



**SUBMISSION TO PARLIAMENT'S
PORTFOLIO COMMITTEE ON BASIC EDUCATION
ON THE
BASIC EDUCATION LAWS AMENDMENT BILL
[B2-2022]**

[AS SUBMITTED TO THE PORTFOLIO COMMITTEE ON BASIC EDUCATION]

[18 NOVEMBER 2022]

- [1] We have considered the contents and provisions of the Basic Education Laws Amendment Bill B2/2022 (hereinafter referred to as the Bill). In our most honest opinion the Bill, does not in the view of South Africa Learners Command NPC, seek to redress the results of past racially discriminatory laws and practices, it further limits the rights of learners in an unreasonable and unjustifiable manner. South Africa Learners Command has reached this conclusion based on the following issues that have raised alarm to us with respect to the Bill.
- [2] It is important to first acknowledge and welcome the amendment of section 1 of the South African Schools Act¹, more importantly the definition of the term, corporal punishment, which has closed a considerably detrimental gap in the existing legislation. The absence of the definition in the existing legislation has made it difficult for many learners who have suffered such degrading, inhumane and cruel form of punishment from getting the justice they sought and deserved. The legislature should always endeavour to provide legislation with little ambiguity, especially on matters of such nature.
- [3] We welcome the amendment of section 3(1) of the South African Schools Act² to provide for the compulsory attendance of school to begin from Grade R, this, we believe, will provide for an improvement in learner performance in higher grades, as learners would have begun their education on an equal footing, theoretically.
- [4] We are opposed to the ambiguous wording of clause 3 of the Bill, which seeks to insert Section 4A to the South African Schools Act.³ We are particularly opposed to (the proposed) wording of section 4A(4) which provides that the Principal has the responsibility to report a matter of continuous absenteeism to the SGB for ‘further intervention’. Our opposition is based on the principle that ‘further intervention’ is too vague of a term in this regard, as this gives the SGB too much discretion, and may result in actions which would be in contravention with section 28(2) of the constitution.⁴
- [5] We are opposed to the current wording of clause 4, particularly the proposed wording of section 5(5B) and (5D), insofar as it condones failure to respond to a governing body by the Head of Department, in a manner that will provide for the ‘approval’ of an Admission Policy,

¹ Act 84 of 1996, as amended.

² Act 84 of 1996, as amended.

³ Act 84 of 1996, as amended.

⁴ Section 28(2) of the Constitution of the Republic of South Africa, 1996 provides that the best interests of a child are of paramount importance in every matter concerning the child.

which may be unconstitutional, unlawful and/or invalid. This will prejudice learners, parents and the communities which the schools are located within.

[6] We welcome the recognition of the South African Sign Language as an official language for learning, it is long overdue, and we believe Parliament should process a Bill to amend section 6(1) of the Constitution to include South African Sign Language as an Official Language of the Republic. We are however, opposed to the language only being given status of an official language only for the purpose of learning. We believe that the provision should provide for the recognition of the language as an official language for the purpose of teaching and learning, as well as to serve as a language of instruction, so that no gap is created in this regard.

[7] We reject Clause 6, insofar as it provides the Minister with the power to decide who and who not to consult in determining the national curriculum statement and the national process and procedures for the assessment of learner achievement. This will allow the Minister to continue in her quest of always disregarding the existence of learner formations such ourselves, and justifying such by stating that she has consulted Governing Body Associations, which none are led by learners, nor have a single learner comprising of their leadership. This would also conflict with the existing enactments of the National Education Policy Act.⁵

[8] We welcome the provision that the code of conduct of a school should be subject to the Constitution as it is the most supreme law of the Republic.⁶ This will ensure that Codes of Conduct of schools can be tested on their consistency with the Constitution, first, then the South African Schools Act, only thereafter any applicable provincial legislation. We are however worried by the fact the existing legislation and the Bill do not make provision for the code of conduct of a school to be one that promotes restorative principles instead of establishing a punitive system centred on punishing learners for misconduct.

[9] Noting the recent and unfortunate event at a tavern in Scenery Park in the Eastern Cape Province, where twenty-one children lost their lives in a liquor establishment,⁷ the provisions clause 8 of the Bill, with respect to the proposed amendment of Section 8A of the South

⁵ Act 27 of 1996

⁶ Section 2 of the Constitution of the Republic of South Africa, 1996 provides that the Constitution of the Republic is the supreme law of the Republic; law or conduct inconsistent with it is invalid and the obligations imposed by it must be fulfilled.

