

Non-Educator Stakeholders and Public-School Principals' Views on the Proposed Amendments to the *South African Schools Act* 84 of 1996

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Abstract

On 13 October 2017 the Department of Basic Education (DBE) published the *Basic Education Laws Amendment Bill (BELA Bill)*. The draft Bill aims to revise certain sections of the *South African Schools Act* 84 of 1996. The DBE gave education stakeholders a window period to make inputs on the proposed Bill. Over 5 000 submissions were received.

On 27 and 28 January 2020 Ms Angie Motshekga (Minister of Basic Education) invited the educator unions and governing body federations to further consultations on the Bill. After further amendments the Bill was again circulated to the public in 2021. On 10 January 2022 the Bill was tabled in the National Assembly.

In this article, the authors discuss school principals' (as education stakeholders) opinions on the proposed amendments with a specific focus on school admission and language policies. The article is grounded in the context of governance and management terms like the decentralisation and recentralisation of the authority and functions of principals and school governing bodies (SGBs). The research took the form of a qualitative case study using semi-structured interviews, a literature review and document analysis to gather data.

The aim of the research was to explore the views of principals and non-educator stakeholders on these proposed changes to the current *Schools Act*. The question the research sought to answer was whether or not the principals thought that the proposed amendments would be beneficial to school management and governance in general.

The data produced mixed results. Some education stakeholders were very critical of the proposed amendments to the *Schools Act* while other groups welcomed the proposed changes. Some principals felt that political agendas were the reason why government was rescinding (recentralising) some of the functions devolved to them in 1996 after the inception of democracy. They believed that recentralisation would impede their autonomy when they carried out their professional and governance duties (the duties delegated to principals) in partnership with their SGBs. The principals further indicated that should the *BELA Bill* be promulgated into law the current education system would regress to the Apartheid system of education. Other principals welcomed a more centralised governance approach where school leadership was dysfunctional and where SGBs provided no meaningful assistance to school principals.

Keywords

Centralising; government; cooperative governance; leadership; partnership.

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1 Introduction

When a Bill is introduced in South Africa it is assigned to one of four categories, a process known as "tagging". The first category is for Ordinary Bills that do not affect provinces, falling under section 75 of the *Constitution of the Republic of South Africa, 1996* (the *Constitution*). The second category is for Ordinary Bills that impact provinces, under section 76 of the *Constitution*. The third category is for Money Bills, under section 77 of the *Constitution*. The fourth category is for Bills aimed at amending or revising the *Constitution*, under section 74 of the *Constitution*. This categorisation helps to ensure that the Bill is processed according to the appropriate legislative procedure and that the relevant parliamentary committees are responsible for reviewing it. Tagging sets out what must happen before a Bill can become law.¹ Bills are tagged by the Joint Tagging Mechanism (JTM), a committee made up of the Speaker and the Deputy Speaker of the National Assembly and the Chairperson and Permanent Deputy Chairperson of the National Council of Provinces. They are advised by the Parliamentary Law Adviser. It is the prerogative of the JTM to categorise a Bill.² In this regard the JTM classified the *Basic Education Laws Amendment Bill* (the *BELA Bill*) as a section 76 Bill, meaning that it is an ordinary Bill affecting the provinces. In essence, the *BELA Bill* deals with concurrent matters in national and provincial operational spheres (function areas) set out in Schedule 4 of the *Constitution* of 1996.³ This Schedule sets out the operational spheres in which both Parliament and the provincial legislatures have the prerogative to draft laws. These operational spheres are agriculture, health, housing, the environment and education (but not higher education and training).⁴ The process of introducing the *BELA Bill* included public hearings and public participation, which is a constitutional obligation imposed on both Houses of Parliament (the National Assembly and the National Council of Provinces). Each House has an obligation to ensure that it hears the public, considers the public comments, and should, where

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1 South African Legislator 2019 <https://sals.gov.za/wp-content/uploads/2021/12/practical-guide-for-mps-and-mpls.pdf>.

2 South African Legislator 2019 <https://sals.gov.za/wp-content/uploads/2021/12/practical-guide-for-mps-and-mpls.pdf>.

3 *The Constitution of the Republic of South Africa, 1996* (the *Constitution*).

4 *The Constitution* Schedule 4.

comments are valid and relevant, ensure that the opinion they represent is incorporated into the proposed version of the law. The importance of public consultation was also emphasised by the Constitutional Court of South Africa in 2006 in *Doctors for Life International v Speaker of the National Assembly*.⁵ The case dealt with the constitutionality of a Bill that sought to legalise physician-assisted suicide. The court held that the Bill was unconstitutional because the legislative process did not adequately provide for public participation, which is required by the *Constitution*. The Court emphasised the importance of public participation in the legislative process and noted that it serves as a safeguard against the arbitrary and unaccountable exercise of governmental power. The court also emphasised that public participation is a fundamental aspect of democracy and is essential for ensuring that the views and concerns of all affected parties are considered in the law-making process. Once the call for public comments is published, the Portfolio Committee's researchers are to examine all written public comments before presenting them to the Committee. In this article school principals' and education stakeholders' (educator unions, governing body federations and other non-profit organisations) views, both positive and negative, are discussed.⁶

The Department of Basic Education (DBE), as the executive structure, also receives these submissions from the public before making its response on policy determination. The DBE can also deal with concerns raised by parliamentary legal services about the Bill after the hearings process, including the hearings in provinces.⁷ The Committee then performs a clause-by-clause analysis of the Bill and provides its inputs. The state law advisor, the parliamentary legal advisor and the DBE will work together to ensure all public and Committee proposed amendments have received the necessary attention (that the functionaries have applied their minds to the comments as required by the principles of natural justice) and that necessary and justifiable amendments to the *BELA Bill* have been made. A list of proposed amendments will be prepared. After these formal processes have occurred, a motion on the Bill will be made. The Committee may decide that the Bill should be re-drafted and differ from the one proposed by the Executive, taking into consideration public comments.⁸ The importance of the *BELA Bill* is underlined by the extensive processes that had to be undertaken (a large number of stakeholders had an opportunity to make

⁵ *Doctors for Life International v Speaker of the National Assembly* 2006 6 SA 416 (CC).

