

Angie Motshekga | BELA Bill is pivotal to realising 'Education 2.0'

The current version of the Basic Education Laws Amendment Bill has been shaped by extensive consultations over several years and aims to realise Education 2.0, writes Basic Education Minister Angie Motshekga.

In an age where education reform is pivotal, the Basic Education Laws Amendment (BELA) Bill has emerged as a beacon of hope for many while simultaneously sparking intense debate among stakeholders. The bill represents a move towards what some have termed "Education 2.0", an overhaul of our current basic education system to address our historical and present challenges. But what exactly is this bill trying to address? And how does it answer its most vocal critiques?

In this article, I focus on the contentious issue of determining a school's policies, including language and admission, central procurement, management of pupil pregnancy, confusion about early childhood development, the sale of liquor and the approach to home education.

However, I first wish to focus on the making of the bill. In its current form, the BELA Bill is a product of painstaking consultation, listening, reflecting and iterating. It exemplifies our dedication to an inclusive legislative process, ensuring that our basic education system remains a collective endeavour underpinned by our nation's diverse voices and aspirations. The recent cycle of amending the basic education laws through the BELA Bill is a testament to this principle.

Deep-rooted public interest

In its development phase, the bill saw the submission of almost 5,000 comments from the public, alongside 144 petitions with a collective weight of 195 695 names. Such engagement underscores the deep-rooted public interest in and commitment to refining our basic education system.

From 19 February 2018 to 14 February 2020, a task team convened for a staggering 31 meetings spanning 57 days. These were not mere check-box exercises. They were in-depth dialogues, often supplemented by discussions with other department officials to gain clarity on issues raised by commentators. Recognising the value of external perspectives, the team even sought advice and insights from individuals outside the Department of Basic Education.

But the consultation did not end there. In January 2020, in a continued bid to ensure that the voices of our education stakeholders were heard and understood, I personally met with representatives from school governing body (SGB) associations, teachers' unions and home education associations. Post this meeting, further comments from these stakeholders were submitted and, true to our commitment, were duly considered.

Additionally, from February to September 2020, we engaged in a series of pivotal discussions within the National Economic Development and Labour Council. Its inputs were assimilated into the bill, which added another crucial dimension to our understanding.

Push towards a more inclusive, equitable and efficient basic education system.

At its core, the bill reflects South Africa's aspiration for a more inclusive, equitable and efficient basic education system. It addresses key challenges that have, for years, hindered the progress of our education ecosystem, including a failed attempt to capture the recruitment of educators and the appointment of principals.

While the BELA Bill has its critics, its objectives are clear and grounded in the best interests of our learners and educators.

I now address the pertinent issues that form the bedrock of the bill. One of the primary issues it tackles is determining a school's language policy.

There's a common misconception that the bill aims to erode the autonomy of SGBs. In reality, it aspires to harmonise the powers of the SGB with the directives of the relevant provincial head of department (HOD). While the SGB is initially tasked with setting a school's language policy, the bill emphasises that this authority is not unequivocal. It ascertains that such policies are adaptable, inclusive and congruent with the constitutional right to basic education.

Recognising that educational institutions ought to be arenas that promote unity, not exacerbating divisions, is pivotal. The Constitutional Court has articulated that although the role of determining a school's language policy is a devolved function (or responsibility) as per Section 6(2) of the South African Schools Act (SASA), it isn't solely the remit of an SGB.

The delegation of this authority doesn't imply that SGBs' prerogative to set language policy is unqualified. Such power is bound by the Constitution, the SASA and any pertinent provincial legislation. The Constitutional Court, referencing [the Ermelo judgment](#), further maintained that the extensive powers and duties of the SGB don't preclude a HOD from intervening, given reasonable grounds, to ensure that a school's admission and language policies adequately align with Section 29(2) of the Constitution.

This isn't a backdoor policy to emasculate Afrikaans as a language. Afrikaans is a vital heritage of our country and is protected by the Constitution. We reject the argument that preserving and promoting any language should be a means to exclude and disenfranchise others.

Furthermore, the bill touches on central procurement, aiming for transparency and collaboration. The HOD and SGB must be in consensus for central procurement. The intent isn't to sideline the SGB but to make the process more streamlined and accountable. Without an agreement, the HOD may not take a unilateral decision to procure centrally.

Moreover, the BELA Bill also addresses the crucial issue of managing pregnancy among pupils.

The unfortunate reality is that pregnant pupils often face ostracism and educational hindrances. The bill aims to guarantee that their constitutional right to education remains intact. The minister's regulatory power isn't about dictating personal decisions or delving into

health matters such as abortion. It's centred on ensuring that schools adopt a compassionate and pragmatic stance towards supporting pregnant pupils.

Section 61 of the SASA is revised to grant the minister the authority to establish regulations on various topics, including managing pupil pregnancy. This section, commonly referred to as the "regulation section", bestows upon the minister the discretion to formulate regulations in areas necessitating more explicit guidance. Every primary legislative document contains such a provision.

The notion that I will regulate abortion is misplaced. The matter of pregnancy termination is a health issue for the health minister, and I am not qualified to handle it. If I were to regulate pregnancy termination, I would be acting beyond jurisdiction and outside the boundaries of the law.

As exemplified in the New Clicks case and other judgments, the Constitutional Court has reiterated that "state functionaries, regardless of their intentions, can only act within the bounds of their legal empowerment. This upholds the principle of legality, a foundational pillar of our constitutional framework."

Additionally, the bill unequivocally places the responsibility of determining the admission policy in the hands of the SGB. It says: "The admission policy of a public school is determined by the governing body of such school."

It is mischievous to contend that this power is being removed from the SGB. The HOD, within the confines of the law, will only intervene where an admission policy discriminates against a pupil, which is frowned upon by our Constitution.

Dedicated to levelling the playing field

Similarly, the BELA Bill introduces provisions to make all pupils' early childhood development (Grade R) compulsory. It also aims to heighten penalties for parents neglecting to enrol their children in school, thus denying children their constitutional rights.

The updated clause suggests extending the penalty period in section 3(6) of the SASA from six to 12 months in instances where a parent, without a valid reason, fails to ensure the attendance of a pupil subject to compulsory schooling or if another individual unjustifiably prevents such attendance. This initiative is already budgeted for, so the DA need not fear that making Grade R compulsory will divert resources from feeding and learner transport schemes. Our dedication to pro-poor policies to level the playing field remains unwavering.

Finally, the Portfolio Committee on Basic Education has removed clause 8 of the bill, which allowed the possession or sale of liquor at private functions on school grounds. Schools were never meant to be a point of sale for alcohol. It was intended for adults only for special functions, mainly fundraising. This provision should have been viewed alongside clauses that declare it an offence for pupils to possess or consume alcohol. The clause aimed to expand Section 8A of the SASA provisions concerning liquor possession by a pupil and to adjust the section for the new definition of a "drug".

This change was necessary because pupils found either possessing or misusing liquor, dependence-inducing and booster substances, as well as similar substances, have been expelled.

It's essential to understand that the BELA Bill, in its entirety, is a product of collective effort. It has undergone a series of consultations: One by the Basic Education Department and another by the Portfolio Committee on Basic Education in the National Assembly. It embodies many hopes, aspirations and concerns unified by a vision: To ensure the best for our pupils, educators and the community.

Each step we took, and consultation we held was driven by our commitment to ensure that the bill stands up to constitutional scrutiny and serves the best interests of our pupils, educators and all our people.

The BELA Bill is a testament to what we can achieve when we come together to better our nation's future.

- Angie Motshekga is the minister of basic education.

-News24, 06 October, 2023.