

# Facing the language challenge

The entrenchment of multi-lingualism in section 6 of the 1996 Constitution confronts the South African government with the obligation to design and put into practice a language policy that will give effect to the constitutional directives on multi-lingualism.

The purpose of this contribution is to first focus on the theoretical and practical issues that are likely to emerge from an interpretation and application of section 6 of the 1996 Constitution which provides for the officialization of eleven languages. How local governments understand and cope with the constitutional obligation to put into practice a policy for the advancement of multi-lingualism that complies with the provisions of section 6 is the follow-up theme. The commentary on the latter issue is based on a survey that was undertaken in early 1999 amongst 79 local government structures in the Free State Province to determine the status of language policy and planning on local government level against the background of the constitutional directives for local governments contained in section 6 of the Constitution.

## The structure of the official language clause

The results of the survey, some of which will be discussed later on, show that there is, amongst the municipalities surveyed, no clear vision as to how the official language clause of the constitution should be applied. At least part of the blame for this confusion must be attributed to the lack of clear guidance contained in the official language clause itself on when and to what extent the declared official languages should be used in the official business of municipalities. The basic problems regarding section 6 are the following:

First, section 6, on the one hand, states that official languages should enjoy parity of esteem and be treated equitably (section 6(4)), but on the other hand, provides that in the actual choice of language for government use, cognisance should be taken of factors such as usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned (sections 6(3)(a) and (b)). Clearly, in practice these subsections,

when applied in isolation, can and do point municipalities in different directions. Section 6 itself does not provide any clear indication of how these subsections are supposed to inter-relate. This results in a practice where they are applied individually and separately, depending on which subsection serves the political interest at stake.

Second, the factors themselves differ in nature and could also, in the absence of any guidance on their relative importance, cause arbitrary decision-making when some are emphasised and others ignored.

Third, municipalities are treated separately from national and provincial government, in the sense that the normative guidelines for official language policy that are prescribed for national and provincial government are not repeated in the case of municipalities, and only some of the prescribed practical factors to be taken into account in language choice, are provided for in the case of municipalities. This creates confusion as to whether the same basic principles governing official languages on the national and provincial level, also apply to local government.

In what follows, these problems will be addressed and a framework for the application of the official language clause will be proposed.

## Normative guidelines and factors for official language policy

The Constitution now provides three basic normative guidelines that should inform the formulation of language policy and legislation. Section 6(4) states that the national and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages, but that all official languages must enjoy "parity of esteem and equitable treatment". Regarding indigenous languages specifically, section 6(2) provides that the state must take practical and positive measures to "elevate the status" and "advance the use" of these languages. Section 6(3)(a) provides that in the actual choice of language, the national government and the provincial governments shall take into account a number of practical factors such as usage, practicality, expense, and so on. Regarding municipali-

ties, section 6(3)(b) states that municipalities must take into account the language usage and preference of their residents. There is certainly no shortage of instances where economic concerns, or considerations regarding communicative effectiveness, or sometimes even a specific concept of nation-building have been used to brush aside claims for the recognition of language diversity and equity. From the survey, it appears that language choice is often based on one or more of these factors only, without relating them to the guidelines or any reflection on their collective or individual relevance as such.

The subsections ought to be related to one another in a way that respects the principle of constitutionalism and affords a legal meaning to all, which does not reduce any to a mere non-binding symbolic status. It is submitted that the factors can only have the function of providing a justificatory basis for limiting and balancing competing language claims in actual situations. This view of the relationship between the factors of section 6(3)(a) or (b) and the normative directives of parity of esteem, equitable treatment and development is attractive in that it provides a framework for a coherent understanding of the language clause with the potential to integrate its constituent elements. This puts the normative guidelines and the limiting factors into a relationship of rules and their exceptions.

If, as has been argued, section 6 contains a clear instruction to recognise language diversity and equity, then the purpose of the qualifying factors is not to release the state from the duty to fulfil this obligation. It is, of course, self-evident that the promotion of parity of esteem and equitable treatment of languages cannot be approached in a mechanical way, but must take into account factors such as the relative level of development of languages, the measure of historical disadvantage or privilege of specific languages, and their geographical distribution. The qualifying factors mentioned in section 6(3)(a) and (b) obviously also have the purpose of keeping all language claims within reasonable bounds and providing a basis for the integration of these claims with other constitutionally

recognised interests and concerns. However, practical considerations of feasibility cannot be allowed to dictate language policy with the same force as the clear constitutional commitment to the promotion of language equity, diversity and development. Therefore, no organ of state may approach section 6 with the sole motive of finding loopholes in it only to justify its lack of commitment to overcoming the practical problems encountered while striving for the realisation of the constitutional directives of parity of esteem and equitable treatment of all official languages, as well as the development of the neglected indigenous languages.