⁶ South African Legislator 2019 <https://sals.gov.za/wp-content/uploads/2021/12/practical-guide-for-mps-and-mpls.pdf>.

⁷ South African Legislator 2019 <https://sals.gov.za/wp-content/uploads/2021/12/practical-guide-for-mps-and-mpls.pdf>.

⁸ South African Legislator 2019 <https://sals.gov.za/wp-content/uploads/2021/12/practical-guide-for-mps-and-mpls.pdf>.

inputs) before the Bill could be promulgated into law – should the legislature decide to do so.

In this article the authors discuss the aims of the *BELA Bill* with a specific emphasis on the proposed amendments to school admissions and language policies of public schools. In the past school admissions and schools' language policies were two sensitive aspects that were contested in our courts, where SGBs were at loggerheads with the DBE. This discussion is followed by a discussion of stakeholders' opinions of the proposed amendments. Finally, the article discusses principals' perspectives on the proposed amendments. We were not able to identify any published research where school principals provide their views on the effect that these proposed amendments could have on the professional functioning of their schools. There is, however, ample literature available where other education stakeholders comment on the proposed amendments.

2 Problem statement

The *South African Schools Act* 84 of 1996 (SASA) regulates school governance in public schools. The promulgation of SASA in 1996 was a momentous milestone in South Africa's move towards the establishment of a cooperative working relationship with local school communities and signalled an increase in democratic participation in the governance of schools. However, school governance as practised today does not seem to incorporate the essential components of cooperative governance in a working partnership between schools and the state as represented by the DBE. The *BELA Bill* is an example of the government's centralisation tendencies which seem to be eradicating the powers of SGBs and principals. The authors probed this issue by asking: "What are principals' and other stakeholders' perceptions of the *Basic Education Laws Amendment Bill*?"

3 Research methodology

The research project was designed to gain insight into principals' and non-educator stakeholders' understanding of the intricacies and the possible impact and corollaries of the proposed amendments to SASA. This qualitative research project made use of a multiple case study design. Creswell and Poth⁹ refer to a case study as "a qualitative approach in which the researcher explores a phenomenon in an everyday realistic, bounded system (a case) over a period of time, through comprehensive, in-depth collection techniques like interviews, documents and reports." This design enabled the authors to collect data in bounded systems, namely twenty-four

⁹ Creswell and Poth *Qualitative Inquiry and Research Design* 96.

public schools in four school districts in Gauteng. Semi-structured interviews were conducted with the principals in these bounded systems (schools) to determine their perspectives on the *BELA Bill*.

The authors also incorporated a discourse document analysis as manifested in official documents, policies and reports, submissions by civil organisations and case law to generate knowledge to supplement the data obtained from the semi-structured interviews and to triangulate data. In this regard, Bowen¹⁰ mentions that document analysis gives researchers greater insight into the phenomena being investigated. The document analysis was conducted simultaneously with the semi-structured interviews.

Data coding was used to analyse the transcriptions of the semi-structured interviews. The data coding began with the identification of meaningful segments to formulate meaningful words or phrases that were then grouped into categories.¹¹ The categories were the main ideas that were used to describe the meaning of similarly coded data.¹² The categories were then arranged into themes and the themes into clusters of themes. Finally, the themes and clusters of themes were grouped together in patterns. The patterns constructed the connections between the various categories.¹³

4 Aims of the *BELA Bill*

The *BELA Bill* recommends changes to *SASA* and the *Employment of Educators Act 76 of 1998 (EEA)* to realign them with the evolving education environment and ensure that structures of learning and excellence in education are positioned in a way that respects, protects, promotes and fulfils the right to basic education as stipulated in section 29(1)(a) and section 7(2) of the *Constitution*.¹⁴ Furthermore, the Bill is also intended to augment *SASA*'s conformity with the principles in section 1 of the *Constitution*. In addition to this, the Bill aims to provide more clarity on current stipulations in *SASA* and *EEA* that have been the source of a great deal of controversy in the past.¹⁵

4.1 Amendment of section 5 – school admission policies

This clause seeks to amend section 5 of *SASA*. It proposes that the Head of Department (HOD) of a provincial education department should have the authority to instruct a public school to admit a learner to a public school¹⁶ and that an SGB of a public school must provide a copy of the admission

¹⁰ Bowen 2009 *Qualitative Research Journal* 29.

¹¹ McMillan and Schumacher *Research in Education* 404.

¹² McMillan and Schumacher *Research in Education* 29.

¹³ McMillan and Schumacher *Research in Education* 29.

¹⁴ Preamble of the *Basic Education Laws Amendment Bill [B2-2022]* (the *BELA Bill*).

¹⁵ Preamble of the *BELA Bill*.

¹⁶ Section 2.4.3 of the Memorandum to the *BELA Bill*.

policy of the school, and any adjustments thereof, to the provincial HOD for endorsement before the policy is implemented. The HOD will then consider specific recommended factors when studying the policy or any changes thereof. If the HOD does not endorse the policy or any changes thereof, he or she must inform the SGB of the specific aspect of the policy that should be adjusted.¹⁷

4.1.1 The Department of Basic Education's reasoning for the proposed amendment

According to the memorandum accompanying the *BELA Bill*, the above-mentioned changes have become necessary because of the misperception formed by sections 5(5) and 5(7) of *SASA*.¹⁸ Section 5(5) of *SASA* states that subject to this Act and any other relevant provincial law, the admission policy of a public school is decided by the SGB of the school.¹⁹ Section 5(7) of *SASA* points out that a submission for the admission of a learner to a public school must be referred to the provincial education department in a manner determined in respect of the admission of learners to public schools. The HOD of the provincial education department has the decisive power to give access to a learner to a school.²⁰ When implementing the power to admit learners, the HOD is not strictly obliged to follow a school's admission policy. The overall stance is that admission policies must be implemented in a malleable way and that the right of a learner to be allowed access to a school takes preference over the right of a school to implement the conditions stipulated in its admission policy.²¹ Furthermore, the admission policy of a provincial education department postulates that the admission policy of a school must be coherent with the Department's admission policy. Therefore, the HOD must have time to review the admission policy of a school to make sure that it is, in fact, aligned with the Department's admission policy.²²

4.2 Amendment of section 6 – language policy

The Bill aims to change section 6 of *SASA* to place an obligation on the SGB to present the language policy of a public school, and any changes thereof, to the HOD for endorsement.²³ The HOD may accept the policy or any changes thereof, or he or she may send it back to an SGB to amend the policy in line with the recommendations. The HOD must consider specific proposed aspects when studying the policy or any changes thereof.

