LANGUAGE RIGHTS IN THE NEW CONSTITUTION

Albie Sachs

June 1994

South African Constitution Studies Centre

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Author's note:

Suddenly we have become a country of angels. Yet we need our fools. In presenting this paper, I volunteer for that title. No sane person would rush into print on the language question. It is so intricate and so laden with emotion that you are bound to offend many and please few. Yet debate there must be. Someone must take the initiative.

The thoughts and commentaries that follow emerged from my participation in a conference organised in Pretoria at the end of May 1994 to discuss the new language dispensation in South Africa. Entitled: Languages for All - Towards a Pan South African Languages Board, it was organised by the Department of National Education, with the collaboration of the Department of Arts and Culture of the ANC. The conference was opened by the Deputy Minister of Arts and Culture and attended by more than three hundred delegates from various organisations and many regions. The discussions made it clear that there is huge interest in the subject and that a multiplicity of divergent and honestly held views have still to be reconciled.

This is the paper I presented at the conference, re-worked and extended in the light of the lively debates. I hope its appearance will encourage other fools to rush in. In the meantime, may it help focus attention on some of the difficult problems. And may readers pass on their comments and critiques to me so that I can correct errors and improve on presentation.

Albie Sachs

Director, South Africa Constitution Studies Centre, Community Law Centre, University of the Western Cape, Private Bag X17, Bellville 7535.

LANGUAGE RIGHTS IN THE NEW SOUTH AFRICAN CONSTITUTION

PART ONE

SOME INTRODUCTORY CONCEPTS

Tidiness is not always a virtue. The new constitutional provisions relating to language are messy, inelegant and contradictory - just like the language situation itself. So are the new flag and the new anthem.

The flag is over-busy, it has many colours that jangle with each other, and contains incoherent shapes. Yet it works. The same can be said of the anthem, which has three languages, two histories, three tunes, and umpteen verses and choruses. In both cases, elegance gave way to history, and neatness to inclusiveness. The beauty of the flag lies in the eye of the holder, and the resonance of the anthem in the heart of the singer. They work because they correspond to the fundamental themes of the constitution: equal rights, national unity and reconciliation. Everyone feels acknowledged and included in them. Their message is that when it comes to the fundamentals of citizenship, there is no ranking or ordering, no-one is in front, no-one behind, everyone participates.

This is not a plea for untidiness for its own sake, simply a recognition of the inevitability of inelegance in the solutions to problems arising from the turbulence of history. Pluralism is by its nature untidy. It allows things to achieve their natural contours rather than attempts to force them into a single pre-ordained shape.

The peopling of our country has been such that we have a multiplicity of languages used in a great number of different situations. Language utilisation and status reflects cycles of conquest and re-conquest. The situation is a product of historical conflict and interaction, not of constitutional prescription.

The whole approach of the drafters of the Constitution was accordingly to construct a set of functional principles around the existing reality, rather than to attempt to subordinate the reality to a simple controlling principle. This is one of those areas where, within the framework of common citizenship and a shared endeavour to make South Africa a decent and prosperous country for all, we can declare that diversity is strength.

What is disappointing is that the greatest exponents of liberty and spontaneity in the economic sphere are frequently the most prescriptive in relation to language use: English is the language of business, therefore English must be the language of the world.

How easy it would have been to declare English to be the working language of government and the functional medium of public discourse, reserving to other languages a protected but subordinate status. This may be called the one plus ten solution. Most of those who, like myself, are English-speaking, would see no problem with one plus ten. After all, to most English-speakers, English is considered the natural medium of communication, so convenient and ever-present as to be more like the air you breathe than a language. The language problem, then, is seen to be what to do about all those other tongues.

To speakers of other languages, however, the problem is just the opposite. The omnipresence of English can be inconvenient and suffocating, and induce a sense of disempowerment and exclusion. In a sense, all language rights are rights against

English, which in the modern world is such a powerful language that it needs no protection at all and tends to resist being slotted into any system of rights.

It might well be that one day English will emerge as the working language of most of government and business in South Africa. Perhaps it will come to be the language that everyone wants to learn because of its utility. That, however, would be evolution through choice. Nothing could be more inimical to the widespread acceptance of English than to make it the common language by command.

Forced anglicisation in the post Anglo-Boer war period had disastrous consequences. Language became politicised. The loss of language rights became associated with the loss of sovereignty, dignity and land. English came to be seen not as a convenient means of communication, but as the language of the conqueror. To make matters worse, Afrikaans was treated as though it were a rudimentary tongue, fit for the kitchen and the bushveld, but not for learned discourse.

