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The President
H.E. Matamela Cyril Ramaphosa
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(per email)

Dear President Ramaphosa,

1. I, Marie Elizabeth Sukers, am writing as an ordinary citizen, to urge you to not sign the Basic Education Laws Amendment Bill [B2D-2022] (BELA Bill), adopted by the National Council of Provinces ("**NCOP**") and the National Assembly ("**NA**") on 16 May 2024 into law.

2. As an ex-MP who served on the Portfolio Committee on Basic Education in the 6th Parliament I have personal knowledge of the manifold flaws, both procedural and substantive, that render the Bill unconstitutional. These flaws are so fundamental that they militate against it being signed into law. The BELA Bill should rather be referred back to the National Assembly for the public participation process to be conducted again or, at very least, for the PCBE to review the process in detail (ample video and written evidence of the proceedings is available) and amend the Bill to render it compliant with the Constitution.

   There are and were a number of patent flaws in both the processing of the Bill and in the substantive content of its clauses. These flaws include but are not limited to:

   a. Failures during the National Assembly public hearings.
   b. Procedural flaws during the clause-by-clause process in the PCBE.
   c. Abuse of the committee process following the Bill's referral back to the NA from the NCOP.

3. There was a failure of MPs to engage with the public's submissions in an open-minded manner, in particular due to the lack of a detailed matrix of the public comment.

4. The whole public participation and parliamentary process was conducted with undue haste.

No Matrix – No Bill

5. As serious as the above flaws are, the most fundamental one is that as a member of the committee who participated in all public hearings I did not have access to the written submissions made by the public, be that in a suitably detailed matrix or a detailed compilation of the public written submissions, that allowed me to act in an informed manner taking into account, in particular, the public's written submissions. It was only on the 12 September well after the clause-by-clause deliberations that at the second last meeting an incomplete matrix was produced. There was at that stage no time to work through the document and it was mere exercise in window dressing.

6. I was, and remain, of the view that the committee was never properly informed of the content of the over 26 000 (i.e. after duplicates and spam were removed) written public submissions. On this ground alone, I respectively submit that the President cannot sign the Bill into law and should refer it back to the National Assembly to remedy this.

7. The ACDP's Minority Report and the letter set by the ACDP to the PCBE prior to the consideration of the NCOP version of the Bill are included.

A: Procedural Flaws

Failures during the National Assembly public hearings:

8. The failure of Parliamentary Legal Services to attend the public hearings conducted by the National Assembly and/or to provide advice on the constitutionality and legality of certain procedures meant that many aspects of the public hearings were not properly conducted. Parliamentary Legal Services stated they were unable to do so due to their workloads. This should have been addressed through better scheduling of this and other bills to match the capacity of the Parliamentary Legal Services rather than processing a Bill without the required legal advice on processes and procedures. I made repeated requests for the committee to seek the advice of the Parliamentary Legal Services in order to avoid the procedural flaws that then undermined the process. A few of these are detailed below.

9. There was a complete lack of pre-hearing education of members of the public, something the public complained of in a number of hearings.

10. The recruitment and bussing in of uninformed members of the public to attend the hearings. This was done primarily through the promise of a meal.

11. Bias on the part of DBE officials who used the opportunity to address the public to promote rather than inform the public of the Bill.

12. Intimidation of the public by the then Chair, certain members of the Portfolio Committee, as well as officials who repeatedly stated that their interpretation was correct and that the members of the public who differed from them were, misled and

ill-informed. This was particularly evident where members of the public expressed their concerns about Clause 39 being used to broaden access to abortion through schools.

13. Unfair allocation of time, in particular, in the Northern Cape, that resulted in members of the public not being able to speak, while officials were allowed to make as lengthy a comment as they liked.

14. Officials and educators who spoke in the hearings and sought to use their status as officials or educators to persuade and influence the public. Their mandate and status was, at best, unclear.

15. Members of the public were allowed to personally attack and attempt to intimidate me. No steps were taken by the Chair to stop this.

Procedural flaws during the clause-by-clause process in the PCBE.

16. Members were limited to three minutes per clause to make submissions/comment. This was wholly inadequate especially in respect of clauses such as the definitions clause that contained many terms requiring definition. This hampered members' participation. I had thoroughly prepared various comments and submissions but was told by the Chair that there was a three-minute time limit and that this was aimed at me in particular. See Meeting of the PCBE 16 August 2023 @1:59:44, https://www.youtube.com/watch?v=iwGRWikLYTo&t=9360s.

