

Settlement Agreement between Solidarity (Applicant) and Minister of Basic Education (Respondent)

1. The parties acknowledge:

- 1.1. The role of the President in relation to the Basic Education Laws Amendment Act, 2024 (**BELA Act**) is to –
 - assent to; and
 - proclaim the commencement of the provisions of the Act;
- 1.2. The role of the Minister of Basic Education, as the primary custodian of the portfolio of Basic Education, is to ensure the proper implementation of the BELA Act, including: –
 - making recommendations to the President on the commencement arrangements for the Act; and
 - ensuring that the implementation of the Act is supported by appropriate national regulations, national norms and standards and/or national policies;
- 1.3. It has been accepted by our courts that section 101(2) of the Constitution of the Republic of South Africa, 1996 (**Constitution**) requires that a proclamation to put an Act into operation or parts thereof (which is a written decision) be counter-signed by the Cabinet member responsible for the implementation of that Act. The advice and recommendations of the Minister of Basic Education in this regard are therefore important; and
- 1.4. It is common cause that appropriate national regulations, national norms and standards and/or national policies are not yet finalised.

2. The parties also acknowledge that the Private Office of the President has confirmed:

- 2.1. That the expiration of the three-month period granted by the President for engagements between parties within the Government of National Unity (**GNU**) on sections 4 and 5 of the BELA Act will simply mark the end of the consultation period for these engagements. The date of 13 December 2024 is therefore not set as a commencement date for the BELA Act but rather the end of the period for consultation between the parties within the GNU. All engagements between these parties are in progress, including the GNU clearing house.

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a horizontal line and a small flourish at the end.

3. In the light of the above, the parties agree that:

- 3.1. Cultural or language communities have the right to institutions which reflect their cultural and/or linguistic identities, including single medium institutions, as envisaged in section 29(2), section 30 and section 31 of the Constitution;
- 3.2. In the context of basic education, every learner has a right to receive basic education in an official language of their choice, where reasonably practicable, taking into account considerations of practicability, equity and redress, as stipulated in section 29(2) of the Constitution. The parties also recognise that this right is progressively realisable;
- 3.3. Section 4 and section 5 of the BELA Act should be commenced on a phased-in basis, subject to the successful execution of the recommendations below;
- 3.4. The Minister of Basic Education will recommend to the President that specifically section 4(d) and (f) and 5(c) of the BELA Act should not be implemented whilst certain national policy, national regulations and national norms and standards are developed for these sections;
- 3.5. The Minister of Basic Education shall make the following recommendations to the President for his consideration:
 - 3.5.1. Sections 4(d) and (f) and section 5(c) of the BELA Act shall not be implemented until regulations have been made to require the Head of the Provincial Education Department (**PED**) to take the following additional factors into account before exercising his/her authority under the said sections:
 - 3.5.1.1. The interests of the community in the immediate vicinity of the public school;
 - 3.5.1.2. Any applicable feeder zones determined by provinces;
 - 3.5.1.3. Any required and/or existing plans by the relevant MEC for Education and his/her PED to provide for additional public schools in the education district in which the public school is located, as required in terms of section 3 of the South African Schools Act, 1996 (**SASA**); and
 - 3.5.1.4. The capacity of the public school, taking into account any applicable norms and standards;



3.5.2. Sections 4(d) and (f) and 5(c) of the BELA Act shall not be implemented until regulations have been made to provide greater legal clarity on when and how the authority of the Head of a PED to (a) depart from the admission policy of a public school; and (b) require a School Governing Body (**SGB**) to review their admission policy, may be exercised. These regulations shall ensure that the decision-making is rational, reasonable and informed by a clear process of consultation;

3.5.3. In the case of sections 4(d) and (f) of the BELA Act, such sections shall not be implemented until regulations have been made to ensure that:

3.5.3.1. a directive or similar instruction may not be issued by the Head of the PED to a SGB of a public school in terms of section 5 of SASA where the public school is operating at capacity in accordance with applicable norms and standards; and

