

Comments: 2022 Bela Bill

The proposed BELA Bill of 2022 suggests that learners must submit "mandatory" documents when applying for admission to a school. If they are unable to do so, they are referred to committees comprising representatives from the Department of Home Affairs, South African Police Services, and the Department of Employment and Labour. Parents who provide false or deceptive information and documents, or refuse to cooperate, may face imprisonment, fines, or both. The Bill also increases the potential prison sentence to 12 months. Despite the Bill's assertion that learners will still be admitted to school even if they cannot provide the required documents, these requirements raise significant concerns.

The criminalisation of parents or caregivers in this manner is problematic, heavy-handed, and not in the best interests of the child. The proposed amendment disproportionately punishes parents or caregivers who are often desperate, vulnerable, and predominantly black and impoverished, as they seek to secure a better education for their children. It also imposes harsh penalties on families who are not South African citizens, many of whom have made repeated attempts to obtain legal status in South Africa but face significant delays.

The establishment of the so-called National Intergovernmental and Provincial Intergovernmental Committees is unlikely to be effective as it fails to address the underlying issues within the Department of Home Affairs. Moreover, there are concerns that these committees are primarily focused on immigration control rather than assisting learners in obtaining the required documentation.

1. We suggest the complete removal of the clause in the Bill pertaining to "mandatory" documents, as well as the clause that criminalises parents or caregivers for submitting false information during admissions. Additionally, we recommend against establishing the committees mentioned.
2. The proposed 2022 BELA Bill suggests an increase in the duration of imprisonment for parents/caregivers, or any other individual, who unjustifiably prevents a child of compulsory school age from attending school. Instead of the current six months, the proposed amendment extends the possible jail time to twelve months. If found guilty, individuals may face fines, imprisonment, or both.

We believe that this approach fails to address the underlying causes of children's non-attendance at school, such as poverty and disability. Rather than assisting in resolving these issues, the amendment exposes parents/caregivers to criminal charges, perpetuating the circumstances that hinder learners' access to education. Additionally, this amendment disproportionately affects women, who are often the primary caregivers in South Africa.

Furthermore, the 2022 BELA Bill states that anyone who intentionally interrupts, disturbs, or obstructs school activities may face fines, imprisonment for up to twelve months, or both. We find this provision overly broad and potentially detrimental to constitutionally protected rights, including the right to protest. Such criminal conduct is already addressed by existing laws.

We strongly advocate for the complete removal of both provisions criminalizing actions that keep children away from school and impede school activities from the 2022 BELA Bill.

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3. We express deep concern regarding a clause in the 2022 BELA Bill that permits the sale and consumption of alcohol at schools and during school activities, both on and off school premises. While the bill prohibits the possession, sale, and consumption of alcohol during school hours, we firmly believe that this proposal will harm learners. Alcohol abuse is a significant issue in many communities across the country, and to safeguard learners from encountering individuals under the influence and prevent them from consuming alcohol themselves, schools should remain alcohol-free environments.

We strongly urge for the complete removal of this proposal from the bill. Alternatively, if it is decided not to remove it entirely, alcohol should, at the very least, be prohibited from being consumed or sold at activities where learners are present.

4. The high rate of learners dropping out of school in South Africa, exacerbated by the COVID-19 pandemic, is a crisis. Prior to the pandemic, reports indicated that 40% of learners dropped out before reaching Grade 12.

The 2022 BELA Bill introduces a clause that assigns the responsibility of monitoring and encouraging school attendance to teachers, school principals, and School Governing Bodies (SGBs). However, we believe that effectively addressing the issue of learner dropout should not solely rest on individual schools for tracking and intervention.

We recommend that the 2022 BELA Bill incorporate a provision obligating the government to establish committees at the provincial and national levels to address dropout rates. These committees could comprise representatives from the Department of Basic Education, the Department of Social Development, and StatsSA.

5. The 2022 BELA Bill introduces important changes pertaining to the authority of School Governing Bodies (SGBs) concerning admissions and language policies, as well as the requirement for disclosure of financial interests. Rather than being novel, these changes align the law with previous court rulings on the relationship between SGBs and provincial education departments. The proposed amendments provide an improved opportunity to detect and prevent discriminatory practices in schools while ensuring meaningful input from SGBs in these processes.

Regarding admissions, the Bill specifies that the final authority to admit a learner to a public school lies with the Head of the provincial education department (HOD). In the 2022 version of the Bill, a positive amendment has been introduced, requiring the HOD to consult with the School Governing Body (SGB) before making such decisions and granting the SGB the right to appeal. We also appreciate the inclusion of additional factors that the HOD must consider when evaluating a school's admissions policy, such as the efficient and effective utilization of the State's resources. Additionally, the time period for making a decision during the appeal process has been shortened.

The admission of children with disabilities is a legal requirement in terms of the Schools Act, which does not exempt children with disabilities from attending school. Education White Paper 6 on inclusive education also prescribes the admission of children with disabilities to ordinary schools. In defiance of the Schools Act and White Paper 6, the common practice for school principals is to deny children with disabilities access to schools. The Bela Bill of 2022 should address this transgression by school principals and SGBs and enact the constitutional right of children with disabilities to a basic education equal to that of non-disabled children. The Bill should also prescribe that schools are structurally accessible to learners with disabilities and that the learning environment employs reasonable accommodation measures to facilitate optimal and equitable access to learning for learners with disabilities. The crisis of hundreds of thousands out-of-school children with disabilities because of schools denying them admission cannot be ignored by the Bela Bill. The DBE has been extremely sluggish in its implementation of its own inclusive education policy and the time to legally compel HODs and schools to admit children with disabilities is long overdue.

Currently, SGBs have the power to determine language policies for their respective schools. In an effort to prevent discriminatory language policies, the 2022 BELA Bill mandates that the HOD approve and provide oversight of SGBs' decisions regarding language policies. Despite these positive reforms, there is still a potential for schools to misuse language policies as a justification for racially biased practices, such as excluding learners based on language.

We recommend that the 2022 BELA Bill explicitly state that language policies should not be used as an automatic basis for excluding learners from specific schools. Instead, the provincial HOD should apply these policies when making the final decision about admissions at each school.

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28 June 2022