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1 December 1995

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Executive Director
Constitutional Assembly
P.O. Box 15
Cape Town

Dear Sir

On behalf of the National Language Project and the Project for the Study of Alternative Education, UCT, I am submitting an urgent document relating to the language clauses of the constitution.

We are concerned that the earlier commitment to multilingualism of the interim constitution is likely to fade. We would urge that our earlier submission be reconsidered together with this document.

Yours faithfully

A handwritten signature in cursive script, reading "Kathleen Heugh".

Kathleen Heugh

Urgent submission to the Constitutional Assembly: Language clauses in the final draft of the constitution

from
**The National Language Project
and
The Project for the Study of Alternative Education, UCT**

The National Language Project and the Project for the Study of Alternative Education in South Africa, UCT, have been involved in language policy and planning research for the last decade and would like to draw urgent attention to the language clauses of the constitution. We understand from the discussion about the language clauses for the final draft of the constitution that there may be some questions about whether or not a multilingual policy can be implemented especially since commonly held wisdom tends to advocate the use of one language as the main language of communication. Our research has traced the history of different language policy and planning options in multilingual countries around the world, particularly in Africa. Consequently, we appeal to you to ensure that the final constitution frames the language clauses so that we avoid the pitfalls of a language policy which is doomed to failure from the start, and that we maximise the benefits of the multilingual reality of our country.

Summary of recommendations

NLP and PRAESA urge you to formulate the language clauses in the final constitution in the following manner:

- 1. Functional multilingualism will be promoted in South Africa - to guarantee rights related to language, to avoid linguistic conflict, and to ensure an economically, educationally, politically and socially viable approach to language equity.**
- 2. Identify the 11 official languages - for historically significant reasons but add a note of flexibility so that it would be possible at a later stage to add to or reduce this number as usage changes naturally.**
- 3. Promote the use, development and harnessing of the country's linguistic resources, which in addition to the official languages includes the following categories of languages, namely: *community and heritage languages; endangered indigenous languages, languages of religion, signed languages, languages of trade.* Avoid conflict - do not name any other language individually, to do so signals preferential treatment of some languages; and language usage changes with migration thus it would be impossible to identify the full repertoire of languages for perpetuity.**
- 4. There shall be no linguistic domination or discrimination.**

Why we must choose a strong multilingual policy

There is a widely held perception which emanates from particularly English speaking countries in the West that monolingualism is the most practical and cost-efficient approach to deal with the 'problem' of multilingualism. Economists and specialists in development issues in the West often point to the underdevelopment of African countries and have cited the multilingual nature of African societies as a causal factor in this underdevelopment. The obvious solution seems to be that if one language were to be selected as the main language of communication, then development would proceed unhindered.

But this is a fallacious argument and one which is based on a series of misconceptions. Internationally renowned scholars and linguists (such as Ayo Bamgbose, S. Beban Chumbow, Neville Alexander and Paulin Djité) have, over the last decade, systematically pointed out that it is not multilingualism that is the problem. Rather, the problem is that the development models which are applied in Africa have their origins in the West and are dependent upon a language policy which uses only one language. These development models, in other words, are not designed to match the conditions in Africa. The NLP and PRAESA believe that this is not an adequate approach for South Africa to follow. In essence, these models work against the multilingual nature of African countries rather than with their multilinguality.

The view of multilingualism as a barrier or hindrance to development falls within the language planning paradigm of *language is a problem* which is always used in societies where segregation and inequality are practised. Speakers of the dominant language are privileged and those from the other languages are marginalised. Historically there has been a shift away from this paradigm to *language is a right* and latterly to *language is a resource*. The accompanying table shows these three orientations to language planning and the results one can expect of them. *Language is a right* has generally provided the basic principle for language policy development in independent Africa. Unfortunately, however, this orientation is difficult to implement and has become linked to conflict between language communities who come to see themselves in competition for scarce resources with one another. Gideon Strauss from the Language Facilitation Programme, UOFS, has recently identified this as an adversarial relationship which has the potential for civil strife. Neville Alexander has on several occasions also warned of this. In practice, because of the difficulty of implementing a language policy based on the principle of rights this approach defaults to implementation via *language is a problem* and so suffers from the same inadequacies as a policy conceived of under the paradigm of *language as a problem* from the outset.

Language policies implemented over the last three decades in Africa have shown comprehensively that despite all efforts to make the European language (English, French, Portuguese) the primary language of communication and available to their citizens, they have been resounding failures. Zambia is an example of one of the most serious failures of this kind. There are now fewer people able to communicate

effectively through English than before that country's independence despite an English only policy in schools since independence some thirty years ago. Consequently, English has succeeded neither as a language to facilitate national unity nor as a language of empowerment for the public at large. It empowers only a shrinking minority.

In sum, the results of language policies which attempt to promote the use of one language for education, government and the economy in multilingual contexts, are as follows:

- greater access to the dominant language for the majority has never been facilitated;
- the dominant language has not promoted national unity;
- the majority remains on the fringe;
- linguistic-based division increases;
- the monolingual policies have been economically wasteful;
- economic development has not reached the majority.

There is no doubt that the most appropriate language policy approach in a multilingual context is to work with the multilingualism. By using *language as a resource* as the basis for establishing a language policy and compatible language plan, one takes into account the *functional* uses of each language. Based upon demographic, linguistic and current usage, it is clear that not all languages need to be used for all purposes: some are more suited for international contact and access to international science and technology; others are extremely valuable for historical, social, cultural and educational purposes. Some are useful at local levels of governance, services and the economy. Others may be more efficient at regional or provincial levels of governance and the economy. This status quo is not preordained and it changes as the power relations in a society alter and as the actual and potential functions of the languages shift.

A language plan based on *language as a resource* includes the best of the *language as a right* orientation in that it can guarantee that language rights will be protected without the danger of linguistic conflict emerging. Instead of seeing themselves in competition with one another, language groups are in a mutually interdependent relationship where each language is integral to the entire fabric of a multilingual policy. Value is accorded to the information and resources (historical, cultural, oral, literary, local, regional, international) which each language can unlock. Where each language is seen as indispensable to the whole and the participation of its speakers indispensable to national development, then co-operation is likely. The bottom line is that *language as a resource*, as a policy, can really be implemented successfully.