17. The PCBE's unanimous decision to include ECD and online and hybrid education was ignored.

18. No proper matrix, or substitute document that served the same purpose as the matrix was provided to members. Mr. Bundy (Parliament) offered to produce such a matrix but the Chair saw this as purely "administrative". Parliamentary Legal Services' Adv. Ngema, stated that each committee sets its own procedures and refused to be drawn on whether the lack of a matrix or alternative document that provided detailed information to the committee would at that time present a procedural flaw. She alleged that "capacity" should be a factor. There was no basis in fact, other than the perceived political needs of the then-ruling party, for haste in processing the Bill. There was, therefore ample time to process the Bill in a constitutionally compliant fashion that took all submissions into account and that would have provided the members with the details of the public inputs that would allow them to apply their minds. My attempt to raise the issue and object was repeatedly stifled. It would appear that the last minute creation of a pseudo-matrix well after substantive deliberations took place was done when it was realised that the complete absence of a matrix would doom the bill. This late appearance of the matrix is in and of itself evidence that it was a procedural flaw to proceed with the clause-by clause deliberations without a matrix. When and what instructions and by whom led to the matrix finally being produced will no doubt be revealed in court proceedings should those prove necessary. See Meeting of the PCBE 16 August 2023 1:01:00 and following, https://www.youtube.com/watch?v=iwGRWikLYTo&t=9360s

19. During the clause-by-clause process, a variety of material administrative irregularities occurred. Resolutions taken by the committee were not included in the minutes and all items in the minutes were not reflected in the B-version of the Bill.

20. Failure to minute decisions: In respect of then Clause 39 introducing a new Section 59(A) I stated the following, " I want to make a proposal that after governing body, independent school or home schooling parent be inserted". After checking with the legal staff, and no objection being made by the committee, the Chair then stated "Agreed", however this change appears nowhere in the minutes or in the various subsequent versions of the Bill. See @7:00:55 Meeting of the PCBE 17 August 2023 https://www.youtube.com/watch?v=3da0kSzfl_o&t=23044s.

21. Failure to act on items included in the minutes: Hon. Nodada requested that a definition of meetings be added, this was agreed to by Mr. Ndlebe (DBE) (Meeting of the PCBE 16 August 20230, [@2:13:15 https://www.youtube.com/watch?v=iwGRWikLYTo&t=9360s] and in addition noted in the pseudo-matrix yet a definition of "meeting" does not appear in any subsequent version of the Bill.

22. An attempt was made to ignore approximately 9500 submissions. While these were eventually processed, no proper summary of the content was presented.

23. These flaws and errors led to opposition parties refusing to be bound by the process.

24. A majority was used to force the Bill through without regard to reason and fairness and with MPs acting with a closed mind to patent flaws.

25. The final Committee report was incomplete, biased and selective. It did not indicate that the majority of those making submissions had rejected the Bill.

Abuse of Committee Processes

26. When the Bill returned to the National Assembly for concurrence, on 15 May 2024 further abuses took place.

27. Opposition parties pointed out that the processes in Rules 311 and 312 of the National Assembly rules were not being followed. Parliamentary Legal Services argued that these could be varied in terms of Rule 4. The opposition parties made it clear that while this was the case there was no motion before the house to suspend the rules and that therefore they were in force.

28. When it transpired that the meeting was going to be used to compile the report while the meeting was in progress, the DA pointed out that this had been attempted in the Finance portfolio committee and that Parliamentary Legal Services, there, had opined that this was irregular. The chair of that committee concurred with the opinion of Parliamentary Legal Services. Adv. Ngema should have then consulted with her colleagues or superiors and not ventured to render an opinion on the matter to the effect that the meeting could proceed that may have materially misdirected the members of the committee.

29. The meeting as placed on the ATC did not have as its purpose the consideration of a report but "Consideration of and Concurrence with Amendments by the National Council of Provinces (NCOP) to the Basic Education Laws Amendment Bill [B 2D – 2022]". If the purpose of the meeting was to consider a draft report the report should have been provided prior to the meeting. The draft report needed to be compiled, reviewed and a final report completed and adopted. My repeated attempts to raise this matter were stifled and the Chair misunderstood that my point did not relate to the whether the meeting was placed on the ATC but whether the description in the notice adequately described the purpose of the meeting. If the meeting was going to consider a report this fact should have been included in the ATC. Even if the description of the meeting is to be taken to include the adoption of a report then at very least a draft report should have been sent prior to the meeting. As a member it was not clear when the meeting began that we were going to be expected to draft and adopt a report.

