

BELA Bill

Education Policy and Law crisis?

**Oral Submission on the Basic Education Laws Amendment Bill (2022) to the Portfolio
Committee on Basic Education**

22 November 2022

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Characteristics of Effective Education Law Making

1. Achieve broad societal acceptance
2. Be clear and stable
3. Adhere to international law, be constitutional, coherent with other laws at the national and provincial level
4. Follow best-practices from other jurisdictions
5. Be future-orientated and provide regulatory frameworks that allow for flexibility in adapting to change
6. Educate the public about the law especially fundamental rights law
7. As far as possible to raise the bar to protect against a successful legal challenge to the legislation.

5 Key Submissions

- New architecture of education law is needed
- Education law needs to be made fundamental rights based and child-centric
- Learners with disabilities (LSEN) & rural education included in BELA Bill
- New education modalities need to be accommodated.
- Reform of “How, what and how quickly” policy and education law are developed.
- Case Study

New
Architecture
that
accommodates
children

- Education sector has out-grown the Schools Act
- BELA Bill is not an Education Bill it is a School's Bill
- SASA has never been reformed to incorporate the Children's Act & the Child Justice Act
- Limited attention to procedural rights.

Crisis is evident at the peripheries

- Learners with disabilities
- Early Childhood Education
- Rural schooling
- Emerging Educational Modalities
 - Home education
 - Collaborative & Community-based home education
 - Micro-schools
 - On-line Schooling
 - Hybrid

Policy & Law Reform

“PARVUS ERROR IN PRINCIPIO MAGNUS EST IN FINE”

A small mistake in the beginning is a big one in the
end

- Policy development
- Balancing “hard law” and “soft law”
- Procedural Rights

Case Study: Home Education

1. Limited consideration given to international law and best practice.
2. No facts and figures.
3. No research.
4. SEIA lacks basic data and an evaluation of unintended consequences.
5. Conflict with provincial regulations & responsibilities.
6. Monitoring – Not a DBE/PED function.
7. BELA Bill doesn't work.
8. s51 is out of date.
9. High likelihood of legal challenge.
10. Lack of formal consultative structures.

Proposals

1. Make SASA a true Education Act
2. Create an environment supportive of “soft law” to cater to emerging educational modalities.
3. Support the call of SAHRC that online should be included in the Bill.
4. Incorporate the ECD sections of the Second Children’s Amendment Bill.
5. Incorporate a dedicated section dealing with learners with disabilities.
6. Include procedural rights
7. Reform NEPA to accelerate, democratize and improve the quality of policy development

Anchoring Principles

1. That the best interests of the child are paramount.
2. Law that impacts children should be child-centric, and based on the fundamental rights of the child.
3. The principles of subsidiarity and solidarity fundamental to the South African Constitution are followed.
4. Equality and quality of education provision should be achieved.
5. Promotion of freedom in and of education

Thank You

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