⁷ Mabaso N 'SCENERY PARK COMMUNITY IN SHOCK AFTER ENYOBENI TAVERN DEATHS' Eye Witness New 27 June 2022 available at: <https://ewn.co.za/2022/06/27/scenery-park-community-in-shock-after-enyobeni-tavern-deaths> (accessed 15 November 2022)

African Schools Act⁸, will provide to a great extent the normalisation of alcohol abuse as well as alcohol consumption by minors.

[10] We welcome the detailed definition of serious misconduct; we however recommend the inclusion of discrimination as part of acts of serious misconduct.

[11] We further require the Bill to give the minister the power to determine the functions and the procedures for the establishment and election of representative councils of learners in accordance with section 11(1) of the South African Schools Act.⁹ Furthermore the Bill must provide for the recognition of civil society movements that represent the rights of learners to be duly recognised by the Department of Basic Education, Provincial Education Departments and the Minister, and for such formations to be inclusive of RCL members so as to legitimise their voices, as well as to grant RCLs the right to freedom of association, in the same manner SGBs may associate themselves with different SGB formations.

[12] The Provisions of Clause 12 of the Bill, through the proposed amendment of section 12 of the South African Schools Act¹⁰ will not in any manner protect the right to Basic Education, as per Section 29 of the Constitution of the Republic of South Africa, 1996¹¹ as it will limit the number of nearby schools that offer particular curriculum, especially in rural provinces. The provision will further deepen inequality in our Education system. The state should endeavour to establish more public schools in rural provinces and urban areas, as well as upgrade the existing dilapidated infrastructure in most public schools, and ensure that these public schools offer a wider range of curriculum options, so as to address the demand of undersupplied skills in our economy, rather than forcing learners to take a particular curriculum stream, such as through the establishment of Technical High Schools, this is evident in the community of Vaal Reefs¹² and the Community of KwaMhlanga, where Vaal Reefs Technical High School and KwaMhlanga Secondary School¹³ are located respectively, these two schools both limit their subject choices to a curriculum stream each, and are thus specialised curriculum schools to a greater sense, these two schools are also the only High Schools (Secondary Schools) in their respective locales, thus learners residing in close proximity to the schools that do not wish to pursue careers relevant to those curriculum streams, have to travel further distances to

⁸ Act 84 of 1996, as amended.

⁹ Act 84 of 1996, as amended.

¹⁰ Act 84 of 1996, as amended.

¹¹ Act 108 of 1996, as amended.

¹² Located in Ward 21, Matlosana Local Municipality, Dr Kenneth Kaunda District Municipality in the North West Province.

¹³ Located in Ward 32, Thembisile Hani Local Municipality, Nkangala District Municipality in the Mpumalanga Province.

have their constitutional right to Basic Education enjoyed. We thus reject Clause 12 of the Bill with the contempt it deserves.

[13] We welcome the wording of clause 13 of the Bill insofar as it provides clarity with respect to that whenever two or more schools are merged, a new public school is thereafter established.

[14] We highly welcome the provisions of clause 14 which provide that all members of School Governing Bodies must disclose their financial interests annually, including that of their spouses, partners and immediate family members. This will assist in ensuring that schools do not do business with members of SGBs and will be of assistance in preventing and detecting corruption.

[15] The Proposed Amendment of Section 32 of the South African Schools Act¹⁴ with respect to the insertion of subsection (4) to section 32, lacks justification and limits the participation of learner members of governing bodies, by unfairly undermining their capacity to apply their mind in the fulfilment of their functions.

[16] The Proposed Amendment of Section 38 of the South African Schools Act¹⁵ with respect to the addition of subsection (7)(c) is an invalid provision, that seeks to validate and make lawful a general meeting of parents that does not reach quorum, and thus does not reflect the aspirations of a considerably large number of parents. The addition of such subsection would lead to poorly constituted general meetings of parents, to consider the annual budget of a school, this would not accurately reflect the aspirations of all if not most parents. Governing Bodies must ensure that general meetings of parents are properly constituted and meet quorum, should such meetings not reach quorum at a third attempt, the Provincial Education Department must intervene in a progressive manner.