3.5.3.2. a directive or similar instruction may not be used as a substitute for discharging the MEC for Education's obligation to provide sufficient schooling in the province;

3.5.4. Sections 4(d) and (f) and 5(c) of the BELA Act shall not be implemented until national norms and standards for the capacity of public schools and a revised national admission policy for ordinary public schools have been introduced;

3.5.5. Section 5(c) of the BELA Act shall not be implemented until regulations have been made to ensure that:

3.5.5.1. the factors to be considered by the Head of a PED when deciding whether to direct a public school to adopt a further language of instruction are aligned with the factors to be considered by the SGB when determining its language policy;

3.5.5.2. a directive or similar instruction may not be issued by the Head of the PED to a SGB of a public school in terms of section 6 of SASA where the public school is operating at capacity in accordance with applicable norms and standards;

3.5.5.3. a directive or similar instruction may not be used as a substitute for discharging the MEC for Education's obligation to provide sufficient schooling in the province;

3.5.5.4. there is a requirement on the Head of a PED to ensure that his/her decision to issue a directive is rationally connected to the representations made by the SGB and the public;



- 3.5.5.5. there are clear and comprehensive consultation mechanisms applicable to the consultations between the PED and the SGB and between the PED and the public in this regard;
- 3.5.5.6. the SGB must, upon notice, be provided with a reasonable opportunity to address any concerns relating to the compliance of its language policy with the Constitution and the requirements of SASA before a directive is issued; and
- 3.5.5.7. there is greater legal clarity on the minimum resources to be provided by the PED when such a directive is issued; and

3.5.6. Section 5(c) of the BELA Act shall not be implemented until the national norms and standards for language have been reviewed to ensure that they make adequate provision for mother tongue education.

- 3.6. The above recommendations shall be executed in a manner that is constitutionally and legally sound, as well as in a manner that maintains the carefully balanced powers and functions conferred on the national government, provincial governments and public schools represented through their SGBs.
- 3.7. Notable steps have been taken by the Minister of Basic Education and the Department of Basic Education to progressively realise mother tongue education, as contemplated in section 6 and section 29(2) of the Constitution. The Applicant shall contribute to ongoing efforts, as and where appropriate, to support the realisation of mother tongue education in all South African public schools, as contemplated by section 29(2) of the Constitution;
- 3.8. The parties shall maintain open lines of communication through which to engage with each other constructively on the progress made executing the abovementioned recommendations, periodically at intervals to be agreed to, and/or as and when appropriate;
- 3.9. The execution of the recommendations above does not exclude the possibility that there may be a need for future legislative amendments to section 4 and/or section 5 of the BELA Act, and that the abovementioned recommendations may inform any further processes undertaken to pursue legislative amendments to the BELA Act;



- 3.10. This agreement shall be presented by the Minister of Basic Education to the President for his consideration with a request that the President consider the recommendations presented by the Minister of Basic Education as solutions to the concerns raised by various stakeholders, including the Applicant, in respect of sections 4 and 5 of the BELA Act;
- 3.11. This agreement has the support of the Solidarity Movement and other roleplayers within the Afrikaans language community, including Afriforum, the Schools Support Centre and the Afrikaans Education Network (which represents various stakeholders in Afrikaans education);
- 3.12. It be proposed to NEDLAC that communication regarding the existence and content of this agreement shall be undertaken by NEDLAC in the first instance;
- 3.13. This agreement may be signed electronically by the parties;
- 3.14. This agreement may be executed in two counterparts, each of which shall be deemed to be an original but all of which, taken together, constitute one and the same agreement; and
- 3.15. A signed copy of this agreement delivered by e-mail or other electronic means shall be deemed to have the same effect as delivery of an original signed copy of this agreement.

SIGNED AT Cape Town on this 25 day of November 2024.



MS S GWARUBE MP
MINISTER OF BASIC EDUCATION

SIGNED AT Centurion on this 22nd day of November 2024.



DR DIRK HERMANN
SOLIDARITY TRADE UNION