¹⁷ Section 2.4.3 of the Memorandum to the *BELA Bill*.

¹⁸ Preamble of the *BELA Bill*.

¹⁹ Section 5(5) of the *South African Schools Act 84 of 1996 (SASA)*.

²⁰ Section 5(7) of *SASA*.

²¹ Section 2.4.6 of the Memorandum to the *BELA Bill*.

²² Section 2.4.7 of the Memorandum to the *BELA Bill*.

²³ Section 5(a) of the *BELA Bill*.

The governing body must revise the language policy every three years, or every time the specified aspects have changed, when the state of affairs so requires, or at the implore of the HOD.²⁴

The clause also aims to give the HOD the authority to instruct (to force) a public school to take on an additional language of instruction, after considering specified recommended factors, and after the proposed measures have been followed.²⁵ The HOD must notify the SGB of the public school of his or her intent to act and his or her motivation to do so; therefore, an SGB must have a fair chance to make representations, to conduct a public hearing to allow the community to make their inputs, and to give proper feedback of the inputs received.²⁶

In conclusion, it is imperative for a provincial HOD to consistently adhere to the provisions outlined in section 28(2) of the *Constitution*, which stipulates that the best interests of a child must be of paramount importance in any matter concerning the child.²⁷ The concept of a child's best interest encompasses several sections of the *Constitution*, such as the rights to human dignity, equality, freedom and security of the person, freedom from discrimination (section 6), equality (section 9), basic education (section 29), and the use of his own language, and the right to participate in cultural life (section 30).²⁸ Once the HOD has taken these sections into consideration, it is crucial to inform the SGBs of the findings and to disseminate the information to the community in an appropriate manner. Consequently, any decisions made by a HOD in this regard should be reached only after extensive discussions have taken place. For instance, implementing a suitable language policy can empower learners to maximise their educational opportunities and enable them to become conscientious adults. Conversely, incorrect choices can hinder learners' educational progress and restrict their constitutional rights. Language in education in South Africa presents a challenge in an already complex environment, which is a common reality in post-colonial and linguistically diverse countries.

Despite constitutional and policy amendments, a hierarchical language structure persists in South African public schools, with English occupying the top position, followed by Afrikaans, and finally the African languages.²⁹ This hierarchy has influenced the choice of Language of Teaching and Learning (LoTL) in South African schools, despite the clear benefits of using learners' home languages as the LoTL. Numerous studies have indicated

²⁴ Section 5(c) of the *BELA Bill*.

²⁵ Section 2.5.2 of the Memorandum to the *BELA Bill*.

²⁶ Section 2.5.8 of the Memorandum to the *BELA Bill*.

²⁷ Section 28(2) of *SASA*.

²⁸ Sections 6, 9, 29 and 30 of *SASA*.

²⁹ Van Staden, Graham and Harvey 2020 *Perspectives in Education* 287.

that in the majority of South African school learners are not taught in their home languages.³⁰ The mismatch between home and instructional languages can have detrimental effects on reading development.³¹ Proficiency in oral language provides learners with the vocabulary, grammar, and semantic comprehension necessary for meaningful reading. However, this process is disrupted when the learner's home language differs from the instructional language. Limited reading skills impede meaningful progress as these children advance to higher grades. This conclusion was evident in the Progress in International Reading Literacy Study (PIRLS) conducted in 2006, 2011, and 2016 cycles. The PIRLS 2021 cycle revealed that 81% of Grade 4 learners cannot read for meaning in any language, up from 78% in 2016. This means that only 19% of South African Grade 4 children could read for meaning.³² In the light of these findings, one may question the rationale behind granting the HOD ultimate authority to determine a school's language policy. The HOD lacks involvement in the school community and may lack knowledge of the specific intricacies that a particular school serves. Forcing learners into a school where they do not receive instruction in their mother tongue contradicts section 29(2) of the *Constitution*, which emphasises the right of learners to receive education in the official language(s) of their choice in public educational institutions where such education is reasonably feasible.³³ Furthermore, the HOD must consider section 36(1) of the *Constitution*, which states that limitations on the rights outlined in the Bill of Rights should occur only through laws that are generally applicable, and such limitations must be reasonable and justifiable in an open and democratic society based on the principles of human dignity, equality, and freedom while taking all relevant factors into account.³⁴ Consequently, these clauses place a significant responsibility on the HOD to conduct a comprehensive contextual analysis of a particular school and the community it serves in order to provide reasonable and justifiable grounds for amending the school's language policy.

4.2.1 *The Department of Basic Education's reasoning for the proposed amendments*

It is important to take notice of the argument put forward by the DBE to substantiate these proposed amendments. The DBE points out that the recommended changes to section 6 of SASA are aligned with the Constitutional Court judgment in *Head of Department, Mpumalanga*

³⁰ Van Staden, Graham and Harvey 2020 *Perspectives in Education* 288.

³¹ Center and Niestepski "Hey, Did You Get That?" 157.

³² DBE 2023 https://www.up.ac.za/media/shared/164/ZP_Files/2023/piirls-2021_highlights-report.zp235559.pdf 4.

³³ Section 29(2) of SASA.

³⁴ Section 36(1) of SASA.