However useful English in our day has been in practice as a language of negotiation, any attempt in the current phase to establish formal English-language supremacy would have been unacceptable. It would have revived deeply painful memories of past dispossession in a sizeable section of the South African community and ensured language strife at the moment when peace was most needed in our country. It would greatly have strengthened the hands of those who argued that cultural self-expression could only be achieved through territorial self-determination, rather than democracy and a Bill of Rights.

Language questions are never just about function and convenience. If they had been so, the world could long ago have adopted the most widely spoken language as the language of human kind, and today we would all be speaking Chinese.

The language question is a question of communication, but it is also a matter of identity on the one hand, and of empowerment and disempowerment on the other. If people in the Netherlands or Germany learn English, it is because they wish to benefit from the convenience of doing so, not because they are compelled by law to do so. The status and development of Dutch and German are not in any way undermined by knowledge of English - on the contrary, the Dutch-speaking nation survives and prospers because it speaks many other languages. The stronger that Afrikaans is, the more likely are Afrikaans speakers to use English. Indeed, the chances are that the Afrikaans speakers will become the most multilingual of all South Africans.

The problem of one plus ten does not end with the longstanding battle between Boer and Briton. It touches on the whole history of conquest and the destruction of the independence of the indigenous African people.

If South Africa were a confederation of ethnically based states, then each of the African languages could have had official status in a particular state, and English could have served as a link language. The concept of ethnic confederalism, however, has been overwhelmingly rejected. Not only are there large regions such as the PWV where all the languages are spoken, but the idea of a shared nationhood has become the dominant notion of the times. Linguistic autonomy has come to be associated with corrupt and ineffectual Bantustans, with poverty and marginalisation, and not with independence and development.

The basic concept of the new South African nation is that we come into it as we are, bringing our languages, beliefs and world-views in with us. Citizenship is culturally and linguistically unqualified. To be a South African, you do not need to prove to anyone's satisfaction that you are civilised, assimilated, exempted or honorary. We share a common humanity, occupy a common territory and fall under the protection of a common constitution. We do not have to share a common language. Equality does

not mean identity, but denotes equal rights to participate as we are in a common citizenship.

One plus two is accordingly also unacceptable. It would draw a distinction of status and empowerment between speakers of English and Afrikaans, on the one hand, and speakers of the African languages on the other. To regard English and Afrikaans as national languages while restricting the status of the African languages to the regions only, would simply emphasise invidious distinctions linked with colonial domination and apartheid.

Attempts have also been made to promote three plus eight. The idea is to elevate one of the African languages to the first language league so that the official language cluster would have a less obviously racial character. The argument usually goes that since more people speak Zulu as home language than any other language, the third privileged language should be Zulu. Perhaps an unstated but real consideration some time ago was to support the idea of a three-person rotating presidency, backed up by three politically associated languages. The actual argument used, however, was the headcounting one, which is always relevant to resources, and ever dangerous in respect of rights.

Nothing is more likely to promote language chauvinism than to attach benefits to numbers. Xhosa is in fact the mother tongue of more persons than is Afrikaans or English. Must it then too be added to the top tier, so as to make for four plus seven? The result then would be two `European' and two Nguni languages. What, then, about including the most widely spoken of the Sotho\Tswana group of languages? There is so much overlap in speech forms, so many different and equally valid variants, how would one of these languages be actually counted? Once the selection is made, we would have five plus four ....

A further ingenious proposal is based on a proposed coalescence of languages, so as to produce four plus nothing. The idea is to create a single Nguni language and a single Sotho-Tswana one, so that together with English and Afrikaans we would have four official languages, not eleven. In this way, the problem of numbers would be solved, or, at least, be made more manageable.

Presumably, Tsonga and Venda would once more revert to the status of `other languages'.

The further problem is: who would do the amalgamation and standardisation? Again, nothing is more calculated to promote language friction than to impose a single allegedly superior usage on all the various speakers. It is one thing to argue in favour of language unification as a desirable goal, and to promote it in practice; it is another to enforce it as state policy.

The intention is a praiseworthy one, namely, to raise the status of African languages to that presently enjoyed by Afrikaans and English. The method, however, is flawed. Alarm at the problems of having eleven official languages, leads to attempts to adapt languages to state convenience, rather than to re-model state policy to fit language reality. The languages are obliged, like Cinderella's sisters' feet, to fit into state policy. The shoe should be the size of the foot, not the foot the size of the shoe.

The approach embodied in the Constitution is accordingly not based on numbers as such but on historical, sociological and political fact. There are eleven languages with deep implantation in South Africa, each of which already enjoys some degree of official status in the country. This is the eleven plus nought approach. The idea is in a practical and realisable way to do away with the conflictual symbolism and divisive distinctions of the past, and, on the basis of equal respect for all languages, to move from a situation of standardised compulsion to one of varied and realisable choice.

