



THE FW DE KLERK FOUNDATION

Upholding South Africa's National Accord

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Portfolio Committee for Arts and Culture
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11 December 2011

Dear Sir

**Re: Submissions on the South African Languages Bill
(B-2011 - 12 October 2011 - No 34675)**

1. The FW De Klerk Foundation is a non-profit organization dedicated to upholding the Constitution.
2. To this end, the Foundation 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 to claim their constitutional rights as well as monitor inter-community relations and developments in the cultural, religious and linguistic fields which might affect such.
3. The Foundation welcomes the opportunity to make submissions on the above mentioned bill which aims to provide the future framework for South Africa's linguistic and language rights within a constitutional framework principally within governmental structures.

4. GENERAL COMMENTS

The Foundation wishes to make the following general comments regarding the Bill:

- a. The language rights of South Africans are regarded as being of such importance to our constitutional system that they are included in the founding principles. This is because they are central and indispensable to the achievement of other founding values in S.1 of the Constitution.
 - i. The human dignity of people is closely linked to their perception of the worthiness and value of the language in which they perceive the world and express their innermost views and opinions.
 - ii. Equality cannot be achieved when the language in which people express their views does not enjoy equality of esteem. Prospects of achieving equality are seriously limited if children do not receive education in the language they understand best during the first six years of school.
 - iii. The ability to enjoy the full spectrum of rights assured by the Constitution is seriously limited if government does not communicate about such rights and provide the services on which they depend, in languages that people can understand best.
 - iv. The requirement that government must be open, transparent and accountable cannot be achieved if government does not communicate with people in the languages that they best understand and speak.
 - v.
 - a. The right to equality before the law is seriously compromised if those involved in court proceedings cannot fully understand the language in which the issues involved are addressed.
 - b. It is clear that the Bill has been drafted simply with a view to meeting the minimal requirements of the judgment in *Lourens vs The President of the Republic of South Africa and others* handed down in 2010.
 - c. As such, it does not nearly meet the requirements of the founding principles in Section 6 of the Constitution and other constitutional provisions that affect language rights. In particular, it makes no provision for
- b.
 - i. “practical and positive measures to elevate the status and advance the use” of South Africa’s indigenous languages as required by S. 6(2) of the Constitution;

- ii. language policy that should be adopted by provinces and municipalities in terms of SS 6 (3) (a) and (b);
- iii. the strengthening of the role of Pan South African Language Board and specifically its goal of promoting and creating conditions for, the development and use of all official languages; the Khoi, Nama and San languages and sign language;
- iv. “everyone’s right to receive education in the official language of their choice in public educational institutions where that education is reasonably practicable” in terms of S. 29(2) of the Constitution; and
- v. everyone’s right to use the language and to participate in the cultural life of their choice, in terms of S 30 of the Constitution.
 - a. The 2003 Bill, that was subsequently withdrawn, came far closer to meeting the language requirements set out in the Constitution. Specifically, the 2003 Bill had as its first object “to give effect to the letter and spirit of section 6 of the Constitution” whereas the first object of the present bill is much more limited and is simply “to regulate and monitor the use of official languages by the national government for government purposes.”
 - b. The objects in the Bill make no provision for the regulation and monitoring of the use of official languages by provincial governments. Since this is one of the functional areas reserved for concurrent national and provincial legislative competence in Schedule 4 of the Constitution, it would be appropriate for the Bill to set broad language policy guidelines within which provinces would be able to exercise their relevant competences.
 - c. The Bill should itself lay down the language policy contemplated in clause 4, rather than postponing this critically important constitutional requirement for another 18 months.
 - d. It would also appear that the language policy envisaged in clause 4 would be adopted by the national government by way of publication in the *Gazette*. It is submitted that such an important matter, arising from founding principles of the Constitution, should be adopted by the National Assembly in legislation, rather than by government *fiat*.

5. The Foundation believes that the Bill should be withdrawn in its entirety and that the 2003 Bill should be reintroduced with the following additions:
- a. The Foundation strongly supports the following guiding principles in the 2003 Bill which it believes should properly be at the core of any Language Bill:
- i. The promotion and accommodation of linguistic diversity must be pursued in accordance with the Constitution and relevant international law.
 - ii. The promotion of the use of all indigenous languages and South African Sign Language/s.
 - iii. The entrenchment of language equity and language rights must be pursued in such a way that both national unity and democracy are promoted.
 - iv. The learning of South African languages, especially the indigenous languages, must be encouraged.
 - v. Measures for the implementation of multilingualism must take into account the interests, needs and aspirations of all affected parties, and their participation in language matters must be promoted.
 - vi. There must be intergovernmental coordination and harmonisation of policies, legislation and actions relating to the entrenchment and promotion of multilingualism
- b. The Foundation recommends the addition of the following principles:
- i. The right, wherever practicable, for South African citizens to communicate with national, provincial and municipal government in the official language of their choice;
 - ii. the right, wherever practicable, for South African citizens to be served by national, provincial and municipal government in the official language of their choice;
 - iii. the right, wherever practicable, to use the official language of a person's choice in court proceedings;
 - iv. the right of everyone to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable;

- v. the need for the government to provide the Pan South African Language Board with the support and the resources that it requires to carry out the functions assigned to it in S.6(5) of the Constitution.