Fortunately, the legislation passed in Parliament in September on the formation of the Pan South African Language Board (PANSALB) was framed in the paradigm of language as a resource which gives us the opportunity to generate a workable language plan for the country. However, it is critical that the constitution links the language clauses to language as a resource and functional multilingualism.

Implementing a multilingual policy

Clearly, the actual nitty gritty work required to draft a practical plan for implementing language policy in the country needs to be left in the hands of PANSALB and LANGTAG (currently under the Ministry of Arts and Culture), since these are the appropriate forums for drawing together in a participatory manner all the issues and expertise required to address them.

The suggestions which follow in Appendix A are presented merely as possible guides for how a functional multilingual language policy could be implemented and they are in no way intended to pre-empt the work of either PANSALB or LANGTAG.

1. Context

The following is an extract from a paper delivered by Neville Alexander to the Technical Inter-Governmental Committee in September 1995:

While this approach embraces the language-as-a-right approach, it goes beyond it by calling a spade a spade in that it accepts the actual, historically determined, inequality of the languages in most multilingual countries. In this approach, the realisation of the potential equality of the languages is a strategic goal (i.e., if that is what the native speakers of the languages concerned want) and a language plan is constructed in terms of which the functions of specific languages and the expansion of these functions are defined and time frames are proposed on the basis of research or of other acceptable indicators.

The most important point to understand here is that in a truly democratic multilingual society, no privileging of any language vis-à-vis others can be permitted. But what does this mean in the context of the actual inequality of the languages? It means that we must be scrupulously honest with the citizens of the country. They have got to understand that the languages of high status have acquired this status largely through a history of conquest, oppression and exploitation (in the case of English on the global scale) and that it will require generations, decades and, in some cases, perhaps, centuries of committed attention to the development of the languages of low status in order for actual equality of usage to be approximated. It means, furthermore, that specific functional targets have got to be spelled out and time frames stipulated within which the languages concerned shall have been equipped to be used in the targeted functions.

2. Public records

Public records should in principle be kept in the main languages of each province. At central level, English, Afrikaans, Nguni and Sotho should be used - but flexibly. In other words the government institutions must decide which topics/issues should be recorded in which language. So for example some matters may be specific to KwaZulu-Natal and so should be recorded in Zulu, whereas other matters may be specific to the Western Cape and thus recorded in Xhosa, and so on. Police

stations, for example in Langa may only need to record information relating to a particular case in Xhosa, whereas Caledon Square Police Station will need, as a matter of course, to have the facility to record information in any of the three languages of the Western Cape.

3. Costs

3.1 Financial

It is generally assumed that multilingual language policies will cost more than monolingual ones in a multilingual society. We believe that this may be a point of contestation. The costs of providing a monolingual policy may on the surface appear to be cheaper in terms of initial outlay, but in terms of a return the results are poor. In other words, monolingual policies in Africa have proven to be poor investments in the short, medium, and long term.

There is no evidence of benefits accruing in terms of better educational results for students under monolingual and or subtractive bilingual education programmes:

- monolingual education involves spending large sums of money on schooling through a language which most children cannot access;
- no matter how much money is spent on the newest, state of the art, English second language programmes, for example, they have not worked anywhere internationally;
- the cost of teachers salaries brings little by way of a return where education continues to fail;
- school books published in a language which students do not understand well enough are wasted (approximately R600 million per year in South Africa).

The state services, such as health, end up wasting money and time because of:

- inadequate interpreting services which result in misdiagnosis;
- misunderstandings about medication procedures;
- repeated visits to hospitals and clinics for persistent ailments;
- level of doctors' inefficiency because of excessively high numbers of patients requiring treatment, many for what should be unnecessary repeated treatment.

Wasted expenditure can be identified in each public and private sector, but these examples are simply for the purposes of illustration.

3.2 Social and political costs

Monolingual policies in multilingual societies always discriminate against speakers of languages other than the dominant ones. Democracy is never advanced and those who have access to higher education, the national economy and power are always a small elite. (In Africa this is between 5% of people in the Portuguese speaking countries; 10% in the French speaking countries; and less than 20% in the English speaking countries). Clearly this sows the seeds of conflict and creates a political time-bomb.

3.3 Economic costs

Sustainable economic growth cannot occur unless the majority of the population participates. Development programmes in Africa have generally failed because they are too Western-oriented and too grounded in the drive toward monolingualism and

against the natural multilingualism of the countries concerned. A new understanding of the relationship between multilingualism and economic growth is currently being explored by language planners, sociolinguists and economists in this country as well as in other African countries. The State Language Services is facilitating a number of workshops and think-tank discussions around this relationship and it is certainly set to be a research priority of both LANGTAG and PANSALB. PRAESA is arranging an international conference in 1996 with an African focus on this question, amongst others.

In short, there is striking evidence, particularly from countries like Australia that the national economy can benefit greatly from functional multilingual policies.

- money can be made from a language industry;
- trade, especially in niche markets, can be enhanced by better interpreting and translation work;
- money can be saved in the medium to long term by more appropriate language policies and plans (e.g. in education, health, safety and security, justice, work-place efficiency);
- money spent on the initial outlay of costs will be recovered in the medium to long term.

Concluding remarks

It would be an enormous set back, therefore if the new constitution effectively closed the door on a coherent national plan which might contribute significantly to our plans for advancing democracy, economic and national development. The social and political benefits of a proactive, functional multilingual policy outweigh by far, initial investment costs. The costs of internal conflict and an ailing economy do not warrant a short-sighted policy of hegemonic monolingualism.

Finally, any constitution which guides the formation and implementation of a national language policy should include the possibility that the actual identification of a defined number of official languages might alter over time. Whilst it is appropriate now to have 11 official languages, we might find that the citizens of this country in a generation or so may deem it necessary to have only four official languages or thirteen or none at all. It will depend upon many factors such as changes in the pattern of language usage or migration. In other words, we are urging that flexibility be built into the criteria for identifying languages of official status. Greater weight needs to be placed on the notion of guaranteeing a principle of functional multilingualism which includes all languages spoken and used in the country than on a limited number of official languages. In the end, official status of languages is a decorative and empty notion if there is no plan to effect this status and it is a redundant where there is a comprehensive and functional plan to integrate every language into the process of national development.