THE MOVE FROM BILINGUALISM TO MULTILINGUALISM

The first tendency is to imagine that the move from two languages to eleven means that instead of everything being done times two, it now has to be accomplished times eleven. The expense would be enormous and the inconvenience even greater: if every road sign was in eleven languages, you would not be able to see the street. Similarly, income tax forms in eleven languages would be so expensive that the tax itself would have to be raised; probably not a single person would qualify for the civil service if fluency in all eleven languages were required; no journey by air would be long enough for every announcement to be repeated eleven times.

The fact is that the move from bilingualism to multilingualism does not mean continuing with the present language rules and multiplying performance by five and a half. The change is a qualitative and not just a quantitative one. The essence of multilingualism is not automatic replication, but meaningful communication. It is founded on acknowledging fundamental language rights for eleven language communities, and then finding sensible and practical ways of realising these rights.

With two languages enjoying equal status, it is possible to require fluency in both languages for state employment, to make both obligatory on state documents, and to have the telephonist say: Goeie more, good morning. If the telephonist had to say good morning in all eleven languages, it would be afternoon before she or he finished.

Having eleven languages in fact forces us to look more carefully at what language rights really mean. If they do not signify everything times eleven, what, then, is their essence?, If we succeed in answering that question and manage to develop appropriate language strategies, we will avoid trivialising the issue. We may then focus on what really matters, and hope to achieve our ultimate goal, namely language harmony rather than language hatred.

Re-designing South Africa's language policy, and moving from bilingualism to multilingualism, involves three major shifts of approach.

The first is from language inequality to language equality.
English is in a strong position, and Afrikaans has achieved a powerful status. The African languages, though spoken by the great majority of the people, occupy a status of marked inequality. In keeping with the principles of equality, reconciliation and nation-building, the new language dispensation has to promote the idea of achieving equal status between all languages.

The second is from an emphasis on state prescription towards one on the exercise of individual and community rights. This in turn involves a movement from compulsion to choice.

The third is from a simple and totalistic approach to a more graduated and open one. This, too, pre-supposes that the perspective will be developmental rather than one based on rigidly determined positions. A principled and balanced approach to language rights will enable policy to evolve with time. Problems can be solved on a priority basis rather than all at one moment. Rights can become progressively more meaningful as more and more resources are made available for their realisation.

THE THREE FUNDAMENTAL RIGHTS

Fundamental language rights can be divided into three main clusters: the right to use your language, the right to have your language develop and the right to communicate with speakers of other languages.

The right to use your language relates not only to speech in the intimate sphere of family and friends. It applies to transactions of importance to your life: dealings with the state, communications with your employer or employee, the receipt and imparting of information in the public sphere. People should not be made to feel like strangers in their own land. When you touch the language, you touch the speakers.

The right to develop your language goes well beyond establishing academies to introduce words like cellular phone into the vocabulary. It signifies the production of schoolbooks, television drama, work manuals, law reports and newspapers. Advancing the language means moving forward in a creative way rather than retreating backwards to some allegedly original and pure language font. The thrust for development comes from the inventiveness of everyday speech rather than the dictates of experts. Words are borrowed and manufactured as aids to lively communication. Linguistic correctness has its place, but not as a substitute for linguistic inventiveness. Where oral tradition and interpersonal communication already are central to culture, it would be damaging rather than productive to insist on achieving formal language purity based on an invented and imaginary linguistic past.

The right to be understood and to understand other languages is fundamental to language survival in the contemporary world. This is achieved both through multilingualism of individuals and through the provision of translation and interpretation facilities. You retain, speak in and develop your own language. At the same time, you communicate with, understand and share in the pleasures of expression of other languages. Language ceases to be either a knobkierie or a shield, and becomes just a .....language.

Corresponding to these affirmative rights, is the negative **right not to be discriminated against because of your language.**

All these rights, both positive and negative, individual and collective, interact with and reinforce each other. The art of the constitution is to give appropriate, functional and integrated recognition to them all. In real life they are interdependent; so must they be in the constitution.

APPROPRIATE BALANCE

The move from bilingualism to multilingualism in essence involves a shift from prescription to choice and from rigidity to balance. Without appropriate balance, the shift to eleven languages becomes impossible. Balance is built into the language provisions of the South African constitution in three strategic respects.

The first strategic balance is between **the principles of non-diminution and of extension.** Existing rights in relation to privileged languages should not be reduced, while at the same time there should be an expansion of rights in relation to underprivileged languages. In practice this means that equality between all the languages is to be achieved not by downgrading English or Afrikaans, but by upgrading the African languages. In technical terms, this involves freeing the nine African languages from the Bantustan limits within which they already enjoy official status, and extending rights to their use and enjoyment to the whole country. The extension can be seen as having both a geographic and a status character.

