

# The Biggest BELA Problem of All : Blatant Contempt for Learners and their Constitutional Rights



## A Very Controversial Bill

The South African Basic Education Laws Amendment (BELA) is a highly controversial bill for many reasons, including but not limited to -

- closure of small rural schools that can leave thousands of learners stranded,
- hobbling participation by parents, SGBs and communities,
- giving the HOD an unhealthy level of centralised power,
- forcing home-schoolers to mimic public schooling to a degree that defeats the point,

- violating the enshrined right of families to choose forms of education other than that preferred by this particular state at this particular time,
- criminalising parents who do not manage to overcome all of the hurdles thrown in their path by a rotting education system to ensure that their children are nevertheless in school, instead of fixing any of the obstacles they face,
- threatening traumatised children too afraid to return to classrooms where they and/or their friends are/have been bullied and/or beaten<sup>1</sup> and/or sexually abused, with jail time for their parents if they don't go anyway
- and the actively obstructive rather than inclusive and genuine approach to public participation throughout the BELA Bill process.

The biggest problem with this final issue, the issue of public participation, has hardly been mentioned.

Oh yes, the fact that the DBE and ANC repeatedly tried to minimise and even actively undermine the participation process, as well as repeatedly threatened and tried to shame those who objected to aspects of the bill, has been pointed out. However, there is barely a thought given to the most important excluded participants of all.

How well our education system has done, shaping our minds and the national culture, to ensure that most of us don't even see a problem.

## What Is Public Participation Meant to Include?

Let's have a look at what South Africa's own parliamentary model for participation in law-making says:

*"Public participation:*

- *Is premised on the belief that **those who are affected by a decision have a right to be involved in the decision-making process;***

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<sup>1</sup> The fact that corporal punishment was outlawed in schools in 2007 it is still rife to this day  
<https://www.statssa.gov.za/?p=16128>

- *Includes the notion that the public's input **will be considered**;*
- *Promotes sustainable decisions by **recognising and communicating the needs and interests of all participants** and decision makers;*
- *Seeks to **facilitate the involvement of those potentially affected** by or interested in a decision;*
- *Seeks **input from participants in designing how they participate**;*
- *Provides **participants with the information they need to participate** in a meaningful way;*
- *and Communicates to participants how their input fashioned the decision.”*

*“There may be several and different definitions of public participation but **central to the definitions** is the acknowledgement that institutions with decision-making powers **must involve in the decision-making process those who are likely affected** by such decisions.”*

*“Legal requirements include, **informing, educating and creating meaningful opportunity** for the public to participate in the **decision-making of an issue that affects their lives.**” (emphasis mine)<sup>2</sup>*

## Rights of the child in South African law

Let's also look at the rights of children in South African law:

*“**Children have a right to actively participate in decisions**, processes, programmes and **policies that affect their lives**... This participation of children **depends on the state** and all organisations working with children and families **to protect, respect and promote the rights of all children**”<sup>3</sup>*

<sup>2</sup>

[https://www.parliament.gov.za/storage/app/media/Pages/2019/august/19-08-2019\\_ncop\\_planning\\_session/docs/Parliament\\_Public\\_Participation\\_Model.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2019/august/19-08-2019_ncop_planning_session/docs/Parliament_Public_Participation_Model.pdf)

<sup>3</sup> <https://www.savethechildren.org.za/sci-za/files/b3/b35b6961-cbb7-4693-a9a1-f0ba2f57c6bd.pdf>

***“The Constitution of the Republic of South Africa (Republic of South Africa, 1996) affords all people in South Africa with the rights to freedom of expression, association, peaceful assembly, access to information as well as the right to participate in public processes. It gives full recognition of children’s rights at the very highest level”***

The South African state has an obligation ***“to protect, respect and promote the right of children to participate in decisions that affect them”***<sup>4</sup>

***“Children should be able to contribute to the development of relevant legislative reform”***

***“The South African government is duty-bound to actualise children's rights to be heard in matters that affect their lives”***<sup>5</sup>

(Again, all emphasis mine.)

I could go on and on, but the picture is crystal clear.