Appendix A

Examples of functional plans and time-frames:

1. Already, the Department of Arts and Culture has identified a national telephonic interpreting service as a priority language service to cater, initially for the 11 official languages of the country. The minister is however, *giving serious consideration to inter-governmental language service agreements whereby interpreting and translation services are shared across national boundaries* (Ngubane 1995). What this means¹ is that where we don't have the existing resources and until such time as we do we might, for example, be able to access Australian translators and interpreters who work with languages of the Pacific Rim countries. The internet and international telephonic systems make things very accessible. In return, we might be able to offer translation and interpreting services in Southern African languages to Northern Europe, Australasia, the USA etc. Costs that we incur in buying expertise from other countries could be offset by selling our expertise to others.

By 1997, we could have every post-office linked up to the national telephonic interpreting service which would provide interpreting in the 11 official languages and a mechanical interpreting service for the Deaf.

By 2000 the telephonic service might be able to cater for an additional 6 languages, dependent upon a needs assessment etc.

2. By 1999 a language service centre could be established in each of the five metropolitan areas or if possible in each of the nine provinces to co-ordinate provincial translation and interpreting resources.

3. We could target the provision of on site interpreting facilities in major hospitals by 1998 and in all hospitals in the major languages of the respective regions by, say the year 2000.

4. By 2000 a national languages assessment centre could be operational, ensuring that equitable standards are maintained amongst the different language programmes.

5. By 2000 a national interpreting and translation accreditation institute could be functioning and able to guarantee the quality of translation and interpreting work.

6. By 2000 the language service centre in each province could provide language maintenance programmes in the official languages of the country which are not official languages of that province. Thus, for example, children speaking Venda but living in Durban will not be able to receive their education in Venda at regular schools in KwaZulu-Natal. However, they might be able to attend language maintenance classes at a centrally sited language centre.

¹ Dr Anne-Marie Beukes, State Language Services, has already been in discussion with the Australian interpreting services about such possibilities.

7. By 2003 language maintenance programmes might be available in other community languages (e.g. Tamil, Shona, Chichewa, Portuguese) at the provincial language centres. Obviously, the linguistic needs of each province would determine which languages would need to be offered.

8. By 1999 maths and science text-books could be available in all 11 languages to the end of Grade 7, and by 2002 to the end of Grade 9.

2.9 By 2003 the language centres might be able to provide commercial language programmes in South Africa's most important languages of trade.

2.10 By 2006 school syllabuses and text-books should be available in all 11 languages to the end of secondary school.

Appendix B

Language policy and implementation options

Policy	Language paradigm/view of language	Implementation	Results
Segregation via a top-down process	Multilingualism is a problem; domination by a language(s), culture, and religion	Subtractive/transitional bilingualism (shift to a second language of higher status) for the dominated group; monolingualism or limited additive bilingualism for the dominant group	Poor educational results and limited proficiency in language(s) of power and limited access to power for dominated group; access to meaningful education and power for the dominant group. Economically inefficient
Assimilation	Multilingualism is a problem, monolingualism is the ideal (selective English-Afrikaans bilingualism in the case of South Africa)	Subtractive/transitional bilingualism for those who do not speak the dominant language(s)	Poor educational results and limited proficiency in language(s) of power and limited access to power for the dominated group ² ; access to meaningful education and power for the dominant group. Economically inefficient

² Under assimilation, English Second Language (ESL) programmes flourish and on the surface it appears that speakers of languages other than English are likely to have greater access to the language. In reality, though most students never achieve the expected level of competency. Documents to support this assertion from international studies and our own research can be furnished if required.

Integration via top-down process	Language is a passive right	No implementation plan to effect language as a right, so by default subtractive/transitional bilingualism continues	Poor results, as per above. The effect is the same as if the policy were assimilation
Integration via bottom-up and top-down process	Language is a positive right	Additive bilingual/multilingual education for all; additive language planning likely to be limited to arts, culture and education, therefore difficult to sustain	Equal access to meaningful education; but languages other than English unlikely to be effective in the economy and government.
Multicultural/ Intercultural via bottom-up and top-down process	Multilingualism is a valuable resource; validation and inclusivity of all cultures, religions and languages³	Additive bilingual/multilingual education for all; functional multilingualism in all sectors	Equal access to meaningful education and political power; social equilibrium; economic benefits

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³ In the South African context, this includes active promotion of African languages in order to correct the historical imbalance of status between them and the higher status of Afrikaans and English.

**Submission to the Constitutional Assembly,
Theme Committee Four
on the subject of**

Language

from

**The National Language Project and The Project for the
Study of Alternative Education in South Africa (UCT)
June 1995**

The following submission has been prepared on behalf of the National Language Project (NLP), a non-government organisation which has been working toward the promotion of multilingualism and the rehabilitation of the status of African languages since 1986, and the Project for the Study of Alternative Education (PRAESA), based at the University of Cape Town. This project has focussed on international research and proposals for multilingual education in this country since 1992.

This submission is structured along the following lines:

1. Principles in the 1993 constitution which should be retained in the final draft of the constitution
2. Principles in the 1993 constitution which should be removed
3. Clauses which need further clarification or amendment
4. Reconceptualising the paradigm for language

1. Principles to be retained

Both PRAESA and the NLP are fully supportive of the principle of multilingualism and the promotion of multilingualism in South Africa. Secondly, we are fully supportive of a proactive plan to rehabilitate the status of and develop the African languages in the country. The recognition of 11 official languages in the interim constitution provides a very favourable foundation for a language policy which could assist the transformation of an unequal society into a truly equitable one.

To this end, we believe that the following key principles relating to the clauses on language and related issues in the 1993 interim constitution need to be retained:

- the promotion and development of multilingualism in South Africa;
- the equal status of 11 official languages;
- no domination, exploitation or discrimination (directly or indirectly) by any language or language group over another as in clauses 3(9)(c); and 8(2);
- equal access to education 32(a), which implies equality of languages in education;
- the independence of the Pan South African Language Board.