30. The issues raised in the ACDP letter to the committee were not treated with the requisite attention, in particular by Parliamentary Legal Services. Adv. Ngema failed to act with the requisite knowledge and required independence when advising the committee. The members were, therefore, misdirected.

31. It is evident from a careful listening to the recording of the meeting that Adv. Ngema was not aware that the D-version of the Bill contained an error. It was only when I pointed this out that the matter came to her attention. While it is understandable that mistakes will be made, the fact that it was necessary to repeatedly point this out before a patent flaw was recognised, is evidence that my letter was not carefully considered.

32. Furthermore, her answers betrayed that she was not aware of certain facts but answering off the cuff without taking the time to check her facts and consult with colleagues. One example relates to the discussion of “just cause”. It was noted previously in the clause-by-clause deliberations that the term “just cause” was a term that was legally imprecise and only appeared in our labour law and was not apposite in education law. For that reason it was agreed, during the clause-by-clause deliberations, by the Office of the Chief State Law Advisor that the term “just cause” be removed and a more apposite term added or just cause be redefined. This was not done as it transpired that the term appeared in so many other places in the Act that this change could not be made without changing it in a wide number of sections. Here again thoroughness gave way to undue haste. Subsequently, this was changed in one place by the NCOP, no doubt for the reasons set out above. Adv. Ngema, therefore, misdirected the committee when she stated that this was a term well known in law, as it is only a term used in labour law. What is more disturbing is that Adv. Ngema was party to the deliberations mentioned above.

33. Adv. Ngema refused to provide a written opinion despite being requested to do so. This did not allow the committee members to understand, consider and apply their minds to the matters in dispute. Adv. Ngema could, on occasion, not point to rules that she referred to. At this point she should have either, at a minimum asked, for the opportunity to consult the rules. Even this was not done and this demonstrated gross

negligence and the Chair should have not proceeded without an opinion being presented. Once again, undue haste replaced thoroughness.

34. When it was pointed out that the D-version of the Bill had an error, as is explained above, this was dismissed as a mere clerical error that could be fixed by clerks. Even if this was the case, members had a right and duty to confirm what the correct manner was to address this problem. The material issue was whether the version passed by the NCOP containing the error could merely be addressed by a clerk changing the details of a passed Bill. Even if it is correct that this change could be made, this needed to be explained with reference to guidelines, procedures and rules to allow the members to apply their minds. Here again members failed to apply their minds and willingly accepted explanations that should have been questioned.

35. Discussion and debate was stifled and members were removed from the meeting arbitrarily and in violation of the rules of Parliament. This may render the meeting itself procedurally flawed.

36. The Chair failed to follow proper order in obtaining concurrence. The concurrence was voted on and obtained prior to opposition parties being allowed to make comment on the reformulated clauses. This did not afford the opportunity for ANC members to apply their minds to points made by the opposition. The ANC members themselves did not appear to want to engage with the substance of the changes made. This is evidence of a lack of due diligence, failure to apply their minds and, at worst, closed-mindedness that gives rise to the suspicion that the ANC members were acting as mere ciphers of the executive.

37. Allowing objections after concurrence was too late.

38. Even if all of the procedural hurdles outlined above can be surmounted, the fundamental substantive point remains that the Speaker had a choice to refer the Bill directly to the house by placing it on the order paper or referring it to the committee. He was under no obligation to obtain a report or indeed refer the Bill back to the PCBE at all. By choosing to refer the Bill to the committee, it became a requirement that the committee produce a committee report and recommendation. This was no doubt due to the speaker noting the extent and complexity of the changes and therefore he wished a detailed report and recommendation from the committee to inform the members of the house to allow them to apply their minds.

39. While the committee and house had it within its power to shorten the required timelines, the requirement to prepare a considered report remained. This need for the members of the committee to have properly applied their minds and delivered a considered report arose precisely from the fact that the Speaker had referred the Bill to the committee for a report, something he need not have done.

40. I invite the President to review this meeting in its totality and determine if the President believes that the conduct of the committee was constitutional and will stand up to the scrutiny of the courts before he signs the Bill.

B: Rural Education and the Constitutionality of Clause 35

Achievements in Safeguarding Rural Schools

41. I have actively empowered key stakeholders in rural education and this resulted in a successful campaign for the suspension of school closures in the Western Cape. This suspension, upheld and renewed by the Western Cape Education Department in 2023, now faces potential threats from Clause 25 in the BELA Bill, which allows for easy school closures without providing reasons.

