



# Pestalozzi Trust (IT6377/98)

the legal defence fund for home and community-based education  
die regsfonds vir tuis- en gemeenskapsonderwys

---

PO Box/Posbus 12332 Queenswood Pretoria 0121 RSA Tel: +27 12 330 1337 Faks/ Fax: +27 86 680 7985

E-mail/E-pos: [defensor@pestalozzi.org](mailto:defensor@pestalozzi.org) Web: <https://www.pestalozzi.org>

23 April 2024

Mr N. A. Masondo (MP)  
Chairperson of the National Council of Provinces  
Mr EM Nchabeleng (MP)  
Chairperson: Select Committee on Education and Technology, Sports, Arts and Culture  
Parliament of South Africa  
PO Box 15  
CAPE TOWN

CC:

## **NCOP**

*Mr A.J Nyambi (MP), House Chairperson for Committees.*

*Ms W. Ngwenya (MP), House Chairperson for Oversight and Institutional Support.*

## **Provinces**

*Eastern Cape: Mr M Saziswa (MPL) Chairperson: Portfolio Committee on Education*

*Free State: Mr M Buti (MPL) Chairperson: Education, Health & Social Services*

*Gauteng: Mr. TB Munyai (MPL) Chairperson: Portfolio Committee on Education*

*Kwa-Zulu Natal: Mr SM Sonjica (MPL) Chairperson: Portfolio Committee on Education*

*Limpopo: Ms SV Mathye (MPL) Chairperson: Select Committee on Education and Recreation*

*Mpumalanga: Mr GP Mashego (MPL) Chairperson: Portfolio Committee on Education, Culture, Sports & Recreation*

*Northern Cape: Mr G. van Staden (MPL) Chairperson: Portfolio Committee: Education, Sport, Arts and Culture*

*North West: Mr DK Mataboge (MPL) Chairperson: Portfolio Committee on Education, Arts, Culture, Sports and Recreation*

