

THE SOUTH AFRICAN LANGUAGES BILL [W23-2011]

SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON ARTS AND CULTURE

AfriForum thanks the Portfolio Committee on Arts and Culture for the opportunity to make this submission re the South African Languages Bill (SALB).

Language not merely is a medium of communication. It also is the carrier of cultural identity, a means of cultural heritage transmission between generations, a symbol of the sovereignty of nations, and a treasure trove of knowledge that enhances our understanding of the world. In the words of linguist and author, K. David Harrison:

When we lose a language, we lose centuries of human thinking about time, seasons, sea creatures, reindeer, edible flowers, mathematics, landscapes, myths, music, the unknown and the everyday.

The SALB unfortunately fails to take this complex nature of language into account. The need for a language act was created in South Africa by the fact that the Constitution of South Africa set very laudable ideals about the protection and promotion of South Africa’s eleven official languages, and in particular the ten indigenous languages, but did not stipulate in detail how this was to be done. In 2003, after detailed public consultation, a concept for a language act was compiled, but it never reached Parliament. This concept should have been re-examined and discussed again, as the South African language scene has undergone significant changes since 2003, but instead we are unfortunately faced with the SALB, an attenuated version thereof, seemingly hastily compiled and presented with a limited opportunity for public discussion, even though this probably is one of the most significant pieces of South African legislation to serve before Parliament since the adoption of the Constitution itself.

Most of the serious international conflicts of the twentieth century were caused by cultural issues. This demonstrates the fact that language, as integral part of cultural identity, has the power either to unite or divide. A South African language act should take this into account, should make sure that reconciliatory measures are included and that the languages of minority communities are afforded protection in order to protect the culture of the minority itself, so that no feeling of marginalisation would be effected on the speakers of such languages; that polarisation in the South African community would be prevented, thereby ensuring political and social stability in South Africa; and that the cultural heritage and diversity of South Africa would indeed be celebrated and developed.

By doing so, not only would a language act comply with the requirements of the Constitution, but it would align itself with international law, including international

agreements such as the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities; and UNESCO's Universal Declaration on Linguistic Rights.

Instead we find that the SALB merely echoes the vague stipulation found in Section 6 of the Constitution of the Republic of South Africa, 1996, namely that all official languages should "enjoy parity of esteem" and "be treated equitably".

What exactly does "parity of esteem" and "equitably" mean? The SALB leaves this to the discretion of the Minister, assisted by the Pan South African Language Board (PANSALB) and the to be established National Language Unit.

Both of these terms are so non-specific that basically any meaning can be afforded to them with little room for redress.

Because of insufficient funding, severe mismanagement and a complete lack of authority to enforce its rulings, PANSALB has by 2011, for all intents and purposes, become a defunct body that offers little to no relief to any South African who feels that his or her language rights are being infringed on. The SALB offers no remedy for this situation. Its point of departure is that PANSALB functions as the Constitution had intended it to, which has long since ceased to be the case. Ample information is available on the reasons for the difficulties faced by PANSALB, yet the SALB blatantly ignores this opportunity to find solutions for this problem.

Re the National Language Unit proposed in Section 5 of the SALB, it is not clear what this unit would do in addition to the services that PANSALB is supposed to provide.

Probably the most serious flaw is that the SALB still makes no provision for accessible complaints procedures, were one to feel that one's language rights were being infringed upon. The SALB also offers no clear explanation of the accountability of national, provincial, municipal, educational or semi-state institutions.

To a large extent, these institutions seem to have carte blanche to compose their own language policies. The discretion of the Minister of Arts and Culture would be the only additional authority they would be answerable to, and would the public disagree with such policy, or find it to be inadequate to protect their language rights and promote the official language(s) they speak, the long and expensive route of approaching courts would probably be the only option left – an option not readily accessible to communities that already are economically marginalised. Therefore minority communities will not only find that their language rights are being infringed upon, but also that they are being excluded from the opportunity to rectify the issue.

In the SALB, no measures can be found that would actively promote and affirm the languages of minority communities, of that would encourage South Africans to learn more than two dominant South African languages. This puts several of the eleven official languages under threat, not to mention languages not (yet) included as official languages, such as the languages of the Khoi, Nama, San and sign language. In April 2011, Mondli Makhanya wrote:

Most [languages] disappear because the population dies out and there is therefore nothing that can be done to save them. Very few die because their own speakers have rejected or neglected them, as is the case here [in South Africa].

This is a serious charge against the population of South Africa, which sadly is true. AfriForum finds that the SALB does nothing to ameliorate the situation.

South Africa faces many serious problems, all caused by the lack of language policy. The performance of learners at all levels in numeracy and literacy to a great extent is the result of misguided language policy implementation and a lack of access to mother language education.

