
**CHRISTIANVIEW NETWORK COMMENT
ON THE BASIC EDUCATION LAWS AMENDMENT (BELA) BILL
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Sport, Art and Culture
Prepared by: Philip Rosenthal

By email: belabill@parliament.gov.za

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Introduction

The Basic Education Laws Amendment (BELA) Bill 2023 proposes to substantially reduce powers of School Governing Bodies (SGBs) and choice from Home Schooling families. It would increase our tax, raise school fees and increase costs and administration home educating. Depending on

provincial education policy, weakened control of admissions affecting financial viability of quality fee-paying public schools may lead to an exodus, retrenchment of teachers and thus loss of quality. The state could over-rule governing bodies language policy, especially threatening the remaining 1 out of 20 single-medium Afrikaans schools. It would be more difficult for schools to rent facilities to churches and independent schools. Implementation powers are in the hands of provinces, likely making education a key issue in provincial elections and educational refugees moving province. The Education Department consultation process seems unequal, with some stakeholders getting preferential treatment. BELA is the most radical change in education law since the 1996 Schools Act, and would put shift education toward state control, as it was in the apartheid era. [Cl#, S#] are reference to Sections in the BELA bill (version approved by the National Assembly, 2003) amending the Schools Act, 1996.]

What has happened since the 2017 BELA Bill proposals

The process so far

In 2017, the Department of Education proposed the Basic Education Laws Amendment (BELA) Bill, a radical attempt to grab power away from parents into the hands of the centralised state. Parents reacted with outrage on social media, radio talk shows, and what the education department described as an unprecedented ‘avalanche’ of submissions. Over four years the Education Department considered these submissions and revised the bill – accepting about a third of parent’s concerns, mitigating a third and rejecting the rest. The National Assembly agreed to the next third of the requests. Parents and affected interest groups now get a third chance to have our say as the bill goes to parliament, who are planning comprehensive consultation in every province. While the new proposal is less damaging than previous versions, it would greatly weaken parents’ rights.

Improvements in response to parents concerns

Key improvements include School Governing Bodies (SGB) not losing control over teacher appointments; more flexibility to rent school facilities (although still more difficult than before); educators and SGB members no longer have to declare all financial interests. This would have discouraged some from wanting to be on the SGB. The original bill would have reduced schools powers to verify whether parents can pay and thus viability. This has been fixed.

BELA still threatens parents rights to determine school admissions, procurement and language policy and unreasonably limits the applicability of the school code of conduct. These clauses have however been softened by a process of interaction although giving ultimate control to the state.

Home educating parents will only have to submit assessments at the end of each phase rather than annually as formerly required, although they will still need to pay consultants for assessments annually. The penalty of six years in jail for infringement, is reduced to one year, but still double the current six months. While the bill still requires prior authorisation, if the department fails to respond, it would now be granted by default. The requirement to follow the state curriculum and grade system is softened to ‘predominantly’ do so. Overall it will add to costs and difficulty. The current BELA Bill does not allow exceptions to the rule of no alcohol in schools, which will benefit those communities that have this as a problem.

The bill still does not accommodate ‘cottage schools’, which are growing responding to a need to accommodate children with disabilities and particular religious ethos.

Parents should be encouraged that the Education Department and National Assembly have responded to ‘two-thirds’ fix the BELA Bill. We need to speak up again to fix the rest of the

problems.

Issues in the bill

More tax and fee costs (C11,2,26,35)

To implement the Bill, the Department of Education will have to recruit a new army of bureaucrats to review each school's revised admission policy every three years from 24,000 schools plus review 60-100,000 academic assessments of home schooled children at the end of each phase (S35), currently costing the taxpayer nothing.

Leases of school facilities for more than a year will need special permission from the Member of Executive Council (MEC) (C1 26,S36). This increases administrative load, which risks not being granted in an already dysfunctional system - and the risk thousands of church plants renting school halls will be evicted. It would be better to have leases terminable on six months' notice or with a maximum three-year fixed lease without MEC permission.

