be directed to all educators, parents, members of the SBGs as well as learners.

### **RECOMMENDATION 11:**

There is a need to establish and define the terms misconduct and serious misconduct so that educators are aware of what it means and the consequences for contravention of these acts, and these must be aligned with the Constitution, the Children's Act, and existing sexual offences laws.

The relevant employment legislation should also strive to define and align the acts of a sexual nature with the definition provided for in the Sexual Offences Act, this would place emphasis on these acts and the severity of the consequences if an educator is found guilty of such an offence.

### **RECOMMENDATION 12:**

Beyond new appointments having to be accompanied by a police clearance certificate, the PEDs should also implement a 'school protection policy.'

It is recommended that part of this policy should include a form of an affidavit that is signed by a teacher on appointment, indicating that they are not on any sexual offences register.

This would protect particularly SGB appointments where they do not have resources to immediately check an applicant against the NRSO; this would allow a school to summarily dismiss the educator should it later transpire that the educator was on the NSRO or NCPR and failed to disclose this.



## VI. CONCLUSION

Educator sexual misconduct is rife in South Africa with many cases falling through the cracks while others go unheard and thus unpunished. The laws and policies that regulate sexual misconduct committed by educators against learners are inadequate and are disconnected from the realities faced by learners daily at the hands of educators. There needs to be a coherent and collaborative system used by PEDs and SACE towards ensuring that the basic education system is rid of educators who have committed sexual misconduct and that children are protected at all costs. A unified approach by key role-players is crucial to successfully advocating for legislative amendments ensuring that educators who commit acts of sexual misconduct against learners are held to account and that the law in this regard is effectively applied.

There is a need to include a comprehensive programme on addressing school gender-based violence and sexual misconduct or adopt different policies that deal exclusively with school gender-based violence with a focus on educator sexual misconduct. These policies must address the gaps and challenges in implementing a uniform approach to eradicating sexual misconduct and school gender-based violence, create uniform and coordinated reporting and investigation mechanisms, provide guidelines on appropriate sanctions, and should create mechanism to monitor the implementation of these policies at provincial and school level. Legal and systematic reform is imperative in establishing a coherent legislative scheme that addresses sexual misconduct perpetrated by teachers against learners, one that is sufficiently strict and is focused on protecting and promoting the child's best interests.

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# LRC

Legal Resources Centre