Department of Education v Hoërskool Ermelo,³⁵ which imparted direction with regard to the endorsement of a school's language policy. The Constitutional Court clarified that although the function of determining a school's language policy is a delegated function in terms of section 6(2) of SASA, it is not the sole purview of an SGB.³⁶ The delegation of this function does not insinuate that the SGB's right to determine the language policy is absolute. This function is subject to the *Constitution*, SASA and any appropriate provincial law. In the *Ermelo* judgment the Constitutional Court further pointed out that an SGB's broader authority, functions and duties do not mean that the HOD is prohibited, on reasonable grounds, from ensuring that amendments are made to an SGB's policies so that the admission and language policies of a school observe section 29(2) of the *Constitution* of 1996.³⁷

Moreover, the *Ermelo* judgment and the Constitutional Court judgment in *Head of Department, Department of Education, Free State Province v Welkom High School*; *Head of Department, Department of Education, Free State Province v Harmony High School* made it a requirement to include further checks and balances above and beyond those that are presently in SASA in respect of the language and admission policies of schools.³⁸

4.3 BELA Bill approach: Recentralisation

The proposed Bill aims to empower the HOD to have the final say in school admissions and language policy. This empowerment of the HOD is done through the means of a recentralised governance approach. It is therefore important to pause and consider what is meant by centralisation and recentralisation in the context of this Bill. Brennen³⁹ argues that "centralised governance in education normally implies a situation where central administrative authority has absolute control over all resources including money, budgets, information, people, legislation, policy and also technology." In this case centralisation limits the roles or involvement of individuals at the lower levels. López-Murcia⁴⁰ describes recentralisation in education as "the set of formal and informal policies and reforms that transfer resources, authority, or responsibilities from lower to higher levels of government, after a process of [failed] decentralisation" (authors'

³⁵ *Head of Department: Mpumalanga Department of Education v Hoërskool Ermelo* 2010 2 SA 415 (CC).

³⁶ Section 2.5.4 of the Memorandum to the *BELA Bill*.

³⁷ *Head of Department: Mpumalanga Department of Education v Hoërskool Ermelo* 2010 2 SA 415 (CC).

³⁸ *Head of Department, Department of Education, Free State Province v Welkom High School*; *Head of Department, Department of Education, Free State Province v Harmony High School* 2014 2 SA 228 (CC).

³⁹ Brennen 2002 <https://www.soencouragement.org/centralizationvsdecentralization.htm>.

⁴⁰ López-Murcia *Recentralisation and Its Causes* 14.

insertion). This proclivity of the government to recentralise power can become a problematic issue for it in the sense that, although it is an authoritative policymaker and can determine the content of policy text, it may not be able to regulate everything at grassroots level because it is not the sole authority that makes decisions on the demarcations of where policies apply. In the school environment where policy is put into practice, there are interconnecting human and non-human aspects that form policy practice.⁴¹

5 Reactions to the *BELA Bill*

5.1 *Negative reactions*

In a meeting of the Basic Education Committee in February 2022, some opponents to the Bill cautioned that the Bill would centralise powers and would turn community schools into state or government schools, especially pertaining to sensitive aspects like language policy, school admission policies and appointments of educators.⁴² The *Suid-Afrikaanse Onderwysersunie* / South African Teachers Union (SAOU) emphasised that the overarching perception is that the education authorities wish to revert to a dispensation where all decision-making power will lie with the provincial departments of education. That would be similar to the system that existed pre-1994, when there was a state school dispensation as opposed to the current public-school approach, which, among other things, involves parents as stakeholders in decision-making at school level and where parents could be regarded as lawful representatives of their particular communities.⁴³

Similarly, the National Professional Teachers' Organisation of South Africa (NAPTOSA) pointed out that several of the recommended changes to *SASA* seem to corrode the current democratised education system in favour of a centralised system. They added that many of the institutions implicated in the centralised system were found to have been acutely defective.⁴⁴

The Federation of Unions of South Africa (FEDUSA) called on the government to stop "school capture" and expressed the opinion that the Bill stood to weaken communities by reassigning school governance to state

⁴¹ Bayeni and Bhengu 2018 *SAGE Open* 4.

⁴² De Beer 2022 <https://www.georgeherald.com/News/Article/General/www.georgeherald.com/News/Article/General/keen-interest-in-bela-Bill-progress-202203160954>.

⁴³ SAOU 2020 <https://irp-cdn.multiscreensite.com/c0cc1c10/files/uploaded/SAOU%20NN%2001%20BELA.pdf>.

⁴⁴ NAPTOSA 2017 <https://www.naptosa.org.za/doc-manager/90-provinces/94-kwazulu-natal/kwz-archived/1416-naptosa-comment-on-bela-bill/file>.

officials.⁴⁵ Similarly, the Democratic Alliance (DA) (a political party) described the *BELA Bill* as "state capture" of the education system.⁴⁶ In this regard the DA launched the *#StopSchoolCapture*-petition, advocating all South Africans to oppose the recommended Bill designed by the ruling party (the ANC), the main objective of which was to overthrow South Africa's parents and children.⁴⁷ The Federation of Governing Bodies of South African Schools (FEDSAS) expressed the opinion that the *BELA Bill* was the government's attempt to address shortcomings in the education system. These shortcomings included incompetent officials, a lack of adequate capacity in schools, and poorly performing educators. FEDSAS argues that the government is planning to redress the system by taking control of successful schools.⁴⁸

AfriForum also objected to the planned legislation, pointing out that it aims to centralise decisions on schools' admission and language policies in the hands of the government and to take these functions away from the communities in which the schools are situated. However, notwithstanding overwhelming public opposition in this regard, these propositions continue to be included in each new version of the Bill.⁴⁹

5.1.1 School language and admission policies

According to Mohohlwane,⁵⁰ South Africa's history illustrates the interrelatedness of absolute authority and control over peoples' identity and language. Language does not develop parenthetically; it is the result of intentional determinations. The discipline of language planning describes this interrelationship distinctly.⁵¹ A quotation by Robert Cooper also reflects this interrelationship: "To plan language is to plan society".⁵² This is precisely what the Apartheid government attempted to do by forcing Afrikaans on its citizens in order to rearrange society in accordance with its political views. Language planning first emerged in articles in 1959 in the

⁴⁵ Anon 2017 <https://www.iol.co.za/news/south-africa/schoolcapture-education-Bill-will-turn-sgbs-into-handymen-11902829>.