*Western Cape: Ms DM Baartman (MPP) Chairperson: Select Committee on Education*

## **Speakers**

*Eastern Cape: Ms H.M. Sauls-August (MPL) Speaker*

*Free State: Ms N.Sifuba (MPL) Speaker*

*Gauteng: Ms. Lentheng Mekwe (MPL) Speaker of the Legislature*

*Kwa-Zulu Natal: Ms N.N. Boyce (MPL) Speaker*

*Limpopo: Ms SV Mathye (MPL) Speaker*

*Mpumalanga: Ms M.C. Masilela (MPL) Speaker*

*Northern Cape: Ms N. Klaaste (MPL) Speaker*

*North West: Ms S. Dantjie (MPL) Speaker*

*Western Cape: Mr D.G. Mitchell (MPL) Speaker*



Dear Honorable Messrs. Masondo and Nchabeleng

**IN RE: WRITTEN CORRESPONDENCE TO SELECT COMMITTEE ON EDUCATION AND TECHNOLOGY, SPORTS, ARTS AND CULTURE – NCOP**

**INTRODUCTION**

1. The Select Committee on Education And Technology, Sports, Arts And Culture of the National Council of Provinces (“**NCOP**”) is scheduled to *inter alia* consider and adopt the C-list of the BELA Bill [B2B- 2022] (“**BELA Bill**”) on Wednesday 24 April 2024 and to consider final mandates and adopt the Committee Report on the BELA Bill [B2B-2022] on Thursday, 02 May 2024.
2. This correspondence is directed to the Select Committee and intended for its consideration in advance of those scheduled meetings.
3. This correspondence is made on behalf of the Pestalozzi Trust (“**Trust**”). The Trust has as its objective the protection of the interests of South African homeschoolers, an extensive community that incorporates parents and children, tutors, curriculum providers, sporting, cultural and religious groups.
4. The Trust is assisted by its attorneys and external legal counsel in preparation of this letter. The letter is intended to highlight certain high-level concerns which arise from the public participation processes which have been embarked upon within the provinces, and the manner in which the ‘clause by clause’ meetings of 17 and 18 April were conducted.
5. The Trust seeks in this letter to highlight the inadequacies of the process followed, and the failure of the NCOP (through the work of the provinces) to comply with the requirements of section 72(1) of the Constitution, which requires the NCOP to (a) facilitate public involvement in the legislative and other processes of the Council and its committees; and to (b) conduct its business in an open manner. The Trust highlights that the duty to facilitate public involvement requires legislatures to provide citizens with a meaningful opportunity to be heard in the making of the law that will govern them.
6. Parliament is to “conduct its business in an open manner, and hold its sittings, and those of its committees, in public”. We contend that this “openness” requires that the public is able to identify its representatives when they speak and when they vote. Within the NCOP, it is important that the public can identify how their province is voting. The Trust has observed the public participation meetings and processes that have been undertaken in provinces around the country and in the NCOP. The Trust has dispatched monitors and observers to take detailed notes of meetings and to report back on the adequacy of the processes which have been adopted. The purpose of this letter is not to deal extensively with that evidence, or to provide a province-by-province account, but to



note and highlight what the Trust regards as egregious errors in the processes to date. Further details of those allegations appear in the attached appendix for more detailed consideration, along with reference to supporting evidence.

7. The letter below addresses, first, the failures the Trust has identified in respect of the meetings which have taken place in Provinces around the country; and thereafter the failures in respect of the NCOP processes. Under the final heading “Observations, conclusions and recommendations”, the Trust proposes how the matter may be taken forward.
8. The Trust appreciates the Standing Committee’s time and attention, including in respect of the matters it addresses in this letter.

## **FAILURES IN RESPECT OF THE PUBLIC MEETINGS CONDUCTED IN THE PROVINCES**

### **Pre-public meeting “education” entirely inadequate**

9. While each of the nine Provinces has embarked upon public hearings to discuss the BELA Bill, no or inadequate “pre-hearing education” (i.e. explanatory / educational sessions to explain the content of the BELA Bill in advance of the public participation hearings) has taken place.
10. The Trust is aware of only one such pre-hearing having been held in the province of Gauteng with appropriate and adequate notice being given to the public of the nature and scope of the meeting. According to the Trust’s information, this pre-hearing in Gauteng was the one meeting advertised to the general public as a public information meeting on the BELA Bill.
11. Where “educational” meetings were held in other provinces, in advance of the public hearing, the nature of such sessions was not conveyed and notice of such meetings was not shared publicly (other than informally through schools and unions).
12. This channel of communication prejudices those who do not attend schools (such as the home educated in whose interests the Trust acts). The result was that in the instances that such meetings were held at all in provinces outside Gauteng, many parents and the general public were not aware of the meetings or what they were for.
13. The importance of such meetings cannot be underestimated, given the far-reaching implications of the Bill on education in South Africa - including for home educators. The failure to take appropriate steps to provide notice of the meetings to persons who do not attend schools is a fundamental failure of process in relation to the Bills. The public cannot meaningfully engage on issues they do not understand or have not had explained to them.

14. Instead, it appears that members of the public had been encouraged to attend public hearings without being told what the meetings were about at all, or made aware of the implications of the Bill. This is borne out by the fact that at many public meetings, attending members of the public were under the impression that the meetings were related to more general grievances pertaining to education in South Africa and had no knowledge of the BELA Bill.

### **Inadequate notice of public hearings, venues changed without notice**

15. A further concern is one related to inadequate notice of public meetings. The notice of public hearings was, in a number of provinces, not widely advertised and where notice was provided, it was primarily through schools, party political structures and teachers' unions rather than through channels to which the general public (and in particular home educators) had access. It has been explained above why the use of these limited communication channels are prejudicial to homeschoolers.

16. See annexure "A" for a list of examples of lack of wide notice of hearings and last-minute venue changes of which the Trust is aware.