### **Municipalities**

It is noteworthy that municipalities are treated separately and that the criteria for language use are reduced in the case of local government. Municipalities are to apply only one demographic criterion, "usage", and one attitudinal criterion, "preferences of their residents". In terms of language demographics, it seems reasonable that a more flexible and individualised approach be allowed at the local level, since national or even regional language demographics are not necessarily replicated in each municipal area within a particular region. This allows a municipality to have a different official language profile from that of its provincial government or even those of its neighbours. It also stands to reason that, owing to vast discrepancies in the financial capacities of individual municipalities as well as differences in the governmental mandates of various municipal structures, it would be difficult to formulate uniform guidelines for municipalities, particularly in respect of the task of the development and promotion of official languages. It is, nevertheless, difficult to explain why some of the factors to be taken into account in making language choices at the national and regional levels are not repeated at the local level. Most noticeably, no reference is made to factors such as expense, practicality or the language needs of residents. Above all, it is not clear why the principles of parity of esteem and equitable treatment of official languages are not repeated in section 6(3)(b). Whatever the case may be, it is submitted that this separate treatment of municipalities must not be read to mean that they, as the third sphere of government, stand completely unintegrated in the over-all constitutional scheme for official language policy. Within the ambit of their own governmental mandate, municipalities should comply with the general obligation to respect and promote official multi-lingualism.

### **Language planning and policy on local government level**

Only some results of the survey are being dealt with here. For a more comprehensive account see Strydom & Pretorius "How do local governments cope with multi-lingualism?" in 2 *Tydskrif vir Regswetenskap* 1999.

### **How local governments handle multi-lingualism**

In response to the question: How do you handle multi-lingualism? 40,5% of respondents indicated that English is used predominantly, while other languages are allowed and accommodated, apparently by means of interpreters and translation facilities as 15,2% of the respondents have indicated. In 15,2% of the cases Afrikaans and English are used alternately and/or simultaneously while 7,6% of the respondents decided on Afrikaans only and 6,3% on English only. Only 1,3% indicated that Sesotho, the dominant indigenous language, is used predominantly and in such cases minutes of meetings are made available in English only.

Responses to open, unstructured questions aimed at eliciting further explanations disclosed a pragmatic approach determined by the exigencies of the occasion. Debates and reports are predominantly in either Afrikaans or English and when another language is used (mainly in debates) translation takes place, often by other members in the Council, as opposed to a professional translation or interpretation service. What is abundantly clear, however, is that the language that the majority can understand tends to dominate.

### **The adoption of written language policies**

A high percentage (60,8%) of local governments have indicated that they have no official written language policy and of this figure 95,8% have indicated that no steps are being taken to rectify the matter. Reasons given for this attitude were either that such a policy is not a priority or that a resolution has been taken that English will be used during Council meetings.

Local government councils that had adopted written language policies amounted to 39,2%. A question on the content of such policies elicited responses that once again indicated that the language policy amounts to little more than the officialization of English and Afrikaans as dominant languages by virtue of their utilization. Of the respondents 41,9% have indicated that

English is both the spoken and written language while other languages are used only in the spoken form. In 25,8% of the cases English is the only language medium while according to 19,4% of the respondents minutes and reports are made available in both Afrikaans and English. Only 12,9% of the respondents followed a policy that accommodates all three dominant languages (in terms of users as opposed to mother tongue speakers) in the region by means of interpreting and translation services. Responses on the content of language policies must be read in conjunction with the responses on local governments' familiarity with section 6 of the Constitution.

Of the respondents 86,3% have indicated that they are familiar with the provisions of section 6, and 85,7% have indicated that section 6 was taken into consideration when the language policy was determined. The only reasonable conclusion to be drawn from these and other responses is that local governments either did not understand the implications of section 6, or if they did, section 6 was for some or other reason not implemented.

With regard to the question: Has the policy been made known to staff and the public? an interesting discrepancy seems to prevail. While 87,1% of respondents communicated their policy to staff, mainly by means of circulars and memos, 67,7% did not communicate the policy to the public at all. Whether this lack of external dissemination of information on language policies is owing to the fact that the majority of Councils still consider such issues as internal in nature and not of importance to the communities they serve, is difficult to tell.

### **Whether local governments deem their handling of multi-lingualism sufficient for effective communication, or not?**

Councils that responded negatively (12,5%) cited as reasons the domination of Afrikaans and English (which makes communication with the Sotho-speaking public problematic) and the absence of official interpreting services.

Councils that were upbeat (87,5%) about their effective communication showed a considerable amount of complacency with regard to the fact that no problems are experienced since everybody understands (as opposed to prefers) the languages used, which invariably turn out to be Afrikaans or English or both.