If home education is made more difficult, expensive, reduced options and the threat of a one year jail sentence (C12,S3a) – and the requirement for prior authorisation – many such families may be forced to apply to schools – with taxpayers money wasted building schools for families that don't want or need them. Increased sentences were motivated to stop violent intimidation in schools, but can end up hurting home schoolers. An administrative offence of non-registration should not have such a heavy penalty and should be distinguished from intimidating people not to attend school or neglecting to educate a child.

The bill would create a new class of educational consultants, who would need to be hired to assess the progress of home schooled children (C11,S1;C35,S51), already sacrificing one parents income plus curriculum costs and supplementary tutoring.

Quality public school viability (C114,39)

The financial viability and ethos of quality public schools is dependent on their control of admissions policy (C14(e-g),S5; C139,S61). If more non-payers are admitted or condoned, fee paying parents would have to pay more to cover those who can't. While some imagine this will help equality, history has shown if the proportion of non-payers tips beyond a certain fraction, the remaining paying parents have to pay more fee for less quality, and eventually all leave. All public schools would become equally weak. Parents will be less motivated to participate in a powerless SGB. Quality schooling will then concentrate in the private sector for a smaller elite.

Language choice (C114)

Most parents want English medium. Currently, those wanting Afrikaans single-medium have a choice of only 1 out of 20 schools. Currently SGB's influence language by setting language policy (C14(e-g),S5(9-13), admissions choice, catchment area (C14,S5). If BELA is passed, the government can over-rule the majority language choice and also stop the governing bodies giving preference to Afrikaans children in admissions or via their catchment area and force schools to appoint teachers of a different language. Afrikaans universities have been forced first to dual-medium, then to English only, with pressure from students who say they can't understand it. With this law Afrikaans could be phased out in public schools, meaning Afrikaans parents wishing to preserve their language would have to pay for private educational options. It is ironic that the 1976 riots were against an attempt to force Afrikaans language on Soweto schools and a legacy of Afrikaner nationalism was provoked by the British trying to force English onto Afrikaans schools after the Boer War. Now it is happening again. If this was unfair after the Boer War and unfair in 1976, is

this not also unfair now? If the principle of parental choice is respected and the government stays out of language policy, all this pain could have been avoided. The Gaelic language has just about vanished from Scotland, Wales and Ireland and the same could happen to Afrikaans if the government is allowed to decide language policy. Some parents prefer Afrikaans schools because they preserve Christian cultural ethos. Even if you don't personally want Afrikaans medium, we must defend the principle that parents decide what is in the best interest of their child because that applies to religious and ethical ethos as well. Our principal interest is religious policy and not language policy.

[In response to the concerns expressed by the Department of Basic Education, in the Debate held on Thursday 9 November, 2017 we made a separate submission on language policy available on request]

Religious freedom (C114,17,26,39)

The bill would further erode governing body powers to determine religious ethos and policy of a school, by weakening admissions policy (C14(e-g);S5) and determination of its code of conduct (C17(2);S8). As an improvement, the revised BELA bill is no longer infringing teacher choice by SGBs. The June 2017 ruling of the South Gauteng High Court unjustly attempted to restrict the powers of the six schools on religious policy. It was not appealed, but is likely to be challenged by other schools in future.

Many churches, particularly church plants, currently rent school buildings on Sundays, an arrangement that brings in school funds and helps the community. With BELA, special permission, for leases over a year, will be needed from the Member of Executive Council (MEC)(C126,S36), making this more difficult. With much existing correspondence going unanswered, permission may not be granted due to lack of capacity. Rather ongoing leases should be allowed on six months termination notice or on three-year fixed lease. The original intent appears to be to prevent the alienation of school property and/or corrupt agreements becoming binding – but the restrictions are excessively tight.

Clause 39,S61 includes empowering the Minister to turn the Learner Pregnancy Policy into regulations. Teachers with religious convictions opposed to this policy will then be open to discipline and prosecution.

Many home school for religious reasons and thus religious freedom is affected by making this more difficult.

Less School Governing Body Powers (C15,14,17,39)

With BELA, school governing body powers can be easily over-ridden by the state for example on language policy (C15,S6(5-20)) admissions policy (C14(e-g);S5(9-13)), procurement (C114,S21) and indirectly other things.

The Minister is empowered to issue more regulations on a range of issues including admissions, without the check and balance of parliament, by which she may further strip governing body powers (C139,S61). If this happens, parents will be less motivated to participate. The DOE claims they can save money by socialist centralised procurement as opposed to private enterprise competition and choice.