### **Access to public hearings unreasonably impeded / not reasonably facilitated**

17. A further concern relates to the accessibility of such public hearings.

18. There are various examples of hearings being convened in remote and inaccessible locations and inadequate venues being made available to host meetings.

19. However, the most egregious oversight is the refusal to conduct the hearings in hybrid format (i.e. in person and online), despite requests being made for this (all such requests were refused, save in respect of the Western Cape, where two hybrid format hearings were provided).

20. The refusal in the remaining provinces to hold any public hearings online, or at least in hybrid format, is obviously unreasonable and exclusionary. It would have cost almost nothing and inconvenienced no party to screen the proceedings on a virtual platform and enable participation from attendees virtually – only a laptop and an internet connection would have been required, and hundreds or thousands of interested participants would have been enabled to "attend" virtually.

21. Failure to accommodate virtual attendees is plainly unreasonable. Those impacted by the legislation are likely to be children and parents of young children, many of whom are unable to travel long distances, pay for transport, and stay out for lengthy periods to attend public hearings. But anyone with a smartphone and data, or a Wifi connection

(including in public spaces such as libraries, where these are provided) would have been able to participate in the meetings, had online attendance been accommodated.

22. It is unfathomable that in the virtual age, post-COVID-19, the doors of participation were closed to those who wished to engage through their laptops or cellphones. This is compounded by the fact that recordings of the meetings were not made publicly available in the bulk of the provinces.
23. Private recordings of the meeting (while allowed or even encouraged in some provinces like Mpumalanga and KZN), were prohibited in others (with physical force being threatened to force already set-up recording apparatus to be removed e.g. in Limpopo at the hearing in Bela-Bela on 8 February 2024). This conduct fatally undermines the openness and transparency of the process, with the obvious result that this could result in irregularities being hidden and defeating one of the objects of public engagement (enabling the public to obtain an understanding of the BELA Bill and its content). Recordings make it possible for the public to self-educate on the BELA Bill prior to making written submissions.
24. The failure to accommodate virtual hearings was exacerbated in provinces where the accessibility of the meeting was seriously limited, such as, for example, in the Free State. The hearing locations in this province were remote and all were held outside of large towns or city centers. (The only meeting near a large city was just over 50 kms outside Bloemfontein). This too was unreasonable: meetings both within and outside city hubs were required, and alternatively holding virtual and hybrid meetings (as was requested, but not accommodated) should have been organised.

### **Meaningful participation in public hearings prevented**

25. A further concern relates to how in-person public meetings were conducted.
  - 25.1. Firstly, insufficient copies of the BELA Bill were distributed to those in attendance, and copies of the South African Schools Act were not available at all. The effect of this is that the discussion about amendments to the Act was impossible to follow. The amendments to an act cannot sensibly be understood – and thus commented upon – in the absence of copies of both the principal act and the amendment act being provided.
  - 25.2. Secondly, the copies of the Bill which were available were available in limited languages. See examples in annexure “B”. Naturally this makes the engagements impossible to follow for those whose languages have not been catered for.

25.3. Fourthly, the public were encouraged – directly and indirectly - not to complain, to limit the scope of comment, to only comment on matters mentioned by the Department of Basic Education (“**DBE**”), were interrupted by Chairpersons, and heckled and disrupted for making unpopular submissions. In various public meetings, the public were scoffed at or criticized for their comments. See the examples and evidence of this at Annexure “C”. These conditions do not facilitate meaningful engagement by those in attendance.

25.4. Fifthly, at the hearings the public was misled on key issues. For example, at many meetings it was misstated by the DBE official making the explanatory presentation that the Minister does not make regulations at all and the public were told that the BELA Bill does not concern school curriculums. The examples and evidence of this is apparent from annexure “D”. These are fundamental misstatements about the content and effect of the laws under discussion which had the potential to mislead the public.

26. All of the above did not reasonably facilitate meaningful participation at such meetings. These were, unfortunately, not random incidents but generally reflective of the manner in which the meetings took place.