⁴⁶ Boonzaaier 2021 <https://www.netwerk24.com/netwerk24/nuus/onderwys/staat-wil-skole-se-taalbeleid-bepaal-20220213>.

⁴⁷ Nodada 2022 <https://www.da.org.za/2022/02/da-launches-stopschoolcapture-petition-to-oppose-ancs-new-basic-education-Bill>.

⁴⁸ Boonzaaier 2021 <https://www.netwerk24.com/netwerk24/nuus/onderwys/staat-wil-skole-se-taalbeleid-bepaal-20220213>.

⁴⁹ AfriForum 2022 <https://afriforum.co.za/en/afriforum-mobilises-countrywide-for-public-consultation-on-schools-Bill/>.

⁵⁰ Mohohlwane 2020 <https://resep.sun.ac.za/wp-content/uploads/2020/05/Mother-tongue-instruction-or-straight-for-English.-The-primary-education-policy-dilemma.docx.pdf>.

⁵¹ Mohohlwane 2020 <https://resep.sun.ac.za/wp-content/uploads/2020/05/Mother-tongue-instruction-or-straight-for-English.-The-primary-education-policy-dilemma.docx.pdf>.

⁵² Cooper *Language Planning and Social Change* 182.

work of Huaguén. Consequently, language planning became a technical term which is commonly used in a broad sense: intentional language development that embraces administrative and political determinations to solve a language objective in society. Therefore, emotional protest by certain groups in society when it comes to issues of language is expected.⁵³ In this regard NAPTOSA raised its concerns about the fact that the proposed Bill forces SGBs to present their language policies to the HOD for endorsement. The union argues that this is an impractical proposition because of the number of schools and the amount of paperwork involved.⁵⁴ Furthermore, a problematic ambiguity is produced as to what the status of existing policies would be while waiting for the approval of new or revised policies. In other words, would the current policies be valid or invalid considering the lengthy period it would take for the HOD to peruse each policy and to resolve the probable disputes that would arise. NAPTOSA also argued that it would be contrary to the democratic principles of the *Constitution* if the provincial HOD were to prescribe to schools what their language policy should be.⁵⁵

NAPTOSA also does not support the proposed amendment that speaks to school admissions. The union pointed out that the way in which the recommended section 5(5)(a) of the Act to be amended by section 4(d) of the Amendment Bill has been written might lead to unintended misunderstanding and unintended consequences; for example, that the HOD is now capacitated to determine admissions as s/he desires. Decisions about admissions continue to be the right of the school, in line with the admissions policy of the SGB. Only in circumstances where challenges surface and the HOD has an understanding different from that of the school would the HOD's decision overrule that of the school, on condition that the rules of natural justice and constitutional prescripts are adhered to.⁵⁶ *MEC for Education in Gauteng Province v Governing Body of Rivonia Primary School*⁵⁷ spelt out how a HOD should exercise such power. In this regard, most of the court pointed out that in this case the HOD had not exercised his authority in a procedurally fair-minded way. The Court emphasised the fact that collaboration is the obligatory norm where there is a conflict between school governing bodies and the national or provincial government. Such collaboration is embedded in the mutual constitutional

⁵³ Cooper *Language Planning and Social Change* 182.

⁵⁴ NAPTOSA 2017 <https://www.naptosa.org.za/doc-manager/90-provinces/94-kwazulu-natal/kwz-archived/1416-naptosa-comment-on-bela-bill/file>.

⁵⁵ NAPTOSA 2017 <https://www.naptosa.org.za/doc-manager/90-provinces/94-kwazulu-natal/kwz-archived/1416-naptosa-comment-on-bela-bill/file>.

⁵⁶ NAPTOSA 2017 <https://www.naptosa.org.za/doc-manager/90-provinces/94-kwazulu-natal/kwz-archived/1416-naptosa-comment-on-bela-bill/file>.

⁵⁷ *MEC for Education in Gauteng Province v Governing Body of Rivonia Primary School* 2013 6 SA 582 (CC).

objective of guaranteeing that the best interests of learners are promoted and that the right to basic education is fulfilled. The principle of collaboration is infused in the Court's approach and a sound emphasis was placed on the pertinent stakeholders' responsibility to engage in good faith prior to requesting the courts to intervene.⁵⁸

The DA's shadow minister of education, Baxolile "Bax" Nodada, refers to section 5 of the *BELA Bill* as the "Lesufi clause". She argues it would give MECs like Mr Panyaza Lesufi, the former MEC for Education of Gauteng, what he has always longed for: the authority to transform the language policy of any of the thousands of public schools in the country and to instruct any public school to change its language(s) of teaching and instruction.⁵⁹ *Governing Body Hoërskool Overvaal v Head of Department of Education*⁶⁰ is an example of Mr Lesufi's ignorance of policy in terms of a school's admission and language policy. In December 2017 Mr Lesufi's Gauteng Department of Education instructed *Hoërskool Overvaal* – an Afrikaans-medium high school in Vereeniging providing education to black and white learners – to admit 55 English-speaking learners into its Grade 8 class, starting in January 2018. The SGB protested that the school had reached its full capacity and that the school's finances did not afford it the luxury of appointing additional English-speaking educators in order to accommodate such a small group. The school also raised the question of why the two neighbouring schools, General Smuts and Phoenix High Schools, could not admit these learners instead. The department replied that it had already arranged to accommodate the 55 learners, which also included one English educator, along with the necessary furniture and study material. The Gauteng Department of Education (GDE) also recommended that the school convert some of its laboratories into extra classrooms for the 55 new learners. The court strongly criticised the department's recommendations, saying that there had been no attempt to verify Overvaal's capacity relative to other schools in the district, as the law stipulated there should be. As an alternative, the department attempted to "force [the school] in an arbitrary fashion on very short notice to convert to a double medium institution when it was not practically possible to do so."⁶¹ In response to the judgment Mr Lesufi pointed out that school language policies were "malignant" and "the

⁵⁸ *MEC for Education in Gauteng Province v Governing Body of Rivonia Primary School* 2013 6 SA 582 (CC) para 68.