As far as obstacles were concerned the majority of responses can be grouped

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together according to the following categories:

- The absence of terminology in the African languages;
- The costs involved in providing a multi-lingual service coupled with the poor financial situation of local governments;
- The shortage of trained professional staff to provide translation and interpretation services.

Although respondents mentioned these issues in order to betoken the nature of the obstacles, the vast majority (60%, 85% and 76,2% in the sequence of the three listed categories) indicated that these are not considered to be problems, which perhaps means that the obstacles are considered to be surmountable. This positive assessment of the respondents, especially with regard to the first two stumbling blocks, could be somewhat unrealistic if it stems from a perception that the stumbling blocks can be overcome with relative ease. Developing the terminology in African languages to make them effective for present-day communication may take longer than initially anticipated. Secondly, the financial situation in local government structures throughout the country does not seem to have entered a phase that points to a meaningful recovery in the near future.

## **Determining the language preferences of the community and the need to promote African languages**

The language preferences of communities had been determined in the areas of only 35% of the respondents. The vast majority (62,5%) had not taken any steps in this regard while 2,5% were uncertain or did not know whether any steps had indeed been taken.

Opinion polls or surveys seem to be the dominant strategy (35%) adopted to determine the language preferences of communities. In 28,6% of cases an assessment of the language preferences was made after informal conversations with members of the community or on receipt of feedback after ward or mass meetings.

Those local governments which had not made any assessment indicated that they would opt for opinion polls (36%) or mass, ward or community meetings (22%) to determine the language preferences. Interesting, however, is the fact that 22% of respondents in this group indicated that it was unnecessary to determine the language preferences of the community since the local government knows the language profile of the community and is fully aware of

the community's needs and preferences. Another interesting result of the survey in this category is that 20% of respondents indicated that they had no specific idea or plan on the strategy to be followed.

Somewhat startling results were obtained in response to the question concerning the policy of local governments to promote African languages. In 93,7% of cases no such policy exists. To the question: How would the Council go about promoting African languages? 42,7% responded that they had never thought about it or did not know; 38,7% suggested training courses while 12% adopted the view that it was unnecessary to promote African languages since they were not used by the respective local government Councils.

## **Concluding remarks**

A number of points emerge when the results of the survey are interpreted in terms of the constitutional obligations of municipalities in terms of section 6.

On the level of municipalities' understanding of the constituent elements of the official language clause, what appears is a general tendency not to interpret this clause as an integrated whole. As was explained above, the formulation of the clause itself must carry some part of the blame. However, especially in regard to municipalities' inactiveness regarding the development of indigenous languages, practical factors are allowed to dictate decisions on a level completely undermining the constitutional obligation of increasing the usage and promoting the status of such languages. In particular instances, this also happens in decisions regarding the official use of Afrikaans or English.

There does not seem to be any unequivocal awareness of and commitment to the intent of the official language clause as a binding directive for the promotion of multilingualism. It has been noted above that a natural outcome of such an awareness and commitment would have been a formal official language policy providing some regulatory system for the use of official languages in the normal business of municipalities. The survey has brought to light that the vast majority of municipalities has not yet adopted an official language policy, and neither are any such policies in the planning phase. The low status of official lan-

guage policies in the range of priorities of municipalities is further underscored by the fact that of those municipalities that did adopt a formal policy, almost 70% did not deem it necessary to communicate its contents to the public at all.

As a result of the above, it is not surprising that the de facto use of official languages by municipalities is not so much dictated by a considered application of the Constitution, as the result of pre-existing socio-linguistic patterns informally transplanted into official local government business. It has to be said that this form of informal accommodation of language preferences, with some notable exceptions, seems to have provided a reasonable successful format for addressing language conflicts. The survey indicated that language complaints comprise only a small percentage of the total of complaints received by municipalities. The vast majority of respondents also stated that language has not been experienced

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as a problem during council meetings. It would be wrong, however, to deduce from this that language is not a politically volatile issue. The present approach clearly harbours inherent dangers. Its extent of language accommodation relies largely on personalities, relationships and the strength and persistence of historical patterns of inter-personal language use. Should these informal mechanisms become dysfunctional and fail to prevent or address language conflict, there is nothing to fall back on which may provide an acceptable basis for its resolution. A great many factors have the potential of undermining the effectiveness of the present pattern of informal accommodation. For instance, any significant change in the demographics of council membership or the municipal workforce might radically alter the standing of a particular language in the internal and external communication of a municipality; present language accommodation might be the outcome of political compromise or expediency, wiped out by a different constellation of events in the future, etc. A legal framework for official language use, based on the Constitution, remains an essential ingredient in the resolution of language conflict.

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