### **Failure to hear affected interest groups**

27. There was a deliberate decision to exclude affected voices from being heard.

28. Those impacted seriously and directly by the BELA Bill are children. They are a special interest group. Not only was no meaningful effort made to hear from children, but they were actively precluded from making submissions.

29. In Gauteng, on 28 February 2024 at the Thembisa public hearing, it was indicated that submissions by children were not allowed. In this regard, Chair (Hon. TB Munyai) stated at the end of the meeting that he spoke to the State Law advisor and received advice that **children under 18 cannot make submissions**. Evidence of this (through a recording which is available) is tendered.

30. Given the content of the Bill, and its effect on children, this was a fundamental misdirection which vitiated the fairness of the proceedings.

## **FAILURES AT NCOP LEVEL**

### **The NCOP did not ensure public hearings were conducted fairly**

31. It is clear that there have been significant differences in how different provinces have conducted public hearings. The NCOP has placed sole and exclusive reliance on the

public hearings conducted by the Provinces. The NCOP did not conduct its own public hearings within the Provinces.

32. As a result, there has been little uniformity between the Provinces as to the form and protocols applicable to the public meetings. The NCOP appears to have failed to issue any guidance or instructions on the public meeting process such as to facilitate uniformity and avoid arbitrariness and if it has done so it has not been universally implemented. While the NCOP is in principle permitted to delegate to the Provinces to conduct hearings it must ensure fair and equal treatment of all members of the public in order to protect its own processes. It failed to do so in this instance.

### **Procedural flaws in the conduct of the NCOP Clause-by-Clause meeting - 17/18 April.**

33. The NCOP's clause-by-clause consideration of the BELA bill took place on a virtual platform.

34. The Trust welcomes the use of virtual and hybrid meetings, as these promote public participation and access. These must however be suitable to the occasion and conducted subject to appropriate protocols. Parliament has been holding virtual meetings for nearly five years and there should, by now, be clear protocols.

35. It is clear that no such protocols were in existence, or if in existence, were not applied at the NCOP's clause-by-clause meeting.

36. There was a clear lack of proper procedures provided for the meeting. Committee Members attended remotely but due to lack of protocols (or adherence thereto) at such meetings, the following obvious problems arose:

36.1. Firstly, there appears to be serious doubt that members were applying their minds during these meetings. Members' cameras remained off throughout the meeting. It was not always clear on behalf of which province a member was speaking and some Members' cameras remained off while voting.

36.2. Notably, some Member's names were not even displayed.

36.3. Even the Chair was unsure at times who was speaking and who was voting.

36.4. It was unclear if the meeting was quorate at all times (given that members joined and left the meeting at will and without notice). Even the Chair did not appear at all times to be aware who was present. He repeatedly asks if certain provinces are present.

36.5. Members did not appear to participate for substantial parts of the proceedings and appeared to be inattentive to proceedings. Some appeared (from background noise) to be in the car or engaged in other activities.

37. Plainly all of the above precludes a proper consideration of the matter by such Members. It is unclear how a member who should have access to a detailed matrix and supporting papers can participate in an attentive fashion if they are not in a suitable location. This is confirmed by the Chair repeatedly complaining that members were inattentive and because members made comments and voted on the incorrect clauses. It also undermines the openness and transparency of the process followed.

38. Plainly, the format that was used was not an appropriate format for the clause-by-clause deliberations in the NCOP. The virtual format - where members had their cameras off and certain names were not displayed - was not conducive to fair procedure.

39. By comparison, the Portfolio Committee on Basic Education in the National Assembly organized a 3 to 4 day in-person meeting to perform the same work.

#### **Public comment not engaged with in the NCOP Clause-by-Clause meeting**

40. Public comment was at best noted and was not engaged with in a meaningful and accurate fashion at the NCOP Clause by Clause meeting.

41. In general, there was disproportionate weight placed on the views and submissions of the national DBE in the NCOP: while the DBE was invited to comment to support statements made by members rather than provide objective comment, the DBE's views were not interrogated and questioned even when statements that were made were incorrect and this was or should have been within the knowledge of the members.