Who is more affected by Basic Education Laws than... learners in public schools? Who is more affected by having their parents criminalised if they don't attend school, than... learners in public schools? Who is more affected by the closure of their small local public school than... the learners in such schools?

Again, I could go on and on. Instead I will just quote one of the messages sent during the written submissions process all the way back in 2017.

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<sup>4</sup> <https://www.savethechildren.org.za/sci-za/files/e3/e32b69e4-157c-45f0-aa4d-2b8fcd63387c.pdf>

<sup>5</sup> *Children and participation in South Africa: Exploring the landscape*, Rachel Bray, Sue Moses, University of Cape Town, 2017

## Why Did the DBE Fail to Initiate, Let Alone Rectify Support for the Participation of Learners?

Who is the 'DBE'? Part of the problem is that the Department of Basic Education is an entity in its own right, above and beyond the sum of all of the current people who work there, and it is also a cog in a bigger political machine. There is no point trying to pinpoint individuals, no matter how senior. When I speak of 'the DBE', and 'they', I am speaking of that entity, not any of the well-intentioned human beings within the DBE who are just doing their best in a very limiting circumstance. However, there is a very real problem in that the whole of the DBE currently does not seem to contain any prominent children's champion. Nobody within the DBE is visibly standing up for children's rights. I have searched and been unable to find any mention of anyone in the DBE making even a token effort to actively include learners in the BELA Bill process.

This message, along with many others, was sent as part of the public comment process in 2017:

*"WHERE, OH WHERE, IS THE DEPARTMENT'S PROVISION FOR CHILDREN IN THEIR VERY OWN SCHOOLS TO COMMENT ON THE BELA BILL?"<sup>6</sup>*

Six years later, essentially the same message was submitted, yet again, in June of 2022, 16 months before the time of writing of this article.

*"We note that the lack of young people's participation has been repeatedly flagged since 2017.*

*However:*

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<sup>6</sup> Excerpt from "Submission and Comments" sent to the DBE from democrateducationsa in 2017, including multiple submissions from young people outside of the public school system.

*A) There is still no evidence of any significant consultation process with young people.*

*The DBE has direct access to the vast majority of South African youth. Where is the evidence of consultation with youth in schools, to help inform the draft content of this Bill?*

*The DBE specialises in interaction with young people and has existing means to inform and explain complex topics as well as gather and process individual responses on such topics, from each and every child in their system. Where is the evidence of this system having been used to fulfill the right of all these young people to participate in the public comment process?”<sup>7</sup>*

*As recently as June of 2023 “The Constitutional Court struck down the Traditional Khoi-San Leadership Act 3 of 2019 (TKLA) due to the National Assembly and provincial legislatures failing to fulfill their constitutional obligation to reasonably facilitate public participation in its passing.”<sup>8</sup>*

With seven years of being reminded at each and every round of public participation, and with this precedent of the TKLA absolutely fresh in their minds, as far as I can see, the Department of Basic Education and everyone else responsible for facilitating the public comment process, still... made *zero, Zero, ZERO* effort even in the 2023 rounds of public participation to:

- Provide public school learners with the information they would need in order to participate<sup>9</sup>
- Seek input from learners to help designing how they might be able to participate
- Facilitate the involvement of learners in the public participation process

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<sup>7</sup> All ages participatory letter to parliament from Riverstone Village 192-488NPO June 2022

<sup>8</sup><https://www.cliffedekkerhofmeyr.com/news/publications/2023/Practice/ProBono/pro-bono-and-human-rights-alert-9-june-traditional-khoi-san-leadership-act>

<sup>9</sup>In fact translation into languages other than English was so last minute, and efforts to summarise issues accurately in ordinary language was so neglected that most South African adults were not provided with this either.

- protect, respect and promote their right to participate

There is only one word for the attitude of the DBE towards the right of its learners to participate in the BELA Bill process: contempt.

Contempt.

*Contempt: “the feeling that a person or a thing is worthless or beneath consideration.”<sup>10</sup>*

The DBE’s attitude throughout the 7 years of the BELA Bill process has consistently been that their learners have nothing to say worth hearing. Learner’s opinions, insights, ideas, feelings and potential input are all... worthless. The learners themselves are beneath consideration, their rights are beneath consideration, essentially *they* are worthless except as pawns in a political game.