2. Principles to be removed

Principles relating to language in the interim constitution which are in conflict with those cited above and which need to be removed are as follows:

- the non-diminution clause which effectively protects the privileged status of Afrikaans and English so that these two languages automatically have to be declared official languages in each province. This is irreconcilable with the principle of equal status for 11 languages, since it protects the privileged status

of these two languages over and above the other nine. Hence it would not be possible to articulate a coherent language policy and plan for implementation where such a contradiction exists.

- the contradiction present between clause 8(2) and 32(c): whereby the former guarantees non-discrimination on the basis of language, among other things, whereas the latter readmits such discrimination by the backdoor, as it were. The way out of this dilemma seems to be to reformulate 32(c) so that it is in synchrony with the substance of clause 8(2)¹
- the term *where(ver) practicable*, as in: 3(3); 3(6); and 32(b) since this makes provision for not implementing multilingualism, hence the fundamental principle of the language clauses is effectively undermined.

3. Clauses which need further clarification or amendment

The locus of responsibility for the formulation of language policy and planning and its implementation is not clearly spelt out. By default, this responsibility is currently devolving to the Department of Arts, Culture, Science and Technology. Whilst this department may have the capacity to effect a language plan to cater for its own needs and that of education possibly, it does not have the capacity to effect a plan which will incorporate all sectors of public and private life (see also discussion about paradigm shift in 4). We would suggest that the responsibility for effecting a national language plan be vested in the Senate and the Ministry whose responsibility it will be to implement the constitution i.e. Constitutional Development or its successor after the next election. In order for this function to be carried out effectively in practice, each department of state at both national and provincial levels should have a person or group of persons charged with the implementation and maintaining of language policy.

The provision in the 1993 constitution for the appointment of a PSALB by the Senate is not adequate. If the PSALB (or its equivalent) is to have the responsibility for policy and planning formulation and implementation, this needs to be specified. The PSALB should be enabled to advise on all aspects of language policy and to liaise with the relevant desk in all the ministerial departments.

Clauses which refer to languages other than the 11 official languages should not list any languages by name since this will give preferential treatment to those languages which are named and may give the impression that languages which are not specifically listed are less important. In particular, there is currently no mention of historically important languages such as the Khoe (Khoi)² and San languages which are also endangered languages in this country, and this presents a serious oversight where a number of other languages are specifically mentioned under 3(10)(c). Furthermore, for many reasons, including migration, language usage changes naturally over time, therefore we would suggest that the constitution does not make specific reference to any language by name other

¹ The following wording could be used to replace that in the 1993 constitution: "Every South African citizen has the right of access to all institutions which are either wholly or partially funded by the state. The state is obliged to provide for the language needs of those catered for by such institutions. Where such provision is problematical for economic or any other material reason a solution shall be found in consultation with all the parties concerned. Privately funded institutions catering predominantly for a particular language or self-defined cultural group shall be permitted provided that clause 8(2) is not violated."

² The term *Khoe* is now preferred by linguists, although *Khoi* is more widely known.

than the 11 official languages. We would suggest, instead, that mention needs to be made of the following categories of languages: *endangered indigenous languages; community/heritage languages; languages used for religious purposes; sign languages; and languages of trade.*

We also suggest that the name, Pan South African Language Board, is problematic for three reasons:

- the term *Pan* conveys the sense of separateness and division rather than unity;
- the term *Board* is too reminiscent of all the old language boards conceived under apartheid for the further division of languages and promotion of separate development. Furthermore, these boards are associated with undemocratic practice; and
- the current name may give the impression that literacy issues are not integrally linked to language. The acquisition of and access to literacy is currently addressed as part of Adult Basic Education and Training (ABET) but child literacy, literacy for out-of school youth, and literacy for physically impaired people etc. are not currently addressed anywhere. All forms of literacy are related to access to language and language skills and consequently need to be addressed as part of a coherent plan for languages and literacy. People who are not literate have limited access to all public and private (civil) sectors, and so the issue must be addressed beyond education and the workplace.³

We would recommend, therefore, that there should be a change of name to: The National Council for South African Languages and Literacy; or South African/National Institute for Languages and Literacy.

4. Reconceptualising the paradigm for language

What is currently missing from the way in which the language clauses are presented in the constitution is a coherent view of the way in which language and literacy are fundamentally important to national development. The importance of language is presently confined, in different sections of the constitution, to the domains of culture and the right to use the language of one's choice in dealings with government, education and the legal system.

Language and literacy affect every fibre of national, provincial and local development from the economy, through technology and science, health care, education, justice, arts and culture, and the social services. In other words they affect life in every domain of both civil society and government. In order for provision to be made for the formulation of a coherent national policy and plan for languages, the appropriate paradigm for language policy needs to be adopted.

Depending on what outcomes a society wishes to have, the model of language policy and planning appropriate to those outcomes needs to be selected. The following table outlines the various options:

³ Australia, a country known for having the most progressive and coherent language policy and plan has named its national language board, the *National Languages and Literacy Institute of Australia*, and literacy issues are an integral component of the language plan.

Policy	Language paradigm/view of language	Implementation	Results
Segregation via a top-down process	Multilingualism is a problem; domination by a language(s), culture, and religion	Subtractive/transitional bilingualism (shift to a second language of higher status) for the dominated group; monolingualism or limited additive bilingualism for the dominant group	Poor educational results and limited proficiency in language(s) of power and limited access to power for dominated group; access to meaningful education and power for the dominant group. Economically inefficient
Assimilation	Multilingualism is a problem, monolingualism is the ideal (selective English-Afrikaans bilingualism in the case of South Africa)	Subtractive/transitional bilingualism for those who do not speak the dominant language(s)	Poor educational results and limited proficiency in language(s) of power and limited access to power for the dominated group⁴; access to meaningful education and power for the dominant group. Economically inefficient
Integration via top-down process	Language is a passive right	No implementation plan to effect language as a right, so by default subtractive/transitional bilingualism continues	Poor results, as per above. The effect is the same as if the policy were assimilation

⁴ Under assimilation, English Second Language (ESL) programmes flourish and on the surface it appears that speakers of languages other than English are likely to have greater access to the language. In reality, though most students never achieve the expected level of competency. Documents to support this assertion from international studies and our own research can be furnished if required.