#### **The position and submissions of the Trust misrepresented before the Select Committee**

42. Advocate Ngema, Parliamentary Legal Services, stated that the Trust proposal submitted to the Select Committee on 31 January 2024 was "substantially the same" as the Bela Bill. This was fundamentally to misstate the position of the Trust and render nugatory its submission.

43. There is a key distinction between the two, which had been highlighted before the committee in an oral submission on 7 March 2024, during public hearings in the provinces and in written submissions both to the provinces and to the NCOP.

44. Members appear to have proceeded under the misapprehension that the Trust's proposal and the BELA Bill were in essence the same and therefore that many



homeschoolers supported the Bill. This was so even though the vast majority, if not all, in the public hearings rejected it. The Select Committee proceeded to discuss and vote on Clause 35 under this misapprehension. I refer in this regard to annexure “E” to set out how the statements made to the Committee do not accord with the actual submission of the Pestalozzi Trust.

45. Again, this fundamental misrepresentation fatally undermines the Bill: the NCOP thought that it was adopting a Bill with provisions *supported* by home educators in South Africa; but in fact the opposite was true.

### **Engagement with home educators on applicable home education clauses**

46. During the Clause-by-Clause reading, Hon. Christians proposed that Clause 35 be struck in its entirety due to lack of research on home education and lack of meaningful engagement with the home schooling community. The Trust supports this proposal.

47. The Chair rejected this proposal out of hand. The Chair took the view that extensive consultation had occurred and called on Mr. Ndlebe to substantiate this view (demonstrating a partisan view by the Chair, as it is clear that objective input should have been sought, not a defence by Mr. Ndlebe).

48. Mr. Ndlebe stated that DBE had engaged in extensive consultation, but this is entirely incorrect and reliance appears to have been placed on consultations which have nothing to do with the BELA Bill. I refer in this regard to annexure “F” to explain the basis of the “consultation” that had taken place and why the suggestion that there has been engagement was entirely contrived.

### **False sense of urgency**

49. It is clear that the process of public engagement has been pursued with undue haste and a false sense of urgency.

49.1. As dealt with above, public hearings were hastily organised and were not rescheduled when venues were not available.

49.2. The NA and the NCOP have processed the BELA Bill with undue haste even though there is no urgency. The DBE has been working on the Bill since 2013 but the final stages of the BELA Bill have been rushed in a manner which overlooks proper public participation.

49.3. The BELA Bill was only introduced to Parliament two years ago (a relatively short period of time for the public participation process, particularly in respect of legislation of this magnitude and importance).

- 49.4. The question of home education is an important one within our constitutional democracy, and raises sensitive and nuanced issues. The issues require proper consultation, consideration of the issue, including from the children affected by the homeschooling clauses, in consideration of the best interests of the child standard in section 28 of the Constitution.
- 49.5. Legal staff have not had time to provide detailed and comprehensive guidance to the Select Committee in the NCOP. If they had done so and considered the issue of home schooling and children's best interests, it would have been clear that insufficient regard has been paid to these issues.

## **OBSERVATIONS, CONCLUSION AND RECOMMENDATION**

50. The Trust continues to engage in the spirit of cooperation and openness.
51. Unfortunately, the processes to date suffer certain irredeemable defects. These impact the reasonableness of the process as well as the perception of the public that the NCOP is engaging and acting reasonably.
52. The Trust accordingly recommends that it is not appropriate, nor will it be lawful in the circumstances, to accept and vote on the C-version of BELA Bill or to consider the Final Committee Report and consider Final Mandates from the Provinces with respect to their voting directions on the BELA Bill.
53. The Trust recommends a more cautious and considered approach, in which the NCOP suspends the present proceedings.
54. The NCOP might wish to explore the concerns which have been raised above, in order to undertake an investigation into the defects and occurrences and to remedy those process defects before taking further steps. Sufficient easily accessible evidence is placed before the Committee (primarily publicly available video recordings) in this correspondence to allow the Committee to ascertain the factual basis for enough of the claims made above to be checked within a few days.
55. Should there be aspects of the BELA Bill that are urgent, these could be passed and non-urgent clauses in the BELA Bill (such as the contentious home education clause) be removed for more detailed consideration.