The DBE uses the phrase ‘best interests of the child’ in a tone and context that makes it clear that in their minds there is only one authority on what that best interest is: the DBE. Not the parent, and definitely not the child. Clearly the conception of a learner is of someone with no autonomy, no competence, and no real belonging within the school system, only a belonging *to* the state as a ‘national asset’ to be mined and manufactured pretty much like a lump of coal.

So, we have a situation where the best interests of something like a lump of coal are being protected - hey, suddenly so much of the BELA Bill (and the current public school experience) finally makes sense!

What does it matter if a lump of coal can’t be collected within 30km and has to relocate more than 70km to reach a bigger collection point? Lumps of coal don’t have families or communities or homes they love. They don’t have legs that get tired, they don’t need rest and relaxation and sleep.

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<sup>10</sup> Oxford Dictionary online

What does it matter if a lump of coal gets bored, or uncomfortable, or can't understand what's going on? What does it matter if it has no future prospects, if it falls off the truck and ends up in a ditch?

What does it matter if a lump of coal gets a bit manhandled, or sees other lumps of coal smashed to bits? Lumps of coal can't suffer from trauma or anxiety.

Obviously when the lump of coal belongs to you, you can imprison anyone who stops it being in your hand. The lump of coal can't suffer in any way from having the thief imprisoned. Lumps of coal don't need breadwinners or parents to take care of them. There's no abuse of human rights involved in destroying the livelihoods or the family continuity of lumps of coal.

Last but not least, OBVIOUSLY you don't dream of asking a lump of coal for its OPINION! Hahahahaha!

There's a second way in which the DBE's attitude is one of contempt.

*Contempt: "willful disobedience to or open disrespect of a court, judge, or legislative body"<sup>11</sup>*

Given that *"Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration,"* the DBE is clearly in contempt of the Children's Act.<sup>12</sup>

Contempt for every policy and law of South Africa that deals with our children's rights, including our Constitution. Contempt for the United Nations Convention on the Rights of the Child (UNCRC) and every other

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<sup>11</sup> <https://www.merriam-webster.com/dictionary/contempt>

<sup>12</sup> <https://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf>



international rights treaty and instrument that upholds human rights in general and children's rights in particular.

Given that there is *no* state department more involved with children than the DBE, and, given that education is enculturation, there is no part of South African society with a higher obligation in both the legal *and the moral sense*, to respect, protect, promote, and actualise children's rights to be heard in matters that affect their lives.

When the highest level of our national Department of Basic Education models a contemptuous attitude towards the learners it is tasked to serve, is it any wonder that this cascades down into classrooms and floods out into society as a whole?

Not only does the DBE apparently make zero effort to bring democratic process into its schools as an intrinsic part of their functioning, it apparently also can't even spot the learning opportunity of having learners participate in the BELA opportunity. Which is again consistent with the lump of coal attitude. Why would you want them to actually learn anything? The point is to effectively *manage* them.

The DBE has repeatedly protested that the BELA is all about administration and can't therefore be criticised for failing to address issues that actually affect quality of education or learner well-being. They seem to think that this is a good excuse. In fact, it confirms and emphasises the fact that convenient administration is clearly their sole priority.

Every child in a public school is being taught between the lines, that they are worthless.

Educators are being given the implicit message that children's rights are just abstract concepts with no reality.

Of course they can be beaten and sextorted, as taking out one's stress or using them as instruments for the satisfaction of personal needs is merely another variation of treating them like lumps of coal.

Treated like lumps of coal, how does a child build a sense of initiative, self-esteem, confidence, pride? How do they come to feel worthy and responsible? It is only natural that they fall into roles of victim and perpetrator, and that bullying, drug and alcohol abuse, and school dropout due to despair, spiral out of control.

When this happens to almost every child in a nation decade after decade, it is no longer possible to look at the high levels of crime and violence in our society and blame history, or racism, or immigrants, or unpopular minority groups.

“Hurting people hurt people”, and the BELA Bill ensures that we will live with the consequences of this approach to so-called education for many years to come.