[17] As a movement, which seeks to advance the call for Free, Quality, Well resourced and Decolonised Basic Education, we cannot support the adoption of any law by Parliament, which seeks to commoditise Basic Education provisioned for by the State, we thus vehemently reject the provisions of Section 39, 40 and 41 of the South African Schools Act¹⁶

¹⁴ Act 84 of 1996, as amended.

¹⁵ Act 84 of 1996, as amended.

¹⁶ Act 84 of 1996, as amended.

and as a matter of principle, reject the amendment of the Act¹⁷ through clause 32 of the Bill, which sought to amend section 41 of the Act. We believe the state, must reasonably and sufficiently make available, from the National Revenue Fund, funds readily available to increase funding to schools, so that schools can fund their activities in a progressive manner. If members of the 6th Parliament want public schools to continue imposing school fees on the poor, whom are the beneficiaries of the public schooling system, then they should, with shame, refer this Bill to the President of the Republic for assent.

[18] The proposed amendment of Section 61 of the South African Schools Act¹⁸ with respect to the addition of subsection (2) thereto, provisions for a lenient sanction with respect to the contravention of regulations contemplated in subsection (1) of Section 61 of the Act¹⁹.

[19] The Bill does not make provision for the amendment of the National Education Policy Act,²⁰ which is concerning, taking note that the Act requires much needed review, more especially due to the fact that the Minister does not consult all stakeholders in the Basic Education sector whenever she has to determine Policy or intends to table a Bill to Parliament. As a result we recommend that provisions be made in the Bill for the Bill to amend the National Education Policy Act, in order to –

- [A] Align the Act with the recent changes in the Basic Education Sector landscape;
- [B] Provide for the renaming of the National Education and Training Council to the National Basic Education Council;
- [C] Compel the minister to establish the National Basic Education Council;
- [D] Compel the Minister to consult the National Basic Education Council, whenever she/he intends to introduce policy in terms of the Act or introduce a Bill to Parliament; and
- [E] To provide for the composition of the National Basic Education Council.

[20] With consideration of the aforementioned, we have resolved to recommend that the committee consider, with sound-mind and with acknowledgement of the long-term effects of this Bill on our Basic Education system the following.

¹⁷ South African Schools Act 84 of 1996, as amended.

¹⁸ Act 84 of 1996, as amended.

¹⁹ South African Schools Act 84 of 1996, as amended.

²⁰ Act 27 of 1996, as amended.

[21] That paragraph (c) of the proposed substitution of subsection (1) of Section 8A of the South African Schools Act²¹ be deleted.

[22] That paragraph (b) of clause 5 of the Bill to read as follows:

‘(b) by the substitution for subsection (4) of the following subsection:

“(4) [A **recognised**] South African Sign Language has the status of an official language for purposes of teaching and learning as well as a language of instruction at a *public school*.’; and’

[23] That paragraph (b) of Clause 7 read as follows:

‘(b) by the substitution for subsection (2) of the following subsection:

“(2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the promotion of restoration, the improvement and maintenance of the quality of the learning process, taking into account the diverse cultural beliefs, religious observances and medical circumstances of the learners at the school.’;’

[24] That paragraph (b) of clause 9 of the Bill read as follows:

‘(b) Serious misconduct by a learner is defined as—

- (i) Discrimination directly, or indirectly against anyone on one or more of the following grounds of inclusive of, but not limited to: race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;
- (ii) physical assault of a learner, employee, or other person related to the school, with the intention to cause grievous bodily harm, or the imminent threat to commit such an act, while on school premises or during any school activity, or in any circumstance that could reasonably be connected to the school;
- (iii) any form of harassment, including sexual harassment of a learner, employee or other person related to the school, including via electronic and social media;
- (iv) repeated offences related to bullying, or the imminent threat to commit such an act;
- (v) the illegal possession of a drug or liquor;

²¹ Act 84 of 1996, as amended.

- (vi) the repeated disruption of the school programme, or the imminent threat to commit such an act;
- (vii) serious transgressions relating to any test, examination or examination paper;
- (viii) fraud;
- (ix) theft or any other dishonest act to the prejudice of another person;
- (x) the possession of a dangerous object while on school premises, or during any school activity, or in any circumstance that could reasonably be connected to the school;
- (xi) the possession or distribution of pornographic material;
- (xii) engaging in sexual activity on school premises or committing an act of sexual assault, or the imminent threat to commit such an act; and
- (xiii) any other serious act contemplated in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), that prejudices the constitutional rights of learners, employees or other persons related to the school.’.’’