## **ANNEXURES TO PESTALOZZI TRUST LETTER TO NCOP**

### **ANNEXURE A**

1. For example:

- 1.1. In the Free State, in Parys (15/02), the venue was changed at short notice; and in Bethulie/Smithfield (22/02), the venue was changed at extremely short notice. Members of the public went to the old venue and then had to drive to another town. Others were not able to do so and couldn't attend the public hearing.
- 1.2. The Randfontein meeting was at a different venue than published. Members of the public went to the published venue and were unable to attend.
- 1.3. In Mpumalanga, notice of the first round of meetings was not widely published in newspapers. Only one advert was placed in one newspaper on 22/11/2023. This newspaper only prints 9999 copies. The first public hearing took place on 23/11/2023. The legislature advised that the municipalities in which each hearing took place must announce the public hearings to the residents. The only other notices the Pestalozzi Trust is aware of were sent to FEDSAS and a number of other educator organisations. Notice was not in general given to the general public. When a second round of hearings were conducted these were a significant distance from the location of the first hearings, denying members of the public nearer the first set of venues the opportunity to make submissions.
- 1.4. In the Northern Cape, De Aar (22/02), the venue was changed on the day of the meeting. Members of the public were sent from venue to venue as no-one apparently knew which venue was the correct venue.

## ANNEXURE B

### 1.1. For example,

1.1.1. At the public meeting at Alice (03/06), there was no translation into any other languages and most of the meeting was conducted in isiXhosa.

1.1.2. In the Western Cape: Copies of SASA were not available. The public struggles to understand the amendments if the primary Act is not provided. The Bill was not available in any language other than English

1.2. The manner in which the meetings were conducted drowned out the voices of the public. Lengthy presentations were made by officials, who drowned and squeezed out the chance for attendees to have their say as they had come to do. Many members of the public who wished to make submissions were not able to make any submissions, and they were instead pressured to instead put in written submissions. For example:

1.2.1. In the Eastern Cape, at the public hearing convened for Addo (03/06), there was extremely limited public participation: only 7 members of the public got to make submissions and officials spoke for a lengthy period at the beginning. Many people left before the submissions began. The same was true of the public meeting held at Alice (03/06), where fewer than 8 people spoke and where officials spoke for a long time.

1.2.2. In KZN, Ixopo (13/02), there was extremely limited time for public comment at the meeting. Only 8 members of the public were allowed to make submissions and the public was only allowed to “seek clarities” and not to give their views, otherwise they would be “cut”. @1:30:00 [Public Hearing on the Basic Education Laws Amendment \(BELA\) Bill,2022, Peace Initiative Hall, Ixo...](#) The public was forced to make written submissions. The same was true in Dundee (02/02), where there was limited public participation - only 13 or 14 members of the public made submissions. Explanation of the Bill and other formalities took more than 100 mins out of the 166 total minutes. See <https://www.youtube.com/live/wCebYWeBixw?si=pwwKAqBGm-qP0GMn> and access was denied on a selective basis - A family who arrived late was denied access. SADTU members who arrived late were given access.

## ANNEXURE C

1.1 For example, in Randfontein - (26/02), the public was intimidated and stifled.

- The public was warned: “don't bring into the bill when the bill is not saying that”.
- These are concerns on the regulations on the management of learner pregnancy that in the DBE's opinion do not touch on the Bill. Members of the public held different opinions on what the consequences of the clause would be. The DBE tried to stifle these views.
  - Mr Ndlebe @53:20 [Inputs on Basic Education Laws Amendment Bill of 2022 \(Randfontein\)](#)
  - Hon. Munyai, Chair, styles this a barrage of propaganda to mislead society and states that if the public speak on matters that are not in the Bill (in the opinion of the Chair) they will be stopped.. @54:24 and @54:40 - [Inputs on Basic Education Laws Amendment Bill of 2022 \(Randfontein\)](#)

1.1.1 For example, in Limpopo, Polokwane (06/02) input was suppressed - It was stated that this is not a complaining session. Indicating that members of the public had not been properly prepared or informed. In Bela Bela (07/02) Chair says speakers may not reject the whole Bill but may only mention specific clauses they reject.

