



The FW de Klerk Foundation
CENTRE FOR CONSTITUTIONAL RIGHTS

Upholding South Africa's Constitutional Accord

Patron: The Hon Mr Justice Ian G Farlam

The Director- General
Department of Education
Private Bag X895
Pretoria
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For Attention Mr C Ledwaba

9 February 2010

Dear Sir

Re: Comments on the Basic Education Laws Amendment Bill, 2009

1. The Centre for Constitutional Rights (the Centre) is a non-profit organization dedicated to upholding the Constitution. To this end, the Centre seeks to promote the values, rights and principles in the Constitution; monitor developments, including draft legislation that might affect the Constitution; inform people and organizations of their constitutional rights; and, assist people and organizations claim their rights.
2. The Centre wishes to compliment the Department on the draft legislation as the Centre believes that not only is the draft legislation constitutionally compliant, but that 2 insertions specifically contribute to promoting our constitutional order. The relevant insertions are contained in clause 4, which provides for the insertion of section 6A (Non discrimination between official languages) and clause 9, which provides for the insertion of section 33A (Prohibition of non-educational activities during school time).

A UNIT OF THE FW DE KLERK FOUNDATION

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Nichola de Havilland (Director)

Panel of Advisors:

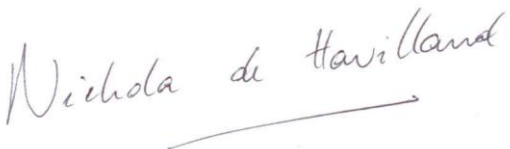
Paul Hoffman, Anthea Jeffery, Johan Kruger, Penuell Maduna, Johann Marais, Brian Spilg, Francois Venter, David Welsh, Marinus Wiechers

3. Section 6(4) of the Constitution mandates that all official languages must enjoy parity of esteem, whilst section 6(2) enjoins the state to take practical steps to elevate the status of all our indigenous languages. In view of our historical background where most of our indigenous languages were not respected and definitely not developed, this injunction is particularly important if real effect is to be given to the foundational values of equality and respect for human dignity, which underpin our constitutional democracy. The promotion of equality of the level at which languages are offered within the schooling system is especially important and the notion of non-discrimination embodied in clause 4 is thus welcomed.
4. However, the Centre is concerned that the present wording of the proposed section 6B does not give effect to that notion, in that languages cannot discriminate against each other. If parity is to be obtained then it is the choice of the language curriculum that must be made without discrimination.
5. The latest matriculation results once again bore testimony to the collapsed state of our schooling system. As a result, we are not producing the skilled people our economy so desperately needs, and even worse, we are committing those learners that we have failed to a permanent life of poverty and degradation. It is thus imperative that we take whatever steps are necessary to improve our schooling system. A prerequisite for a functional system is that school time is used exclusively for teaching and related educational activities. The Centre accordingly welcomes the prohibition of non-educational activities during school time, and particularly political activities.
6. Although the Centre is not concerned with the constitutionality of any specific provision of the amendment bill, the Centre does nonetheless have one general concern regarding the Bill, which relates to the quality of the draftsmanship.
7. A founding value of our constitutional democracy is the Rule of Law. It requires that the law must, on its face, be clear and ascertainable. This requires precise and careful drafting. The quality of the draftsmanship of the Bill under discussion leaves much to be desired. The Bill is not the product of careful drafting, as behoves the state Law

advisors and the responsible Department introducing the legislation. The text abounds with errors, both grammatical and typographical. These include irregular and poor punctuation (such as the omission of closing quotation marks and dashes); inconsistent references to legislation; the omission of affixes (such as “the”); the use of incorrect prepositions and the incorrect use of single and plural nouns. The Centre is confident that these will be corrected.

8. Should the Department wish us to highlight the specific errors, please do not hesitate to call on us.

Yours faithfully

A handwritten signature in cursive script that reads "Nichola de Havilland". A horizontal line is drawn underneath the signature, extending from the start of the first word to the end of the last word.

Adv N de Havilland
Director