⁵⁹ Nodada 2022 <https://www.da.org.za/2022/02/da-launches-stopschoolcapture-petition-to-oppose-ancs-new-basic-education-Bill>.

⁶⁰ *Governing Body Hoërskool Overvaal v Head of Department of Education* (86367/2017) [2018] ZAGPPHC 1 (15 January 2018).

⁶¹ *Governing Body Hoërskool Overvaal v Head of Department of Education* (86367/2017) [2018] ZAGPPHC 1 (15 January 2018) 16.

very essence of racism".⁶² He promised that the judgment would prove "a short-lived victory for the school" because he would appeal it.⁶³ However, the Constitutional Court disagreed, finding that his appeal had no chance of success.⁶⁴

The SAOU commented that they do not support the proposed amendments that speak to school admission and language policy. The union asserted that these amendments are diametrically opposed to the principle of equal partnership between SGBs and the State, as confirmed by several Constitutional Court cases, e.g., *Hoërskool Ermelo* and the *Rivonia Primary* cases.⁶⁵

5.2 Positive reactions

5.2.1 School language and admission policies

The Professional Educators Union (PEU) argues that the current language and admission policies are used by white schools as a "gate watch strategy" to prevent black learners from accessing their schools. The proposed amendment will stop this practice.⁶⁶ In this regard Jansen states that he is "convinced that many white-dominant schools, particularly Afrikaans institutions, use their language policies as one of the instruments for limiting black enrolments."⁶⁷ Jansen seems to support the PEU and warns that people should not be deceived by arguments about language rights and the *Constitution*. Restricting the medium of teaching to Afrikaans in effect deprives many black African learners from receiving an education. This would be a fitting approach for racist SGBs to adopt.⁶⁸ The activist organisation SECTION27 points out that the core proposed amendments in the *BELA Bill* will ensure that SGBs do not take decisions compelled by only their narrow concerns, but are compelled to be mindful of the broader demands of communities in order for each community to be enabled to get access to basic education.⁶⁹ Another activist organisation, namely Equal

⁶² Jeffery 2022 <https://www.biznews.com/thought-leaders/2022/04/21/anc-panyaza-lesufi-overvaal-sgbs>.

⁶³ Jeffery 2022 <https://www.biznews.com/thought-leaders/2022/04/21/anc-panyaza-lesufi-overvaal-sgbs>.

⁶⁴ Jeffery 2022 <https://www.biznews.com/thought-leaders/2022/04/21/anc-panyaza-lesufi-overvaal-sgbs>.

⁶⁵ SAOU 2020 <https://irp-cdn.multiscreensite.com/c0cc1c10/files/uploaded/SAOU%20NN%2001%20BELA.pdf>.

⁶⁶ Boonzaaier 2021 <https://www.netwerk24.com/netwerk24/nuus/onderwys/staat-wil-skole-se-taalbeleid-bepaal-20220213>.

⁶⁷ Jansen 2017 <https://www.businesslive.co.za/rdm/lifestyle/2017-11-17-jonathan-jansen-the-dangers-of-trying-to-change-schools-by-changing-policy/>.

⁶⁸ Jansen 2017 <https://www.businesslive.co.za/rdm/lifestyle/2017-11-17-jonathan-jansen-the-dangers-of-trying-to-change-schools-by-changing-policy/>.

⁶⁹ SECTION27 2017 <https://section27.org.za/wp-content/uploads/2018/01/SECTION27-SUBMISSION-ON-BELA.pdf>.

Education (EE) and its Equal Education Law Centre (EELC), also welcomes the introduction of these amendments. They contend that the proposed amendments would further bolster the government's authority to guarantee a more equitable distribution of learners among schools.⁷⁰ The South African Democratic Teachers' Union (SADTU) supports the proposed amendments that speak to school admission and language policies.⁷¹ The largest teacher union in the country, SADTU suggests that the different members of the provincial executive councils for education (MECs) should be given greater power.⁷² The union emphasises that it is the role of the provincial HODs to ensure that the provisions of the *Constitution* are upheld. HODs must always act in the best interest of the child as prescribed by the courts and section 28(2) of the *Constitution* as well as the *Children's Act* 38 of 2005 with specific reference to section 7 (best interests of child standards) and section 9 (best interests of child paramount).⁷³

SADTU holds that many schools deny learners access through their admission policies. The Union proposes that if in the community in which a school is located complaints are raised about the SGB's using its language policy for discriminatory purposes, the HOD must intervene and compel the SGB to adopt a parallel language model to accommodate those that might be excluded on the basis of language. This indicates that SADTU supports the amendment that the final authority for the determination of a school's language policy must lie with the HOD.

In 2013 SECTION27 acted on behalf of 54 parents against the SGB of Hoërskool Fochville, a public school that agreed to an Afrikaans language policy that excluded English-speaking learners. The result of the policy was that hundreds of learners from Fochville and the Kokosi township had to travel 25 km to attend English-medium schools. Additionally, the Fochville SGB's reluctance to allow their school to become dual medium was said to discriminate against learners based on their race. The GDE attempted to instruct the school to admit English-speaking learners and offered it the resources necessary to operate as a parallel medium school. The school refused and the matter proceeded to court, where the matter was eventually settled and the school became a dual-medium school. This case is an example of what could happen should the *BELA Bill* be promulgated into law. SGBs' language and admission policies could be considered as failing to consider the interests of the broader community, necessitating intervention by the provincial department of education. SECTION27,

⁷⁰ EE and EELC 2017 <https://equaleducation.org.za/wp-content/uploads/2022/01/EE-EELC-joint-BELA-submission-2018-1.pdf>.

⁷¹ SADTU 2017 <https://www.sadtu.org.za/sites/default/files/docs/sadtu-input-bela.pdf>.

⁷² Boonzaaier 2021 <https://www.netwerk24.com/netwerk24/nuus/onderwys/staat-wil-skole-se-taalbeleid-bepaal-20220213>.