Integration via bottom-up and top-down process	Language is a positive right	Additive bilingual/ multilingual education for all; additive language planning likely to be limited to arts, culture and education, therefore difficult to sustain	Equal access to meaningful education; but languages other than English unlikely to be effective in the economy and government.
Multicultural/ Intercultural via bottom-up and top-down process	Multilingualism is a valuable resource; validation and inclusivity of all cultures, religions and languages ⁵	Additive bilingual/ multilingual education for all; functional multilingualism in all sectors	Equal access to meaningful education and political power; social equilibrium; economic benefits

Since the interim constitution sets out the promotion of multilingualism and equality of languages as fundamental principles relating to language, it is incumbent upon us to follow the route that will enable the effective implementation of multilingualism. Consequently, following from the table above, we would recommend that it is essential that the constitution adopt the view that multilingualism is a valuable resource and national asset. This must, however, be made explicit in the final draft of the constitution. To this end we would suggest that the constitution refer to the languages of South Africa, as functional resources which must be protected, nourished and developed in order to enhance social equilibrium and advance national unity and development.

The concerns of all cultural and religious groups about protecting their rights to use languages will be more effectively addressed via this route, since the emotive sentiments about languages will be strengthened by their instrumental worth in advancing national economic and social development.

Practical Implementation of functional multilingualism - a few suggestions

Language viewed as a functional resource in the constitution will guide the articulation of a practical language policy and a practical implementation plan which will determine the functional uses of languages in the different domains at local, provincial and national level.

A functional approach to multilingualism is the only viable route to follow if we are to fix and limit the rampant hegemony of English and the discriminatory effects of linguicism⁶ which currently exists in the country. The experiences of other multilingual countries on the continent show that the hegemony of the ex-colonial

⁵ In the South African context, this includes active promotion of African languages in order to correct the historical imbalance of status between them and the higher status of Afrikaans and English.

⁶ Linguicism is linguistic racism where speakers of languages of high status are privileged over speakers of languages of low status.

language needs to be placed in check if more than a small elite is ever to have meaningful access to power. Functional multilingualism implies a fixing of practical functions/uses for languages in all domains. For example, one may be able to function well in a local economy in the local language(s); whereas to function effectively in the upper levels of provincial government and economy one may need to have access to at least two languages of the province.

A functional approach to multilingualism does not imply that each South African needs to be able to speak 11 languages. It means rather that South Africans will be able to have greater access to meaningful education, political and economic power if they are at least bilingual and preferably trilingual (in any of the 11 languages). It means that on a practical level, all South Africans should be able to at least access the local economy and power, whereas even this may be denied them now when they do not speak either English or Afrikaans.

A practical policy and implementation plan based on the view that multilingualism is a functional resource will cover the following issues, for example:

- which government documents need to be translated into all 11 or fewer languages: for instance not all government documents are of significance to the majority of people, or they may only apply to people in a particular province, in which case these documents only need to be translated into the languages of the people whom they affect;
- which sections of documents need to be made accessible to people in different languages;
- how to streamline translating and interpreting services which can cater for both government and other sectors as economically as possible⁷;
- how provincial/local language service centres can provide language courses/programmes in languages other than the official ones (languages of minority communities, religious languages and languages of trade) for each particular province⁸;
- a time-frame which makes provision for the implementation of a fully-fledged multilingual plan in a graduated and economically feasible manner. (Specific time-frames to be described within which each of the relevant languages shall be enabled to be used for specific and increasing purposes/functions in the state and in society in general. Thus, for example, it might be possible to specify that the Nguni and the Sotho language cluster shall be used at national level for specific purposes within the next 5-10 years; Tshivenda and Xitsonga at provincial level immediately and at national level within 10-15 years, etc.)

Functional multilingualism and economic growth - some pointers

There is increasing evidence from international studies on language policy and the economic viability of countries that proactive approaches to functional multilingualism can assist the rationalisation of resources and advance trade.

⁷ To this end, cost effective telephonic translating/interpreting services can be facilitated via language service centres to cater for the needs of people across many sectors in both public and private life.

⁸ For instance a language service centre in the Western Cape could facilitate cost-effective language courses in Venda, Zulu, Sotho (languages which are official languages in other provinces) as well as courses in community, religious and trading languages. School children and adults would be able to attend language programmes at this centre either as part of the normal school curriculum or for special purposes. This would provide a rational mechanism to ensure access to all 11 languages in the provinces as well as access to other languages considered important for various reasons.

Studies conducted by German, Japanese and Australian economists have revealed that companies involved in export marketing need to be able to conduct business transactions in the languages of their trading partners through their own interpreters rather than ones employed by their trading partners who may experience a conflict of interest. The promotion of multilingualism in South Africa will need to extend to languages of trade with our major trading partners, which may include Germany, Japan, China, the African continent etc. It will be short sighted to attempt to continue to trade using English only. On a domestic front, the knowledge which people in the workplace have in languages other than English is often poorly utilised. For example, where an employee is expected to submit written documentation in English, this may be uneconomical. (S)he might struggle for a long period of time to perfect the document which could have been written in a fraction of the time in another language and then translated swiftly by a professional translator. Or, an employee might feel too self-conscious to draw attention to a costly problem in a language in which (s)he feels uncomfortable, whereas this problem might be more easily addressed if translators/interpreters were commonplace in the working environment. In the education sector, it is clear that monies spent, year after year, on English medium text-books for students who are unable to understand the content of these text-books is ill-spent. In the health-care sector, doctors might have to see the same patient on several occasions for the same ailment because there is no efficient interpreting service available. This is unsatisfactory for the patient, uneconomical for health care and uneconomical where a worker is out of work for longer than would otherwise be necessary.

Conclusion

A flexible policy based on language as a functional resource will best ensure: equality; access; empowerment and economic growth. A flexible policy which is constructed on a graduated time-frame with specific targets for effecting multilingualism to particular levels and degrees, is entirely feasible and it is consistent with a coherent plan to transform South Africa. An automatic benefit of such an approach is that the rights to use any particular languages will be best protected via this route, since languages will always be regarded as positive assets to be preserved and nurtured, not only for cultural reasons, but for all the other instrumental reasons mentioned above.