Amongst the youth of many communities, there is a lack of awareness of identity and heritage, leading to feelings of inferiority, which in turn cause many social problems. English has in practice become the official language of South Africa. Teachers not fully adept in English, have to teach learners to use English, instead of laying a foundation in the learners' mother language and then, once the learners have mastered that language, to step up to the teaching of more official languages. As Dr Mamphela Ramphele states:

[One's mother language] provides the anchor for better and deeper learning by linking it to everyday life and one's own identity.

Millions in state and private funds have been wasted in courts during the past decade where the rights of learners to be taught in their mother language had to be defended against the national and provincial departments of education. Tertiary institutions that offer multilingual tuition do not get additional funding to enable this essential approach – they have to cope with the same subsidies that monolingual, English-only institutions receive. Nothing is even mentioned in the SALB to remedy these situations.

Apart from education, other civil service areas also need a multilingual approach beyond two official languages per department or provincial department. A lack of access to services in one's mother language may lead to exploitation. People desperate for medical services, pensions, documentation issued by the Department of Home Affairs, etcetera, often are faced with application forms and procedural explanations in English and at best one other language. Even the new South African identity documents are being issued in English – we carry proof of our identity in a language that is the mother language of less than 8% of the population only! For a highly literate, affluent person, civil service delivery in English offers little to no difficulty. For someone less literate, it provides huge challenges and leaves the person open to exploitation, for example when (as I have personally witnessed) bystanders offer to “help” an applicant to complete English forms in return for some form of compensation. Had such processes been available in all 11 official languages, as can easily be done in the 21st century with computer technology that offers quick and inexpensive solutions to challenges of this nature, people who, for whatever reason, have been socially and economically marginalised, would be empowered. The best that the SALB however offers in this regard, is a return to the approach of two languages per national or provincial department, leaving the choice thereof to the discretion of the Minister and such departments.

Another area where the lack of clear language policy opens the doors to travesties of justice, is in legal action in South Africa. Lately court proceedings rarely are accessible to anyone not fluent in English. The dearth of translators exacerbates the situation. Once

again the SALB does not refer to this situation in the least, but rather passes the buck by leaving it to individual departments to determine their language policies. Clear guidelines and more detail on ways in which departments would be held accountable for a lack of multilingualism is not to be found in the SALB.

The disregard for languages and ways in which it impacts on South Africans as described above, not only marginalises people, but in fact infringes on the very right to human dignity – an entirely non-derogable right as outlined in the Bill of Rights, Chapter 2 of the Constitution, as well as the right to just administrative action.

The requirement that “every national department, national public entity and national public enterprise must – ensure that a copy of its language policy is available on request to members of the public at all of its offices,” is in fact meaningless, as the SALB does not even outline whether this should be done in one or all of the eleven official languages. It will be hard to complain about a lack of service delivery in your language of choice if you cannot even have access to the specific entity’s language policy in that language.

With all of that said, AfriForum herewith appeals to the Portfolio Committee to open the discussions on the SALB up to broader consultation, to involve national but also international linguists, educators, language rights specialists and human rights experts to ensure that the act eventually implemented will comply with all requirements in this regard.

Such an act should ensure that linguistic minorities can fully enjoy all civil, political, social, economic and cultural rights. This can inter alia be done by taking the demographic distribution of language users in specific areas into consideration, also when deploying staff fully adept in the predominant regional languages – an issue that causes many serious problems at present.

The act should underline and entrench access to mother language education.

The act should contain explicit legal guarantees for the protection of linguistic rights (as for example outlined in UNESCO’s Universal Declaration on Linguistic Rights).

The act should define the terms “parity of esteem” and “equitable” precisely.

The act should focus on making PANSALB fully functional and distinguish clearly between the functions of PANSALB and the National language Unit.

The act should encourage South Africans to master more than two official languages.

The act should hold all institutions it covers accountable for service delivery in all official languages and offer an effective complaints mechanism that is easily accessible to all. Appointing a language ombudsman and an independent language tribunal would be steps in the right direction.

The act should in no way elevate monetary considerations above the human rights of South Africans. The exemption from application of section 7 provided for in section 12 of the SALB leaves the door open to such a travesty.

South Africa’s standards regarding human, and especially minority rights protection remain erratic and often create legal uncertainty. The act should be developed to provide for and implement effective protection for such rights and for linguistic minorities. All indigenous

official languages need to be protected and promoted actively and a multilingual environment should be created in which no South African feels marginalised or alienated.

To quote Dr Mamphela Ramphele once again:

We need the government to make an unambiguous commitment to halt the slow death of our indigenous languages.

AfriForum looks forward to assist in any way possible to ensure that such a act will eventually be implemented.

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