⁷³ Section 28(2) of the *Constitution* and ss. 7 and 9 of the *Children's Act* 38 of 2005.

therefore, supports the necessity for amendments to the current legal framework.⁷⁴

6 Summary

There are stakeholders who have objections to the proposed amendments and other stakeholders who support the proposed amendments. What is not clear is whether the different parties fully understand the complexities of the proposed amendments in terms of power recentralisation. The arguments of those opposed to the changes proposed in the *BELA Bill* bear evidence of somewhat oversimplified assumptions that things will go wrong and that there is a linear relationship between what the law contemplates and what happens in practice. Although they make several valid points that could be realised in practice, they do not seem to consider the factors that might restrain the government's power to implement the proposals, like the rule of law.

The Latin phrase *qui hearat in littera in coric* means "Who clings to the letter of the law, clings to the casing/shell" of the law and ignores the world of law beyond the constituent and easily readable parts of the law applicable to his/her profession. A reading of the proposals whilst considering the implications of this Latin phrase could ameliorate aspects of some of the minimalistic interpretations of the *BELA Bill*.

There are also contextual factors that militate against an oversimplified reading of the proposals. These factors include the proven incompetence of officialdom to implement legal provisions; the ability of certain political leaders to circumvent the law; the fact that all proposals are always subject to the rule of law; and the fact that it is always the courts that have the final say whenever conflicts between various role-players need to be resolved.

Jansen's words are ostensibly meant to support changes to the basic education laws of the country and to support the creation of a sustainable quality and equitable education system. However, his words may be perceived as incendiary and his associating of the exercise of constitutional and other statutory rights (such as Section 5 of SASA) with racial bias and racism could bring into question the founding principles of the *Constitution*. They could also be viewed as buttressing racial and language-based hatred, which could in no way contribute to an educational system that would benefit all of South Africa's people and promote the well-being of the country itself.

⁷⁴ SECTION27 2017 <https://section27.org.za/wp-content/uploads/2018/01/SECTION27-SUBMISSION-ON-BELA.pdf>.

7 Presentation and discussion of the interview data

The following sub-themes emerged from the analysis of the interview data:

- (a) Principals' negative perspectives of the *BELA Bill*;
- (b) Principals' positive perspectives of the *BELA Bill*;
- (c) Principals' perspectives on aspects of concern regarding the *BELA Bill*.

7.1 Principals' negative perspectives of the *BELA Bill*

Participants 2, 13, 17 and 24 said that the proposed Bill does not recognise that schools have specific contextual needs. The prescriptions of the proposed Bill are the same for all schools. The unique needs of a specific school community would be overlooked. Participants 2, 13, 17 and 24 believed that the proposed changes to legislation were politically driven and were the result of certain role players' ideologies.

Participant 6 said:

Our powers are already curtailed, and it seems that with this Bill the Department wants to curtail our powers even more. So, we are becoming followers of the government and in the end just compliers.

Participants 1, 4, 7, 13, 23 and 24 indicated that the proposed Bill would undermine the schools' creativity and efforts towards innovation because schools would have no power to make their own decisions. These participants indicated that the proposed Bill would centralise and locate all decisions in the provincial departments of education. SGBs and school principals would become mere implementers of policy.

Participants 9, 15 and 20 said that SGBs would become "puppets" and their role would become obsolete. Participant 9 explained:

This proposed Bill will restrict the SGB. The supportive role of the SGB will be taken away. The fact is that we need support from our parents to whom we can go with certain problems.

Participant 15 stated that:

If you think a bit further, the governing body federations will also be powerless bodies and will only be administrative bodies going on into the future.

Participants 2, 7, 13, 23 and 24 referred to the importance of local communities having a say in the governance of their schools. These participants pointed out that a school must serve the community whilst simultaneously depending on the support of the community. This proposed Bill would jeopardise this relationship.

7.2 Principals' positive perspectives on the BELA Bill

Participants 1, 5, 10 and 11 believed the proposed Bill was a move in the right direction. These participants alluded to the fact that there are so many schools where unprofessional conduct and mismanagement take place. By centralising everything, one could curb or limit mismanagement. However, the participants also stated that this approach should be implemented only at dysfunctional schools and that the DBE must leave functional schools alone to manage and govern their own affairs. It is a conundrum that the proposed Bill does not make any provision for.

Some participants also said that the Bill would greatly assist schools that have dysfunctional SGBs. Participant 5 said:

At my school, the SGB is just a body that makes it difficult to manage the school. This proposed law will take away their powers and I will then be able to manage the school without fear of constant irrational interferences from the SGB.

Participants 10, 12, 14, 18 and 19 experienced problems regarding their relations with their SGBs. They believed that their SGBs had hidden agendas that were not in the best interest of the school. They further explained that, if the proposed Bill were promulgated into law, they would not have to worry about their SGBs anymore.

Participant 10 pointed out that his SGB allocated tenders to contractors that were definitely not the best pick to provide adequate service.

I know certain members in the SGB are getting some reward from the contractor in return.

Participant 12 uttered his frustration with appointments that the SGB makes.

They appoint educators that can hardly talk a word of English. But I suppose political pressure forces them to make irrational decisions.

Participant 18 admitted that there was no trust between him and his SGB.

I have been audited several times due to payments I make on behalf of the school.

Participant 19 mentioned that the Bill had good and bad aspects and indicated that it would be a huge disadvantage at functional schools.

7.3 Principals' perspectives on aspects of concern regarding the BELA Bill

During the interviews, concerns were raised by participants regarding the Bill's proposed amendments pertaining to the language policies of schools. Participants 4, 5, 14, 15, 16, 17, 19, 22 and 24 expressed the opinion that the proposed amendment in which the Bill seeks to hand over control to the provincial department regarding the language policy of a school was going

to lead to a great deal of tension. The participants pointed out that the language policy of a school was a sensitive matter. The school should decide what languages they would make provisions for without disrupting the functioning of the school. Participant 22 indicated that it was the right of the parents to determine the language policy at the school: "This proposed Bill stands in contradiction to the *Constitution*." Participant 16 emphasised the importance of leaving the choice of the language of instruction to the school community:

The school serves the community and therefore the school community must make such decisions.