1.1.2 For example, in North-West, Potchefstroom (02/02), there was an artificially imposed limitation on input – the hearing was told they are only allowed to speak about what DBE presented. Members who wished to speak about cottage schools were told they were not allowed to speak, despite Clause 33 increasing the penalty for running an unregistered independent school.

## ANNEXURE D

### 1.1.

- 1.1.1. “The Minister doesn’t write any regulations” - Mr.Ndlebe @52:45  
<https://www.youtube.com/watch?v=0SCcX2nR1ps>
- 1.1.2. Mr Ndlebe restated this in the Western Cape Provincial Parliament’s Select Committee’s Clause-by-Clause deliberations and was corrected by the Chair of that meeting. @01:18:10  
[Standing Committee on Education, 15 April 2024, 07:00](#)
- 1.1.3. This misstatement was repeated again before the NCOP Select Committee a few days later. 04:03:15 [Select Committee on Education and Technology, Sport, Arts and Culture, 18 April 2024](#)
- 1.1.4. The Committee is misled here. Mr Ndlebe is not stopped and corrected by the legal experts present.

### 1.2. Another misrepresentation occurred in the Western Cape:

- 1.2.1. A DBE official states that the BELA Bill is not about curriculum. @00:29:00 [Public hearing on the Basic Education Laws Amendment Bill \(afternoon session\), 4 April 2024, 15:00](#)
- 1.2.2. While this statement may primarily be a general statement indicating that details of the curriculum are not going to be discussed, the statement is misleading and especially so in the context.
- 1.2.3. Mr. Ndlebe (DBE) has promised freedom of curriculum choice in the NA and in the NCOP provincial public hearing process. Home school organizations and individual homeschoolers have all asked for this to be made explicit in a freedom of curriculum and assessment clause. They have done so before the committee, during public hearings in the provinces and in written submissions both to the provinces and to the NCOP itself.
- 1.2.4. The DBE contradicts its statement about the BELA Bill not being about curriculum by then addressing the issue of curriculum in its comments @01:09:10. [Public hearing on the Basic Education Laws Amendment Bill \(afternoon session\), 4 April 2024, 15:00](#)
- 1.2.5. This creates confusion and, in all likelihood, led to some members of the public not addressing curriculum issues or if addressed, not doing so in detail, in case they were told to not address that issue, as curriculum is not in the Bill. Yet despite these calls the fact that curriculum was in the Bill was not mentioned; these misstatements were repeated at almost each meeting across the country and even by the final meetings in Cape Town officials did not correct them.

## ANNEXURE E

1. Differences between the BELA Bill and the Pestalozzi Proposal are misrepresented in that:
  - 1.1. @1:39:49 Ms Ngema asks how the Pestalozzi Proposal differs from the Bill “How does this differ from what the Bill ... does” and concludes and demonstrates a slide that suggests that the differences are minimal.
  - 1.2. The Pestalozzi Trust proposal reads as follows:

*“Section 51. Registration of learner for education at home.—*

    - 1) *If the parent of a learner who is subject to compulsory attendance as contemplated in section 3(1) chooses to educate the learner at home, such parent must register the learner to receive home education with the Head of Department.*
    - 2) *The Head of Department must approve the application and register the learner as contemplated in subsection (1) if the parent undertakes to:*
      - i. *Ensure that home education is in the best interest of the child.*
      - ii. *Ensure that the standards to be maintained will not be inferior to the standards in comparable public schools.*
      - iii. *Provide evidence of learning or arrange appropriate assessments for submission to the Department, if there is reason to believe that the education being received by the learner is of an inferior standard to that in comparable public schools. The Head of Department may investigate cases if there is reason to believe that the education being received by the learner is of an inferior standard to that in comparable public schools.*
    - 4) *The Head of Department may advise and mediate to address cases where there is reason to believe that the education being received by the learner is of an inferior standard to that in comparable public schools.*
    - 5) *If the Head of Department has reason to believe that home education is not in the best interest of a child, he or she may approach a court to set aside the decision of the parents to choose home education.”*