6. LANGUAGE POLICY

The Foundation recommends the adoption of a language policy along the following lines to govern the use of official languages at the national, provincial and municipal levels of government:

- a. Each government department should, at the national level, adopt two official languages for the purposes of government, on the following basis
 - i. one of the national languages will be English
 - ii. one third of national government departments will choose their second official language from the isiXhosa, isiZulu, isiNdebele, siSwati language group;
 - iii. one third of national government departments will choose their second official language from the Sapedi, Sesotho, Setswana language group; one third of national government departments will choose their second official language from the Afrikaans, Tshivenda, Xitsonga language group;
 - iv. Each government department will provide incentives to its officials to learn additional official languages.
 - v. Appointment to, and promotion in, national departments will require proficiency in both the department's official languages.
- b. Each national government department should, at its offices at provincial level, adopt two official languages for the purposes of government, on the following basis
 - i. One of the provincial languages will be English;
 - ii. The second official language will be the language that is most widely spoken in the relevant province;
 - iii. Each department will provide incentives to its officials to learn and use additional official languages;
 - iv. Appointment to, and promotion in, the provincial offices of national departments will require proficiency in the official provincial languages - or if there are more than two such languages, in two of the languages.

- c. Each provincial department should adopt at least two official languages for the purposes of government, on the following basis -
 - i. One of the provincial languages will be English;
 - ii. The second official language will be the language that is most widely spoken in the the relevant province;
 - iii. Each provincial department will provide incentives to its officials to learn and use additional official languages;
 - iv. Appointment to, and promotion in, the provincial public service will require proficiency in the official provincial languages - or if there are more than two such languages, in two of the languages.
- d. Each municipality should adopt a language policy based on the language usage and preferences of their residents.
 - i. One of the official municipal languages will be English;
 - ii. The second, or additional, official municipal language(s) will be the language(s) most widely spoken in the relevant municipality;
 - iii. Each municipality will provide incentives to its officials to learn and use additional official languages;
 - iv. Appointment to, and promotion in, the municipality's service will require proficiency in the official provincial languages - or if there are more than two such languages, in two of the languages.

7. THE DEVELOPMENT OF INDIGENOUS LANGUAGES

The Foundation recommends the adoption of the following steps, in addition to those already set out in the 2003 Bill, to promote the development and use of South Africa's indigenous languages.

- a. South Africa's indigenous languages are: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, isiNdebele, isiXhosa and isiZulu
- b. The Minister should, in consultation with the relevant universities, appoint a university, or universities, to promote the use and development of each of South Africa's indigenous languages with a view to:
 - i. the development of the assigned language as an academic language and as a language of tuition;

- ii. the training of teachers to teach the national curriculum in the assigned language;
 - iii. the training of journalists and language practitioners in the assigned language; the development of literature, books and publications in the assigned language.
- c. The Department of Arts and Culture/Higher Education should make adequate financial provision to assist universities in carrying out the above mentioned functions.

8. THE MONITORING AND REGULATION OF THE USE OF OFFICIAL LANGUAGES

- a. A properly drafted South African Languages Act will meet the requirement for regulation of official languages as required in S. 6(4) of the Constitution.
- b. The function of monitoring the use of official languages should be carried out independently by the Pan South African Language Board, which already has such a function in terms of the Pan South African Language Board Act, no 59 of 1995.
 - i. The Board already has sufficient powers in terms of S.8 of the above mentioned Act to carry out this function;
 - ii. The Board should submit an annual report to Parliament on compliance with official language policy as it is already empowered to do in terms of S. 12 of the above mentioned Act.

9. SUPPORT FOR THE PAN SOUTH AFRICAN LANGUAGE BOARD

- a. The Minister should provide support to the Pan South African Languages Board to assist it with its function to promote and create conditions for the development and use of all official languages by
 - i. making provision for the appointment and functioning of subsidiary language councils to monitor and promote the use and development of each of South Africa's indigenous languages. The functions of the subsidiary language councils will be to advise PANSALB on matters relating to the development of indigenous languages.
 - ii. making available the resources required by PANSALB to carry out its functions.

- b. The office of Language Ombudsman should be created within the framework of PANSALB.
 - i. The office of Language Ombudsman should be established by law with the requisite independence and authority to carry out her or his assigned responsibilities.
 - ii. The Language Ombudsman should be empowered to consider and investigate any complaints arising from any breach of the language rights of any person or organisation.
 - iii. The Language Ombudsman should have the power to make recommendations to any government authority regarding the implementation of its language policy or observance of the language rights of citizens.

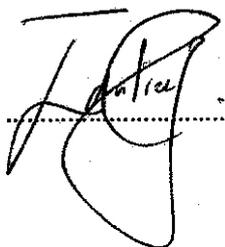
10. EDUCATION POLICY

The Foundation recommends that the South African Schools Act and other relevant legislation should be amended to make provisions for the following:

- a. Acceptance of, and practical steps to assure, the principle in S 29(2) that everyone has the right to receive education in the language or languages of their choice in public educational institutions, where that education is reasonably practicable.
 - i. This principle relates to education at all levels of education, including tertiary education.
- b. Acceptance that, in order to ensure the effective access to, and implementation of, this right the state must consider all reasonable alternatives, including single medium institutions taking into account:
 - i. The requirements in SS 29 (2) (a), (b) and (c) of the Constitution;
 - ii. As well as the need for indigenous languages to enjoy special protection from the overwhelming impact of English, if they are to survive as languages of education.
- c. the teaching of all provincial languages in schools within the relevant provinces to the level of Grade 12;
- d. the provision of mother-tongue education, wherever practicable, for the first six years of education;

- e. the training of educators to teach indigenous languages at the primary and secondary levels of education.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jacques du Preez', written over a horizontal dashed line. The signature is stylized and cursive.

Adv Jacques du Preez