While the government memorandum motivates BELA law on the basis of fighting corruption, in fact the best defence against this is active parent participation. Problems come in schools when parents are passive. School governing bodies also function as a grassroots training ground for

democracy. BELA will undermine this towards an authoritarian state

All school codes must include an exemption provision (C17,S8). Governing bodies argue this should be restricted to medical, cultural and religious grounds to avoid undermining the rules.

Teachers (C1 14,39)

Tens of thousands of teachers are paid by governing bodies using parents fees. If SGB's lose control of admissions (C14,S5;C139,S61) they will have less income and, thus less able to pay for extra teachers.

Home education (C11,2,35)

Under apartheid, home education was banned and those who defied that criminally prosecuted. Pioneers Andre and Bokkie Meintjes were put in separate jails and their children in an orphanage in another province. With the new Constitution, they were released and home education grew exponentially. The 2012 census recorded 57,000 children being home-schooled, but only a tiny fraction registered with the education department.

BELA defines 'home education' narrowly to only those who comply with a detailed set of requirements for registration (C11(g);S1(e)).

It increases the penalty of non-compliance to a years in jail and an unlimited fine (S2). The Provincial Head of Department (HOD) must decide whether the parent should be allowed to home school. In response to parents submissions, this is mitigated by default authorisation if the HOD fails to respond in time.

The parent must pay a qualified consultant approved by the HOD to annually assess the progress of the child and submit a report to the HOD at the end of each phase. The HOD may attach further conditions and may cancel the registration at any time. The definition of education in BELA assumes and by inference compels home educators to predominantly follow the public school curriculum and grade system– using a private service provider at their own expense. This would prejudice those who follow a variety of other curriculums, educational methods and final exams (for example British or American exams as do many private schools). Assessment regulations have made it difficult and expensive to do get an NSC via distance education.

The Bill provides that the Minister has unfettered powers to make further regulations (C135,S51), meaning she may add more financial costs, restrictions and administrative burden – which is exactly why most don't register. If the government doesn't fix these provisions, they are likely to fail constitutional legal challenge. A parent has both the right and personal knowledge to decide what is in the best interest of their child and not the HOD.

The Covid19 pandemic essentially forced everyone to home educate for a period, and shifted the attitudes of many who had formerly been suspicious of the practice. Rollout of fibre and 5G internet has made video communication solutions much more viable. Likewise many mainstream education providers have entered the market to offer distance learning solutions for the home educating market. Nevertheless, this grassroots educational mega-shift shift has not yet translated into the BELA bill.

Cottage schools

Paralleling the growth of home education, thousands of families are sending their children to 'cottage schools', mainly operating from private homes. They operate similarly to home schooling

except it is not parents teaching their own children. For example, a home school parent may take on a few other children at a fee. Parents club together to hire a tutor to teach their children one or more subjects. A church may sponsor a tutor to teach in a place where there is no school. These fulfil a real need and are helping to solve education crises from squatter camps, rural areas and leafy suburbs. Governing bodies of industrial scale schools are under stress as it becomes harder to get consensus between parents. They are a cost-effective alternative for special needs children, which the state schools struggle to cater for. <https://goo.gl/NiygoA> Cottage schools remain however a grey area in the law and BELA makes no provision for them. Typically run by one or two teachers, they do not have the administrative capacity to comply with all the requirements in regulations intended for schools with multiple staff and hundreds of learners.

While home and cottage education are a minority at present, if School Governing Bodies are stripped of their powers, quality degenerates and parents religious and language preferences are not accommodated, these are the next viable option for many families.

Closure of small schools (CI25)

The bill empowers the Minister to close schools, particularly if less than 135 learners, (CI 25, S33) – this particularly puts rural schools at risk. The assumption behind this is the economy of scale of an industrialised schooling system and the model of state providing schooling. Nevertheless, independent and cottage schools are operating successfully with much lower numbers than the state threshold for school closure. Further than this, thousands of small independent Christian schools were confiscated and nationalised by the apartheid government. This can result in the closure of previously confiscated schools.