It would be meaningless to leave language linked only to *rights* in the final draft of the constitution since then the full extent of the connection to economic, political and social empowerment will never be effected, as a study of international language policy developments demonstrates.

Supporting Documentation

We would be happy to provide the Constitutional Assembly with any supporting documentation which may be required.

Contact person:

Kathleen Heugh

**NLP and PRAESA, c/o Education Faculty, UCT, Private Bag Rondebosch 7700
(021) 650 4013/3589; fax: 650 3027**

Request

We also request the opportunity to address the relevant Theme Committee(s) on the issue at the earliest opportunity.

Contact persons:

**Neville Alexander
PRAESA**

**Kathleen Heugh
NLP**

**021) 650 4013/3589
fax 650 3027**

Address as above.

copy to Theme Committee One



Verw. Nr./Ref. No. CS OPS/R/406/3/B
NAVRAE/INQUIRIES: Gen G.L. Meiring
Tel. No. (021) 428 - 3839

KANTOOR VAN DIE-OFFICE OF THE

Mr Hassen Ebrahim
Executive Director Constitutional Assembly
P O Box 15
Cape Town
8000

Chief of the SANDF
Private Bag X161
Pretoria
0001

30 November 1995

Dear Sir

RSA COAT OF ARMS

1. The Executive Director of the Constitutional Assembly's letter regarding the investigation of a new coat of arms for the RSA and financial implications of changing the coat of arms dated 12 Oct 95 refers.
2. The coat of arms traditionally forms part of all military insignia and paraphernalia, not only in the RSA, but also the international military community. The coat of arms is the symbol of the sovereignty of state, the sovereignty the SANDF is charged to defend. The RSA Coat of Arms therefore forms an integral part of SA National Defence Force emblems, insignia and badges of rank. The RSA Coat of Arms is applied as follows:
 - a. All Medals including miniature replicas.
 - b. Badges of Rank.
 - c. Dress Insignia for example qualification badges including SA Air Force pilot and navigator wings, the SA Navy's qualification badges and gilt buttons.
 - d. Unit badges and emblems including all Naval unit badges and naval emblems.
 - e. Documentation including Acts of Commission appointments, certificates and official forms.

The lion on the crests of the RSA coat of arms features significantly on all SA Navy badges of rank, dress insignia including qualification badges, metal buttons and unit badges.

3. The estimated cost to implement a change will amount to RM 29. This amount includes the following :

- a. Cost of redesign of medals, badges of rank, insignia and emblems and the replacement thereof for serving members - RM 17.
- b. Replacement of stock RM 6.
- c. Disposal of existing stock valued at RM 6.

4. The "soft issues" of a change to the Coat of Arms is also to be assessed. South Africans from all sectors of the population have been involved in the defence of this country since the inception of the present Coat of Arms in 1910. These service men and women served under this Coat of Arms in the First and Second World Wars, in Korea and ever since. One should not underestimate the hurt to a very significant sector of our community including the veterans and ex - servicemen and women should the Coat of Arms be replaced. Every effort should be made to avoid hurt and division at this extremely sensitive time in the history of our country.

5. Redesign and production and distribution is estimated to take 3 years. The existing insignia will have to be retained in the interim to ensure uniformity of dress.

6. The RSA Coat of Arms is used and forms part of most military insignia whilst the lion from the Coat of Arms is extensively used in Navy emblems, badges of rank, dress insignia and all unit badges.

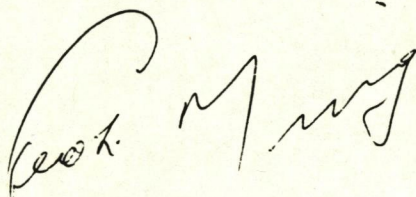
7. A change in the RSA Coat of Arms is not recommended for the following reasons :

- a. Cost of implementation for the Department of Defence is estimated to be RM 29.
- b. A change will place the already strained SANDF budget under further pressure because of the costs involved.
- c. Change to implement a new coat of arms will take approximately 3 years to allow time for redesign and reissue to ensure uniformity of dress.
- d. The RSA Coat of Arms is to be retained in accordance with Art 3(2) of the Transitional Constitution.

- e. South Africans from all sectors of the population have been involved in the defence of this country since the inception of the present Coat of Arms in 1910. These service men and women served under this Coat of Arms in the First and Second World Wars, in Korea and ever since. Every effort should be made to avoid hurt and division at this extremely sensitive time in the history of our country.

8. It is trusted that the above information will assist you in your deliberations.

Yours faithfully

A handwritten signature in black ink, appearing to read 'G.L. Meiring', written in a cursive style.

(G.L. MEIRING)
CHIEF OF THE SA NATIONAL DEFENCE FORCE : GENERAL



Constitutional Court
Private Bag X32
BRAAMFONTEIN
2017

Tel (011) 403-8032
Fax (011) 403-6524

Mr H. Ebrahim
Executive Director
Constitutional Assembly
P.O. Box 15
CAPE TOWN
8000

14 December 1995

Dear Director,

CERTIFICATION OF THE NEW CONSTITUTION

Your letter dated 28 October 1995 was received at the end of November.

The procedure for certifying the new constitutional text is prescribed by rule 15 of the rules of the Constitutional Court. I attached to this letter a copy of part VII of the rules of Court which contain the relevant provisions.

It seems that the correct procedure to be followed is for the chairperson of the Constitutional Assembly to submit the constitutional text adopted by the Constitutional Assembly to the Constitutional Court together with the certificate referred to in rule 15. He should at the same time inform the Constitutional Court whether any of the political parties represented in the Constitutional Assembly wish to present oral argument to the Court pursuant to the provisions of rule 15(4). On receipt of the certified Constitution, and the information in regard to the attitude of the political parties, further directions will be given in terms of rule 15(3).