This is markedly different, in that the essence of the Pestalozzi proposal is that *if the Head of Department (HOD) has reason to believe that home education is not in the interest of the learner, the HOD has to approach the court to set aside the decision of the parents to home educate. The proposal in addition states that the HOD **must** approve an application on the basis of a number of undertakings, i.e. the undertaking itself is sufficient to compel registration, in effect fettering the HOD’s discretion.* Under this proposal the HOD does not conduct any investigation into or exercise any discretion in approving an application if the undertakings have been made. The full details of the Pestalozzi Trust submission are also attached.
  - 1.3. While this position may not be agreed with, it cannot reasonably be presented as not materially different from what is contained in the Bill.

## ANNEXURE F

1. A statement was made in the NA that the DBE has engaged extensively. See @06:34:30 [https://www.youtube.com/watch?v=3da0kSzfl\\_o&t=23516s](https://www.youtube.com/watch?v=3da0kSzfl_o&t=23516s)
2. However, in an oral presentation before the NCOP Ms. Marietjie Ueckermann of the Cape Home Educators explained in detail that these engagements were on the implementation of the Policy on Home Education. @ 00:10:23 [https://static.pmg.org.za/240308scedu\\_part\\_1.mp3](https://static.pmg.org.za/240308scedu_part_1.mp3) (audio only). The presentation can be downloaded here: <https://pmg.org.za/committee-meeting/38552/> [
3. The agendas, minutes and recordings of these meetings will show that the intention of the meetings was not to discuss the BELA Bill.
4. Copies of the BELA Bill were not presented or distributed to the participants for discussion.
5. All of this was pointed out by Mrs Ueckermann during her submission.
6. Mr. Ndlebe responded to the CHE submission on 20/03, merely restating the flawed facts he presented to the NA. It was patently clear that he had not considered Mrs. Ueckermann's submission, as he did not rebut a single one of her allegations. @01:56:45 <https://www.youtube.com/watch?v=PTAw0bwBCx0&t=8056s>
7. Yet at the meeting on 18/04 this matter was canvassed by the Chair again as if it was novel and as if no submission had been made on this matter. @03:01:33 [Select Committee on Education and Technology, Sport, Arts and Culture, 18 April 2024](#)
8. Mr Ndlebe offered to forward his evidence of consultation, about meetings that were primarily on the implementation of the Policy on Home Education, and the Chair accepted and reminded him to do so, with no recollection or acknowledgement that the DBE version was in any way contested.
9. Once again, no member of the committee recalled the CHE submission or commented on it.
10. This is evidence of:
  - 10.1. The inattention of the Chair and the Committee or alternatively their closed-mindedness to the public's submissions.
  - 10.2. The willful or at very least inattentive and inaccurate direction of the committee by the DBE.
  - 10.3. The Chair and potentially the Committee's bias in using the DBE primarily as a crutch to support their opinions rather than as a purveyor of objective fact that should inform their deliberations.
  - 10.4. Striking evidence of the DBE's closed-mindedness and of how the DBE conducts public consultation and reacts to public submissions. This is now made evident in a public forum but is more so the case behind closed doors.
  - 10.5. The matter of the consultations with the DBE is important because the DBE has discarded the views of the public even before the Bill was presented in parliament.
  - 10.6. Parliament is therefore only considering the product of the DBE's biased internal process and sham public engagement.
  - 10.7. The mere fact of the homeschooling community's wholesale rejection of the Bill bears this out.