A better solution is for the state to allocate a standard educational budget voucher per child for all schools. It would then be up to parents through School Governing Body to decide how to solve their financial viability problem – for example by recruiting more children, charging supplementary fees, parental assistance in schools, technology or school closure.

Independent schools (CI26)

Many small independent schools lease facilities from public schools, for example swimming pools and sports fields. This would now need approval from the MEC for each individual lease more than 12 months (CI26,S36). The need to renew leases annually increases the risk they will not be renewed for hassle or administrative reasons. It would be better to allow them to be terminated on six months notice.

It may be slow and difficult to get permission due to MEC administrative load, and for short notice impossible.

Alcohol

The 2017 version of BELA Bill banned any alcohol at schools. The new BELA allowed exceptions for renting venues to outside functions, provided pupils do not drink. The exceptions were then removed by the National Assembly. Some communities have a crisis level problem with alcohol, while others don't. On balance of convenience, the proposal will be easier to enforce without exception for those communities that do have an alcohol crisis. We thus support this decision.

Abortion and sexual sin education (CI 39)

Clause 39 (amending S61) empowers the Minister to make regulations on 'Learner pregnancy'. The most likely intention and least path of resistance is to codify the current 'Learner pregnancy policy', which requires teachers to promote 'safe sin' sex education and abortion. Further it would

require them to refer pregnant learners to abortion promoting external organisations without parental consent. This is policy the most strongly opposed of all government policies by Christian communities and is entirely unacceptable for families and for teachers. To codify it as regulations would make it legally mandatory, unlike the current policy, which School Governing Bodies can and do ignore. We do not want regulations on Learner Pregnancy. Parents decide what their children learn through School Governing Bodies and opt-in or opt-out if no consent is given. Teachers have no right to do anything on this without parental consent.

There has been a denial that the BELA Bill provides for this on AfricaCheck fact checkers, using information from the Legal Resources Centre, resulting in Social Media censorship. These people have not done due diligence.

Technical flaws

Apart from the practical implications above, BELA has various inconsistencies with other legislation and the Constitution. Ironically these flaws will help victims defeat it in court.

Likely implementation risks

Counter productive to intended motivation

The DBE claims BELA will bring education law into line with certain court judgments. Nevertheless, governing bodies argue it impacts far beyond that required by these judgments. DBE says poorer and especially rural governing bodies are non-functional, but the effect of BELA would be to weaken good schools rather than strengthen weak ones. DBE has not responded to the offer of strong SGB's to help build capacity in schools with weak SGBs. DBE already has powers to appoint people directly to run non-functional SGBs, but now wants to take powers from healthy ones. While the Education Minister admits the situation in many schools is a 'national catastrophe' <https://goo.gl/kNk8MC>, they are trying to fix the ones that are not broken and threaten to break them too. DBE hopes centralising power will reduce corruption and inefficiency, but it weakens parents powers who are the best defence against this. The one year jail sentence is motivated to stop school political disruptions, but the wording puts home educating parents at risk.

Provincial differences

The implementation of BELA will be mostly up to the Provincial Education Department and MEC. They will likely have different approaches to language, admissions, home schooling, and teacher appointments. This could result in those with strong preferences moving province, and political party policies becoming a swing issue influencing the provincial vote. Currently Gauteng Provincial Education is most interfering in schools. The Western Cape Provincial Constitution promotes education in the system of the parents choice.

Consideration of alternatives

From the explanations in the memorandum accompanying the bill and media explanations from the department, there are real underlying problems which have motivated this bill. In terms of the limitations clause Section 36 of the constitution, and in view of the importance of the rights of such as religious freedom, the rights of the child and the child's best interests, language rights and also the limited tax resources which are impacted, the Department of Basic Education needs to consider the need for such legislation and less restrictive means to accomplish these purposes.

Further communications**Specific wording proposals**

We also intend submitting specific wording proposals to remedy each clause cited in this submission and the Constitutional Clauses prejudiced by the Bill, on which challenge is likely to be made if not remedied by the National Council of Provinces.

Answering questions of clarification

We are available to answer questions to clarify this submission via email or telephone at any time.

Oral submission request

We request the opportunity to make an oral submission to the National Council of Provinces: Select Committee on Education and Technology.

Philip Rosenthal
Director
ChristianView Network