[25] That the Portfolio Committee insert to the Bill Clause 11A which must provide for the substitution of the wording of Section 11 of the South African Schools Act²² to read as follows:

Representative Council of Learners

- 11 (1) A Representative Council of Learners at every public and independent school must be established, where such school enrolls learners in grade eight and higher, and such a council is the only recognised and legitimate representative learner body at a school, subject to the provisions of subsections (5) and (6).
- (2) Subject to the provisions subsection (5) and policy made in terms of section 3(4)(g) of the National Education Policy Act, 1996, the *Minister* must within one hundred and eighty days after the commencement of the Basic Education Laws Amendment Act, 2022, and whenever required thereafter, by notice in the *Gazette* determine the functions and the procedures for the establishment and election of representative councils of learners.
- (3) The *Minister* must within one hundred and eighty days after the commencement of the Basic Education Laws Amendment Act, 2022, and whenever required thereafter, by notice in the *Gazette* determine the guidelines for the exemption of a school for learners with special educational needs from complying with

²² Act 84 of 1996, as amended.

subsection (1) if it is not practically possible for a representative council of learners to be established at such a school.

- (4) The *Member of the Executive Council* may, by notice in the *Provincial Gazette*, and in a manner that complies with the guidelines determined in subsection (3), exempt a public schools for learners with special educational needs from complying with subsection (1) if it is not practically possible for a representative council of learners to be established at the school.
- (5) The notice determined by the *Minister* in terms of subsection (2) must provide for the recognition of civil society organisations acting in the interests of learners, by schools, provincial education departments and the Department, only if such civil society organisations –
 - (a) Open their membership to learners in a manner that is not inconsistent with the Bill of Rights;
 - (b) Have submitted their articles of registration or incorporation to the Director General; and
 - (c) Have proven to have a minimum of fifty members who are learners, from each province of the Republic in at least three provinces within the Republic.
- (6) The notice determined by the *Minister* must allow for learners contesting election as members of the representative council of learners to practice the right to freely associate themselves with an organisation such as that described in subsection (5), when contesting election to the representative council of learners.

[26] That the Portfolio Committee, delete Clause 12, and amend the Bill to cater for the deletion of the clause. Furthermore we propose that Section 12 of the South African Schools Act reads as follows:

Provision of Public Schools

- 12 (1) The *Member of the Executive Council* must provide schools for the education of learners out of funds appropriated for this purpose by the Provincial Legislature.
- (2) The provision of public schools referred to in subsection (1) may include the provision of hostels for the residential accommodation of learners.
- (3) A public school may be an ordinary public school or a public school for learners with special educational needs.

- (4) The *Member of the Executive Council* must, where reasonably practicable provide education for learners with special educational needs at ordinary public schools and provide relevant educational services for such learners.
- (5) The *Member of the Executive Council* must take all reasonable measures to ensure that the physical facilities at public schools are accessible to persons living with disabilities.
- (6) Only in instances where prejudice would not arise as a result, the *Member of the Executive Council* may make provision for a gender-specific school, in a manner that does not –
 - (a) Cause learners of the gender not admissible to the school in the particular geographic area of the school, to travel a relatively long distance for the purpose of attending school; and
 - (b) Cause the merger of two or more public schools as contemplated in section 12A.
- (7) The *Member of the Executive Council* after consulting *parents, learners, educators, and governing bodies*, through reasonable means, determine by notice in the *Provincial Gazette* the maximum distance to be travelled by a learner to school in relation to subsection (6)(a).

[27] That Clause 26(c) of the Bill be substituted with the following

‘(c) by the addition of the following subsection:

“(4) Notwithstanding the provisions of subsections (1), (2) and (3), a member of a *governing body* who is a *learner* and has acquired by law the status of a major must not be prevented from taking part in meetings at which recommendations for the appointment of staff to the *school* are decided on, or form part of interview panels relating to the appointment of staff, whether *educators* or non-educators.” ; and’

[28] That Clause 26 of the Bill, further provide for an insertion as follows –

‘(d) by the addition of the following subsection:

“(5) The Minister, after consultation with the *Council of Education Ministers* must publish in the *gazette* a set of guidelines for the consideration of an *education department* in a *province* when training members of *governing bodies* who are learners on how to best fulfil their functions and duties as members of a *governing body*.” ’

[29] That Clause 30 of the Bill, provide for the substitution of the proposed paragraph (c) of the proposed subsection (7) with the following –

‘(c)the *principal* should repeat the process above should the second meeting not reach the quorum contemplated in subsection (6), and if the quorum is not reached at the third meeting, the principal should notify the *Head of Department* who must remedy the situation in terms of the prescriptions contemplated in subsection (1).’”