Legal and Constitutional Analysis of Clause 25

42. Clause 25 of the BELA Bill, introducing a new section 33(4), authorizes the Member of the Executive Council (MEC) to close primary schools with enrolments below 135 students and secondary schools below 200 students without needing to provide specific justifications. This provision undermines the constitutional guarantee of the right to basic education under Section 29 and the principles of just administrative action under Section 33 of the Constitution. By setting arbitrary thresholds, Clause 25 disregards equity and fails to provide a substantive basis for communities to challenge closures, effectively transforming the process into a formality rather than genuine engagement.

Implications for Rural Communities

43. The enactment of Clause 25 could lead to the closure of up to 3,000 rural schools, which would have profound repercussions on children, families, and local economies. The forced integration of students into larger, distant schools disrupts family life, impacts local economies, and raises significant concerns about the safety and logistics of transporting children to far-off schools. This scenario adversely affects the holistic development of children, as outlined in international frameworks such as the CRC and ICESCR.

Educational Outcomes

44. Transferring students to overcrowded schools often results in negative educational outcomes, including increased instances of violence, indiscipline, and teenage pregnancies, along with a lack of personalized attention. This transition also erodes community-specific cultural and educational values. Given the unique historical and socio-economic contexts of rural education, a one-size-fits-all policy that emphasizes administrative efficiency over educational quality and community well-being is inappropriate.

Balancing Rights and the Best Interests of the Child
Broad Impacts of Clause 25

45. Despite the importance of quality education, Clause 25 fails to consider its broader implications on children's development, respect for familial and cultural ties, and the socio-economic structures of rural communities. Arbitrary school closures, without substantial justification, undermines participatory democracy, centralizes decision-making, and diminishes the vital role of School Governing Bodies (SGBs), which are essential for ensuring the best interests of the child and fostering social cohesion.

Violation of Parental and Child Rights

46. The enforcement of school closures under Clause 25, without adequate consultation or consideration of local contexts, compromises the rights of both parents and children as outlined in Section 28(1)(b) of the Constitution. This intervention not only disrupts educational environments but also fragments the social fabric of communities, leading to greater social disintegration and weakening the foundational role of families in society.

Rights Limitation and Administrative Equity

47. According to Section 36 of the Constitution, any limitation of rights must be reasonable and justifiable in a democratic society. Clause 25 fails to meet this criterion, imposing excessive administrative burdens and neglecting less restrictive methods of delivering education. The state's obligation to uphold, protect, and fulfil all rights, including the right to education, necessitates a legislative framework that supports diverse and adaptable educational solutions.

Arbitrary Criteria for School Closures

48. Closing schools based on fixed enrolment thresholds without considering the unique needs and circumstances of each community represents an unjustifiable limitation of rights. Such an approach disregards the principle that educational access should be brought closer to children rather than forcing them into distant, unfamiliar educational settings.

Participatory Democracy and Administrative Justice

49. Clause 25 diminishes participatory democracy and undermines the rule of law by centralizing decision-making authority, thereby reducing transparency and accountability. Equitable educational practices require a nuanced approach that addresses the distinct needs of rural communities, rather than a uniform policy that may exacerbate existing inequalities.

Lack of Reasons – Promotion of Administrative Justice

50. The clause’s reliance on notification in the Provincial Gazette without requiring the MEC to provide substantial reasons for school closures undermines transparency and accountability. This lack of justification disregards the rights of affected communities to engage meaningfully in decisions impacting their children’s education and future prospects.

51. Section 33 of the Bill of Rights enshrines the right to just administrative action and the failure of the Bill to comply with the requirement in Section 33(2) that "Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons." is a clear violation of this right.

Recommendations for Amendments - Suggested Revisions by the Eastern Cape Delegation.

52. In response to the Eastern Cape delegation’s recommendation, the criteria for school closures should not be solely based on learner numbers. Removing the proposed Section 33(4) from the Bill would address the unconstitutional aspects of Clause 25,

ensuring equitable treatment for all schools. This adjustment would uphold the constitutional rights of children and communities, support a legislative process that respects democratic principles, and promote an educational system that is equitable and effective, particularly for those in vulnerable rural areas.

C: Clause 39

53. This clause has been rejected by the public throughout the public participation processes in all 9 provinces. Parents, and communities do not want their role as primary caregiver to be usurped by any authority, whether the Minister or public representatives, or educators at a school level in a matter that is life transforming for a child. The role of parents to provide guidance and support to their minor children in matters of medical treatment is paramount, and abortion is medical treatment as per the current government interpretation.

54. Clause 39 gives the Minister the power to issue regulations on the management of learner pregnancy. These regulations have as a framework the current policy, the Policy on the Prevention and Management of Learner Pregnancy. This Policy has the stated aim of providing sexual reproductive services to learners and where applicable abortion, without their parents knowing.