In terms of section 73 of the Constitution the new constitutional text has to be passed by the



Page 2

Constitutional Assembly within two years as from the date of the first sitting of the National Assembly under the Constitution. In terms of section 71(2) of the Constitution the new constitutional text shall be of no force and effect unless the Constitutional Court has certified that all the provisions of such text comply with the Constitutional Principles. No time is prescribed by the Constitution for this to be done. It follows that as long as the Constitution is passed in accordance with the provisions of chapter 5 within the period prescribed by section 73, the consideration by the Court of the provisions of the Constitution can take place later. The Court will deal with the matter as soon as it is able to do so. This will depend to some extent on whether or not there is any dispute in regard to the question whether the Constitution conforms with the Constitutional Principles, and if so, the nature and extent of such dispute. If the Constitution is only passed during the first week of May it seems unlikely that the Court will be able to deal with the certification during its May term. It may, however, be possible to convene a special session of the Court during June to deal with this matter. That decision can only be taken when the Constitution is submitted to the Court in terms of section 71 of the Constitution and directions are given in terms of rule 15.

I will be glad if you would keep me informed of the progress of the debates in the Constitutional Assembly, and in particular, of any changes in the time frame referred to in your letter. Could you also inform me of the date of the first sitting of the National Assembly which will determine the date upon which the two year period referred to in section 73(1) of the Constitution will expire.

Yours sincerely

A Chaskalson

A. CHASKALSON
PRESIDENT: CONSTITUTIONAL COURT

RULES OF COURT

(2) (a) Oral argument shall be succinct and relevant to the issues before the Court.

(b) It shall be assumed that all judges have read the written arguments and that there is no need to repeat what is set out therein.

(3) (a) The applicant or appellant shall be entitled to open and conclude the argument.

(b) A cross application shall be argued with the initial application as one case in the time allowed for that one case, and the Court shall advise the parties who shall open and close.

(c) The legal representative having the opening shall present the case fairly and completely and shall not reserve points of substance for rebuttal.

(4) The registrar shall from time to time prepare calendars of cases ready for argument.

(5) The registrar shall advise the legal representatives in writing when they are required to appear for oral argument within five days of directions to that effect having been given, and shall prepare a hearing list which shall be affixed to the notice board at the Court building not less than 15 days before each term for the convenience of the legal representatives and the information of the public.

(6) On the Court's own motion, or on motion of one or more parties, the Court may order that two or more cases, involving what appear to be the same or related questions, be argued together as one case or on such other terms as may be prescribed.

Part VII

Direct access to the court

12. Opinion on proposed constitutional text

(1) A reference in terms of section 71 (4) of the Constitution by the Chairperson of the Constitutional Assembly shall specify precisely which provision or provisions of the proposed Constitutional Principle or Principles against which such provision or provisions is or are to be so tested.

(2) The Chairperson shall also certify that at least one fifth of all the members of the Constitutional Assembly have petitioned such a reference to the Court.

(3) The Chairperson shall, if so required by the President, forward to the registrar the relevant extracts of the debate in the Constitutional Assembly pertaining to the said reference.

(4) Upon receipt of the reference from the Chairperson the matter shall be disposed of in accordance with directions given by the President.

(5) Such directions may include—

- (a) a further reference to the Chairperson for such additional information as is considered by the President to be necessary or expedient to deal with the matter;
- (b) an order directing all interested parties in the Constitutional Assembly who wish to do so to make such written submissions as are relevant to the determination of the issue within a period to be specified, which order shall be brought to the attention of interested parties in the Constitutional Assembly through such means as the Court considers suitable;
- (c) an order directing that, in addition to the written submissions, oral argument will also be allowed;
- (d) an order directing that any written submission made in terms of paragraph (b) be brought to the attention of other interested parties in the Constitutional Assembly through such means as the Court considers suitable.

(6) The order of the Court may include an order for costs to be paid by the State or by a particular party.

13. Dispute over constitutionality of any Bill

(1) A request in terms of section 98 (2) (d) and 98 (9) of the Constitution by the Speaker of the National Assembly, the President of the Senate, or the Speaker of a provincial legislature, as the case may be, shall specify in writing precisely which provision or provisions of the relevant Bill is or are disputed, and shall certify that the requirements of section 98 (9) of the Constitution have been complied with.

(2) A request contemplated in subrule (1) shall also specify the grounds upon which any such provision is disputed.

(3) The Speaker of the National Assembly, the President of the Senate or the Speaker of a provincial legislature, as the case may be, shall, if so required by the President, forward to the registrar the relevant extracts of the debate in the relevant legislature pertaining to the request.

(4) Upon receipt of the request from the Speaker or President referred to in subrule (1), the matter shall be disposed of in accordance with directions given by the President, which directions may *mutatis mutandis* include the matters referred to in rule 12 (5).

(5) Rule 12 (6) shall apply *mutatis mutandis*.

14. Constitutional disputes between parties in Parliament or between organs of state

(1) A reference by the President of the Republic of South Africa to the Court in terms of section 82 (1) (d) shall include the following written information:

- (a) The identity of the parties between whom the dispute concerned has arisen; and
- (b) the exact nature of the dispute and such information, if any, as the President of the Republic of South Africa may consider necessary or desirable to bring to the attention of the Court.

RULES OF COURT

(2) Upon receipt of such reference the matter shall be disposed of in accordance with directions given by the President, which directions may *mutatis mutandis* include the matters referred to in rule 12 (5).

(3) Rule 12 (6) shall apply *mutatis mutandis*.

15. Certification of constitutional text

(1) The Chairperson of the Constitutional Assembly which has passed a new constitutional text in terms of section 71 (1) of the Constitution and which wishes such constitutional text to be certified by the Court shall certify in writing the content of the constitutional text passed by the Constitutional Assembly and submit such text to the registrar with a formal request to the Court to perform its functions in terms of section 71 (2) of the Constitution.

(2) The certificate contemplated in subrule (1) shall include a statement specifying that the provisions of the text were passed by the requisite majority.

(3) Upon the receipt of the request referred to in subrule (1), the matter shall be disposed of in accordance with directions given by the President.

(4) The directions referred to in subrule (3) may *mutatis mutandis* include the matters referred to in rule 12 (5): Provided that a political party represented in the Constitutional Assembly that wishes to present oral argument to the Court shall be entitled to do so as of right, but such political party may be required to submit written submissions to the Court in advance of the oral argument.

(5) Rule 12 (6) shall apply *mutatis mutandis*.

(6) An order of the Court pursuant to section 71 (2) may specify the provisions of the constitutional text, if any, which comply and which do not comply with the Constitutional Principles.