Participant 24 expressed the opinion that:

If you are going to start prescribing to schools about the language of instruction, you are going to have problems. The DBE puts a lot of pressure on our principals to change or expand the language of instruction in our schools. The principals in my district were called to a meeting and the Department pressured us to take in English-speaking learners. They instructed us to start with English classes. This stands against democratic principles.

8 Conclusion

It seems that the *BELA Bill* has both a positive and a negative aspect, depending on the views and beliefs of the various role-players. The more centralised governance approach as envisaged in the Bill would have to be wisely implemented and due consideration would have to be given to contextual differences between schools and communities. Consequently, implementing a more centralised governance approach, a "one-size-fits-all" approach for all schools, might not be a good idea.

There are still many schools in the system that provide internationally comparable education to their learners. If the DBE were to lump these schools together with the mass of dysfunctional schools, the DBE could impede the innovation that happens at these schools. Functional schools could in fact be held back by the need to comply with the DBE's standards, because these high-performing schools set much higher standards for themselves. It is also interesting that the Bill sets out to curtail the autonomy of well-performing schools despite the recommendations of the National Development Plan. Some role players might justifiably ask why the DBE wants to fix schools that are not "broken". Furthermore, it seems that the sections in *SASA* that are being targeted for amendment are to a large extent areas in which the DBE has lost court cases. So, instead of rectifying the mistakes it has made in the past, the government is resorting to changing the law to make it possible to implement its political agenda. On the other hand, some of the participants were of the view that the centralised governance approach that the Bill proposes has its advantages. Restoring

the power to govern to the DBE, a central point, would greatly assist schools that do not have the administrative capacity and leadership to govern themselves productively. The data indicate that there are principals who battle with SGBs that just do not have the capacity to deal with governance issues, and when the principal disagrees with the decisions of the SGB the principal's troubles really escalate and the end result is a total breakdown of trust. The proposed amendments to SASA would give great relief to these principals. In this regard, notice must be taken of Du Plessis' research, which raises the possibility for differentiated levels of school autonomy:

The model for differentiated levels should be based on the notion that different settings and times will call for specific responses, such as actions of leadership or actions of management. This model stipulates that contextually intelligent school leadership is a prerequisite to guarantee appropriate and maintainable advancement in schools. Also, this model places the emphasis on the capacity building of schools at the local level by taking context into consideration, including the political environment and cultural diversity.⁷⁵

In other words, this model encourages a contextually intelligent approach to the formulation and implementation of legal provisions and amendments. The reason is that individuals may be dealing with multiple contexts at a time; therefore, a unique skill set is needed for a more efficient form of management and leadership practice from situation to situation. The model thus encourages an understanding of contextual diversity and more contextually intelligent approaches to capacity building and school improvement.⁷⁶

In the context of South Africa's political history language is a sensitive subject, and where a language comes under attack in the form of restrictions imposed by government and political parties, this leads to tension, e.g., *Middelburg Primary v The Head of Department: Mpumalanga Department of Education*,⁷⁷ *Head of Department: Mpumalanga Department of Education v Hoërskool Ermelo*.⁷⁸ Furthermore, if the DBE forces a certain language on a school and a community without valid, lawful, fair and implementable reasons, it will be acting in contradiction of the *Constitution*. Section 36(1) of the *Constitution* lays down a test that any limitation must meet. The two central concepts in this test are reasonableness and proportionality. In section 29(2) of the *Constitution* it is clearly stated that:

Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. To ensure the effective access to, and

⁷⁵ Du Plessis *School Governance and Management Decentralisation* 210.

⁷⁶ Du Plessis *School Governance and Management Decentralisation* 210.

⁷⁷ *Middelburg Primary v The Head of Department: Mpumalanga Department of Education* [2002] JOL 10351 (T) para D.

⁷⁸ *Head of Department: Mpumalanga Department of Education v Hoërskool Ermelo* 2010 2 SA 415 (CC) para 4.

implementation of, this right, the State must consider all reasonable educational alternatives, including single medium institutions, considering -

- a. equity;
- b. practicability; and
- c. the need to redress the results of past racially discriminatory laws and practices.

Furthermore, it seems as if the DBE often attempts to force Afrikaans medium schools to also accept English learners on the grounds that there is a shortage of space for them elsewhere. It is necessary to note in this context that it is the duty of every MEC for Education as set out in section 3(3) of *SASA* to ensure that there are enough school places in a specific province so that every child can attend school as required.⁷⁹ It is not impossible that the pressure to which the participants refer does not spring from the need to provide education as stipulated in section 29(2) of the *Constitution*, but that it is instead a façade behind which a MEC who has not done his or her duty as per section 3(3) of *SASA* tries to hide his or her failure in this regard.

Finally, if the DBE acts in a draconian manner, it could take the education system back to the centralised system that prevailed during apartheid. In the previous education system, Afrikaans was forced upon most learners to realise the ideology of the apartheid government. Ironically, today most teachers in Afrikaans schools are not sufficiently proficient in English to teach in that medium. Thus, forcing these schools to introduce English as a language of teaching and learning would place additional operational pressures on these schools.

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List of Abbreviations

BELA	Basic Education Laws Amendment
DBE	Department of Basic Education
EE	Equal Education
EEA	Employment of Educators Act 76 of 1998
EELC	Equal Education Law Centre
FEDSAS	Federation of Governing Bodies of South African Schools
GDE	Gauteng Department of Education
HOD	Head of Department
JTM	Joint Tagging Mechanism
LoTL	Language of Teaching and Learning
MEC	Member of the Executive Council

NAPTOSA	National Professional Teachers' Organisation of South Africa
PEU	Professional Educators Union
PIRLS	Progress in International Reading Literacy Study
SADTU	South African Democratic Teachers' Union
SAOU	Suid-Afrikaanse Onderwysersunie / South African Teachers Union
SASA	South African Schools Act 84 of 1996
SGBs	school governing bodies