[30] That the Portfolio Committee consider the amendment of Section 39 of the South African Schools Act²³ to allow for all public schools not to impose any form of school fee, administration fee, compulsory donation of any goods nor money, as well as a registration fee, and that the Minister of Finance after consultation with the Minister of Basic Education, make means for all public schools, to be provided with funding that will allow them to operate without the imposing of school fees on learners. We are of the view that Section 39

School Fees at Public Schools

- 39 (1) The governing body of a Public School may not determine nor charge school fees at a public school.
- (2) The *Minister* must from funds appropriated by *Parliament* ensure that schools are adequately funded in order for the effect of subsection (1) to have no detrimental effect on the operations of any public school.
- (3) The governing body of a public school is prohibited from requiring parents from paying any fee, goods or any amount of money for –
- (a) The enrolment of a learner to the school;
 - (b) The receipt of any learning material; and
 - (c) The receipt of academic results.

[31] That should our proposed substituted wording of section 39 be agreed to, Section 40 and Section 41 of the South African Schools Act²⁴ should thus be repealed.

[32] That, with respect to Clause 41 of the Bill, particularly the insertion of subsection (2) to Section 61 of the Act²⁵ the period of imprisonment for the contravention of regulations

²³ Act 84 of 1996, as amended.

²⁴ Act 84 of 1996, as amended.

²⁵ South African Schools Act 84 of 1996, as amended.

contemplated in subsection (1), should be amended to provide that the maximum period for imprisonment be twelve months instead of six months.

[33] That the Bill include clauses to amend the National Education Policy Act, 1996²⁶ in order to align it to the changes in the Basic Education landscape in a manner similar to that done with the proposed amendments to the South African Schools Act, 1996, as provided for in this Bill, through the inclusion of and amendment of definitions, as well as other technical aspects.

[34] That the Bill include a clause to substitute the wording of section 6(a) of the National Education Policy Act, 1996 to read as follows –

- (a) the *Council* and *National Basic Education Council* with respect to basic education;
- and

[35] That the Bill include a clause to substitute the wording of section 11 of the National Education Policy Act, 1996²⁷ to read as follows –

11 The National Basic Education Council

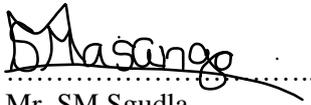
- (1) The *Minister* must, within one hundred and eighty days after the commencement of the Basic Education Laws Amendment Act, 2022, by notice in the *Gazette* establish a body to be known as the National Basic Education Council (NBEC), to advise him or her on any matter contemplated in section 3 or any other matter identified by the Minister.
- (2) The NBEC shall be comprised of –
 - (a) One member from each Governing Body Association, each designated by the Governing Body Associations recognised as such by the Department;
 - (b) One member from each learners' organisation, each designated by such organisations recognised in accordance with the section 11(5) of the South African Schools Act, 1996;
 - (c) Five members designated by the Education Labour Relations Council; and
 - (d) One member from each Principals' Association, each designated by such Principals' Associations recognised by the Department.
- (3) The designation of members of the NBEC in accordance with subsection (2) shall be done once each calendar year.
- (5) The *Minister* shall by notice in the *Gazette* publish the names of members of the NBEC after they have been designated, in accordance subsection (2) and (3)

²⁶ Act 27 of 1996, as amended.

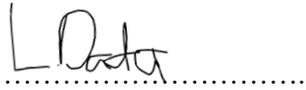
²⁷ Act 27 of 1996, as amended.

- (6) The notice published in accordance with subsection (1) shall –
- (a) Subject to this Act, provide for the duties, powers and functions of the NEBC;
 - (b) Provide for the functions of the office bearers of the NEBC;
 - (c) Provide for the tenure of members of the NEBC; and
 - (d) Any other provision which this Act does not provide for.

Adopted by South Africa Learners Command NPC on 17 November 2022.



Mr. SM Sgudla
President and Commander-in-Chief
South Africa Learners Command NPC



Mr. KPL Dada
Secretary General
South Africa Learners Command NPC