16. Certification of a provincial constitution

(1) The Speaker of a provincial legislature which has passed a constitution in terms of section 160 (1) of the Constitution and which wishes such constitution to be certified by the Court shall certify in writing the content of the constitution passed by the provincial legislature and submit such constitution to the registrar with a formal request to the Court to perform its functions in terms of section 160 (4) of the Constitution.

(2) The certificate contemplated in subrule (1) shall include a statement specifying that the constitution was passed by the requisite majority.

(3) Upon the receipt of the request referred to in subrule (1), the matter shall be disposed of in accordance with directions given by the President.

(4) The directions referred to in subrule (3) may *mutatis mutandis* include the matters referred to in rule 12 (5): Provided that a political party represented in the provincial legislature that wishes to present oral argument to the Court shall be entitled to do so as of right, but such political party may be required to submit written submissions to the Court in advance of the oral argument.

(5) Rule 12 (6) shall apply *mutatis mutandis*.

(6) An order of the Court pursuant to section 160 (4) of the Constitution may specify the provisions of the constitution, if any, which comply and which do not comply with the Constitutional Principles.

17. Direct access in the interest of justice

(1) The Court shall allow direct access in terms of section 100 (2) of the Constitution in exceptional circumstances only, which will ordinarily exist only where the matter is of such urgency, or otherwise of such public importance, that the delay necessitated by the use of the ordinary procedures would prejudice the public interest or prejudice the ends of justice and good government.

(2) The special procedure referred to in subrule (1) may be sanctioned by the Court on application made to it in terms of these rules.

(3) An application in terms of subrule (2) shall set out—

- (a) the grounds on which it is contended that such special circumstances exist;
- (b) the nature of the relief sought and the grounds upon which such relief is based;
- (c) whether the matter can be dealt with by the Court without the hearing of oral evidence.

(4) The application referred to in subrule (3) shall be lodged with the registrar and served on all parties with a direct or substantial interest in the relief claimed.

(5) Upon receipt of the application, the matter shall be disposed of in accordance with directions given by the President.

(6) The directions referred to in subrule (5) may include—

- (a) a direction that the matter concerned is not a proper one for the exercise of the special power of the Court in terms of section 100 (2); of the Constitution
- (b) directions *mutatis mutandis* of the kind referred to in rule 12 (5).

(7) Rule 12 (c) shall apply *mutatis mutandis*.

Part VIII

Appeals and transferred matters from other courts

18. Procedure for an application for leave to appeal

In any proceedings other than those referred to in rules 20 and 21 where a constitutional issue is the only issue in the case or the only issue on which an appeal will be brought, the following procedure shall be followed:

- (a) The appellant shall within 15 days of the judgment given by the provincial or local division of the Supreme Court which heard the case and after giving notice to the other party or parties concerned, apply to the judge or judges of that provincial or local division who gave the judgment or, if such judge or judges are not available, to another



CONSTITUTIONAL ASSEMBLY

B.1.1

22 December 1995

Director
The Human Rights Trust
P O Box
PORT ELIZABETH
6013

Dear Mr Riordan

RE: WORKSHOP: 27 JANUARY 1995

Thank you for your letter dated 14 December 1995. We confirm that we will table this invitation at the Management Committee meeting of 17 January 1996 and revert to you accordingly.

Yours faithfully

HASSEN EBRAHIM
EXECUTIVE DIRECTOR

30

P. O. Box 15, Cape Town, 8000
Republic Of South Africa

Tel: (021) 245 031, 403 2252 Fax: (021) 241 160/1/2/3, 461 4487. E-mail: conassem@iaccess.za



You've made your mark



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THE NEW CONSTITUTION



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The Human Rights Trust is a not-for-profit trust set up to redress conditions of deprivation and suffering caused by discrimination by law, regulation, custom or practice.

P.O. BOX 13167, WILLOWDALE
6013 PORT ELIZABETH
SOUTH AFRICA

THE CONSTITUTIONAL ASSEMBLY
MR HASSEN IBRAHIM
CAPE TOWN

FAX NUMBER 021 241162

11 December 1995

Dear Mr Ibrahim,

THE NEW CONSTITUTION WORKSHOP / CONFERENCE PORT ELIZABETH 27 JANUARY 1996

The Human Rights Trust, based in Port Elizabeth, has held an annual human rights festival and conference since 1988. The conference has, in the past been held in November / December to coincide with World Human Rights Day on 10 December, but it has now been decided to move this towards the end of January so as to enable school pupils and university students to participate in the programme.

The theme for 1996 is 'The New Constitution', and it is envisaged that a one-day conference will be held for all interested persons who wish to learn more about the working draft and who would like to participate in publicly commenting on the document.

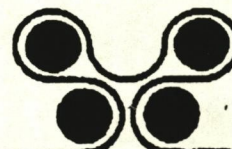
On the recommendation of Mr Cyril Ramaphosa, who unfortunately is unable to attend, would it be possible for you to organise for a suitable well-known speaker to attend on 27 January, either for the whole day or as speaker at a public meeting in the evening? If this date is not suitable, perhaps you could suggest another in February that would be convenient.

All travel and accommodation expenses will be carried by the Trust.

We look forward to hearing from you.

Yours sincerely,

R Riordan
RORY RIORDAN
DIRECTOR



Bosmanstraat 149 Bosman Street • Pivaatsak/Private Bag X85, Pretoria 0001, RSA
Tel (012) 323-9731 • Faks/Fax (012) 323-0009

Verwysing • Reference

Navrae • Inquiries

4 December 1995

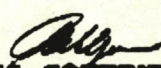
The Executive Director
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

Dear Sir

COAT OF ARMS

In response to your letter dated 12 October 1995 I advise as follows:

- a) The coat of arms is used on most of the forms used by the central government departments and also on letterheads of the departments.
- b) It is not possible to estimate the cost implications of the suggested change without a proper investigation into the values of forms kept by the departments as stock items and the usage by the departments of such forms and letterheads. The Government Printing Works do not have such statistics available.
- c,d) It is suggested that the proposed change be phased in over a period of time as and when new stocks are required.
- e) The Government Printing staff is available to advise on the design of a new coat of arms.


ACTING GOVERNMENT PRINTER

