

Bela Act a test for the GNU

*The manner in which the proposed Bela Act will play out in the next three months is a good test to see if the Government of National Unity (GNE) can work in practice. **Michael le Cordeur** explains why.*

It is seven years ago today that Angie Motshekga announced the Basic Education Laws Amendment (BELA) Act in October 2017. Its signing was delayed due to opposition to two clauses dealing with admission and language. Although President Cyril Ramaphosa signed BELA into law on 13 September, the focus now shifts to these two clauses which have not yet been signed. Ramaphosa decided on a window period of three months for the GNU partners to deliberate in search of a solution.

The President expressed his confidence that the GNU partners will indeed find a solution, but also emphasised that if an agreement cannot be reached within the next three months (up to and including December 13), he will sign and implement the Act in its entirety. This puts great pressure on the GNU partners.

What are BELA's aims?

The BELA Act makes several adjustments to the South African Schools Act (Act 84 of 1996), aiming to streamline the education landscape to a greater extent. These include:

- Grade R becomes compulsory. Currently, poor parents cannot afford to send their 6-year-old children to grade R. According to teachers in the foundation phase, it takes them up to a year to get pupils ready for school before they can start the Grade 1 curriculum. This partially explains why our children read and write so poorly. Compulsory Grade R education levels the playing field because the onus shifts to government to fund Grade R.
- The BELA Act involves severe fines for parents who fail to send their children to school and even the possibility of imprisonment.
- The BELA Act introduces strict measures for misbehaviour by pupils and gives schools the right to immediately suspend offenders for serious offences. All those who have been school principals and teachers know the frustration when a child is sent home for five days before action is taken. For many offenders, this means five days of vacation!
- The new Act introduces strict measures for parents who homeschool their children. This includes compulsory registration with the Education Department and independent assessment before those qualifications will be approved.
- All corporal punishment and initiation practices are prohibited in accordance with the Children's Act. Because my students are sent out nationwide for practise teaching, I am aware that corporal punishment still occurs in many schools. Those teachers and schools can now be prosecuted.

Few people would argue about the above amendments to the Schools Act. This is in line with the ruling in the Rivonia Primary School case of 2013. The Constitutional Court then took a firm position that education authorities must ensure that the admission of pupils must be fair and within the framework of the Constitution and put the best interests of the child first. The judge encouraged school communities to work together *in good faith* in a process of mutual trust and respect. Apparently it is no longer enough. South Africans have lost faith in the ANC government

What is the debate about?

The two clauses that fuel the debate and to which government has received great opposition are clauses 4 and 5. Afrikaans schools in particular are upset because the BELA Act gives provincial heads of education control over schools' language and admission policies.

Government argues that these two clauses have led to great controversy in the past because pupils, even children who live within the school's catchment area, have been denied access. In some cases this has led to court cases (see above). According to government, the BELA Act will ensure equality and schools will no longer be able to use language to discriminate against children.

Those opposed to these two clauses argue that they strip school governing bodies (SGB) of their decision-making power over two policies that are critically important to the school's survival. Shifting final authority from the SGB to the provincial heads of education gives the state the power to change language policies. The feeling is that this will undermine schools' right to mother tongue education.

This led to strong statements from the country's two largest unions. Solidarity believes that the Act will force schools to accept additional languages of instruction and regards it as a calculated attack on Afrikaans schools. In contrast, Cosatu called for the Act to be approved and implemented in its entirety. What further complicates the matter is that the new DA minister of basic education has already taken sides when she boycotted the signing and thus directly clashed with the President. Unless a solution is found, the order of battle is set for a big fight and things are threatening to get out of hand.

Mother tongue education and the Constitution

At the heart of the argument is the issue of mother tongue education. The Constitution guarantees every child the right to be taught in his or her mother tongue, but with this condition: *provided it is reasonably practicable. The question is: what does reasonably practicable constitute?*

In my days as circuit manager, we were often informed that a school is never full for a child who lives in the same street as where the school is located. But is it reasonable to expect the school to hire six English teachers to accommodate one child? Or is it reasonable to expect poor parents to pay R30 every day and therefore R150 per week or R600 per month

(one taxi ride costs R15) because the child is referred to an English school located 10 km away? The state has been silent on this so far.

Furthermore, education experts agree that compulsory Grade R education has long been needed, but the government has not yet given any indication of where the Grade R teachers will come from. Grade R requires specially trained teachers with specially designed classrooms. When we celebrate World Teachers' Day on October 5, we must also think about the following important questions: Who will pay them? And what about the rumours that thousands of teachers are going to be laid off?

Independent Ombud

This brings me to the intended negotiations. Now is the time to keep a cool head and think about the bigger picture. But all I hear are demands and threats (from both sides), which hardly create the desired climate for fruitful negotiations. Above I have tried to summarise the different points of view and it is clear that both sides have a strong case. In such negotiations, all parties must realise that success will depend on the extent to which both parties are willing to make concessions. It is a process of give and take.

Given the mistrust and suspicion that already exists, it is important that these conversations take place in a safe space so that everyone can state their point of view unfettered and with the assurance that everyone will be heard. Therefore, no one can be a player as well as a referee. The discussion leader(s) must be independent. Someone like a retired judge or an education expert. Someone like Prof Mary Metcalfe.

However, the independence does not stop here. For the sake of fairness, neither government nor the governing body can have the final say on a school's language policy in the event of a dispute. I propose an independent ombud or even a committee that will cast a neutral eye on cases where parents or schools may declare disputes.

In this process the role of the media is critical. Irresponsible reporting can sink the conversation before it even starts. It's not so much *what* you say but *how* something is said and this can be decisive for the successful course of the negotiations.

1976

The BELA Act is one of the most controversial education laws in South African history. The only other case that was shrouded in so much controversy also had to do with Afrikaans. I am referring to the controversial education act during apartheid that forced black pupils to be educated in Afrikaans, the language of the government at the time (but not the mother tongue of most black people) and we know how that chapter in our history ended. Ironically, the shoe is now on the other foot: Afrikaans is now the reason why two clauses cannot be signed.

We now have the opportunity to be the architects of our own future. That is why it is in everyone's interest that all the role players come together soon and find a solution to the

impasse in which we currently find ourselves. South Africa cannot afford a repeat of 1976. Just as little as we can afford for the GNU to fail.

The BELA Act is the first real test for the GNU. If the GNU passes this test, the future looks more rosy and we will move closer to a united South Africa.

Prof. Michael le Cordeur is Vice Dean in the Faculty of Education at Stellenbosch University.