55. The turning of such a Policy into regulations plunges the family as the primary protector of our children into crisis. The following questions were raised in particular in the Port Elizabeth hearings:

    a. Who takes responsibility for adverse medical outcomes, and how is consent for abortion obtained where a child is in their formative years?
    b. What constitutes informed consent for a child?
    c. How is the role and right of parents to support their child impacted - a right that should be paramount in any situation or context, but especially where a medical intervention has long-term emotional and psychological impact on a girl child?

56. It was submitted that:
    a. Any health, medical or situation of a learner requiring medical treatment should never be done without the parents. Involving parents respects the social norms and values of family, parental authority and protects the best interests of the child.
    b. The right of children over 12 years to undergo medical procedures without parental consent, should not be at an educational institution's discretion since educational institutions do not have the skills or the mandate to manage health or medical related matters of learners at schools.
    c. Education at school relating to learner pregnancies should not violate learners' religious beliefs and the values of their families that they come from.
    d. Programmes, initiatives and curricula used at schools to address issues relating to the wellness, health or learner pregnancies at school should be done in consultation with parents, as the primary caregivers of children. In terms of South African law, the parent or guardian has primary custodial rights and

duties. For example, a school or its functionaries do not even factor into this equation in the children's court or child custody battles. The DBE, its minister or its functionaries, should not usurp parental authority or guardianship of children by default simply because the child goes to school and by so doing violate the parent(s) or guardian(s) authority over that child.

e. Health and medical related matters concerning learners should not become a legislated function of a school or the DBE. This cannot be worked around by saying all that is being done by the school is to refer or advise. Referral for abortion is a medical act.
f. The "Policy on the Prevention and Management of Learner Pregnancy" is dangerous for our children and for parents and goes directly against religious and cultural values.
g. This policy prohibits the school to disclose any medical treatment or procedure that a child was exposed to. This means that the school would be under no obligation to inform parents of medical procedures that the child underwent as a result of a referral by the school.

57. These issues were not addressed other than by the DBE stating they did not know what was in the draft regulations. The committee did not consider or apply their minds to these questions, yet the committee adopted Clause 39 without having a comprehensive knowledge of the matter. The only change was that regulations will be tabled in Parliament. In this respect the former Minister of Basic Education failed to table the Policy on the Prevention and Management of Learner Pregnancy in the house for a year, a National Education Policy Act requirement. After tabling, this Policy has not been discussed in the PCBE, no report completed and no debate in the house. The inclusion of a tabling provision does not go to the heart of the problem nor address the public's concerns.

58. Teenage pregnancy needs a holistic solution. Such a solution was proposed to the NCOP in an ACDP submission. It was not considered, which again is a breach of the requirement for public participation. While there is no reason that the ACDP submission should be treated in a manner different from the submissions of the general public and other organisations, there is no evidence it was included in a matrix and it appears to have been dismissed out of hand. The issue of Clause 39 was a central issue raised by the public yet here again the views of the public are treated as "wrong" and prematurely dismissed.

59. Clause 39 is prima facie a violation of the African Charter on the Rights and Welfare of the Child that enjoins the State to protect and advance the wellbeing of the family. The actions of anyone in a school system referring a learner for sexual reproductive services, contraceptive and abortions where necessary, violates the principle of familial care, a right prior to that of the State. This undermines parental authority which has a negative impact on the family.

60. In view of the above Clause 39 is over-broad and is an effective abdication rather than delegation of the legislative responsibility to the Minister. Parliament should only delegate carefully circumscribed authority to the Minister, if at all. To sign the Bill

with this clause included in its current form will make the Bill subject to constitutional challenge.

D: Conclusion

61. The constitution of the current government gives great hope that the mistakes of the previous administration are not repeated. The process of law-making should give meaning to the principles of participatory democracy, and the mandate of Parliament to listen to the public and engage meaningfully with their comment when making laws.

62. The BELA Bill process in committee failed to uphold these principles, and to even give recognition to the right of members of Parliament to exercise oversight and due diligence in processes of parliament. There has been a flagrant disregard for both the principles of democracy and the right of meaningful engagement of both the public and opposition members of Parliament.

63. I hereby implore that you do not sign the BELA Bill into law and to return it to Parliament for further consultation and revision.

64. By referring the Bill back to parliament, parliament will have the opportunity to conduct a just process that could restore the confidence of parents, communities and stakeholders whose views of Parliament has been negatively affected by the flawed BELA Bill process.

Thank you for your consideration.

Kind Regards,