Non-diminution and extension are not two separate principles. As the Americans say, they are joined at the hip. Non-diminution should not be regarded as an instrument for the maintenance of a privileged status for English and Afrikaans. On the contrary, it should be seen as the guarantee that enables English and Afrikaans-speakers to welcome the advance of the African languages, since such progress will not threaten rights they already enjoy. Similarly, the advancement of the African languages should not become a pretext for downgrading Afrikaans and English. A balance based on mutual respect

has much greater chance of being successful than an attritional struggle for hegemony. When people are secure in their rights, they will be pragmatic and sensitive in the manner of their exercise. Challenge the rights, deny the principle of equality, and they fight over every street sign and railway announcement.

The second strategic balance is between **rights and practicality**. In many respects, the constitution does not grant absolute and unqualified rights, but rather indicates that subject to reasonable limits of practicality, certain rights may be claimed. The rights are there, and questions of convenience or expense cannot be used to eliminate them altogether, or to make their exercise only nominal. At the same time, the manner in which the rights are exercised has to take into account available resources. Questions of reasonableness and proportionality become important. The State cannot just fold its hands and say that facilitating the exercise of language rights is cumbersome or expensive, and therefore not worth pursuing. It must make honest endeavours to utilise the resources at its disposal to best advantage. It must develop appropriate and open language policies to be applied in concrete situations. It must invest in training and facilities, give due weight to language skills in recruitment and promotion, encourage multilingualism in its various institutions, promote translation and interpretation and in general develop cost effective means of progressively expanding facilities for the enjoyment of rights. Again, rights and practicality should not be seen as principles in collision, but rather as mutually interacting concepts. The rights become meaningful to the extent that they are claimed in a reasonable fashion and to the degree that all reasonable steps are taken to ensure their realisation.

The third area of balance is between **rights to be exercised at national and regional levels**. The constitution does not separate languages into national and regional ones, but rather differentiates between national and regional exercise of language rights. Simply put, at the national level, any of the national languages can be used, while each region can determine which languages can be used in relation to regional matters. This has a major impact on the number of languages used in day to day contact with the state. In most of the country, the number is reduced from eleven to three or four, which in practical terms becomes far more manageable. At the same time, South Africa does not end up as a confederation of linguistically-based states. Each province is multi-lingual, only some are more multi-lingual than others.

LANGUAGE RIGHTS, LANGUAGE POLICY AND LANGUAGE PRACTICE

Confusion often exists between language rights, language policy and language practice. Language rights are those rights that are protected by the constitution and by legislation. To the extent that they are guaranteed by the constitution, they have to be respected. The government has no choice in the matter.

Language policy is of a different order. It can change, reverse itself, be repealed or altered. The government has freedom to develop policy as it thinks best, provided it does so within the limits of constitutionality. Thus, there is great scope for negotiation and trial and error in relation to language policy, whereas rights are rights.

For example, there could be many possible ways of achieving multilingualism in schools, or training interpreters for the courts. The mechanisms used are questions of language policy, not of language rights as such.

Language practice is yet one step further removed. The removal of Afrikaans from soft drink cans created something of a storm. To bitch or not to bitch? That was the question. The fact was that there could be no possibility of a constitutional right to have eleven languages on a soft drink can. This is a matter for civil society, not the government. However unfortunate and unnecessary the decision to remove Afrikaans might have been, it did not raise a constitutional issue.

The language provisions in the constitution essentially concern the relations between citizen and government, not between citizen and citizen. It is even doubtful if the government could legislate to require that Afrikaans be printed on soft drink cans, because this might be regarded as a non-justifiable infringement of freedom of economic activity. On the other hand, legislation to prohibit discrimination in business on language grounds could well be constitutionally acceptable.

THE SPECIAL ROLE OF THE PAN SOUTH AFRICAN LANGUAGE BOARD

Finally, a word needs to be said about the particular role attributed to the Pan South African Language Board [PASALB]. The objective of creating this body is twofold: to bring civil society into the picture, and to ensure that language questions are looked at in a non-competitive and holistic way. This should be the institution which sees to it that a balanced development and exercise of language rights is maintained.

While the courts must always be there in the background to ensure that constitutional rights in relation to language are not violated, it is not the function of the courts to develop language policy or to make decisions about the most efficacious use of public funds in this respect. The separation of powers ensures that although courts are obliged to be wise, Governments retain the right to be stupid [provided they are not so stupid as to behave illegally or improperly or violate fundamental rights]. It is the PASALB that should ensure wise action by the Government. More than that, it should promote active participation by a multitude of language and community n.g.o.'s in the linguistic sphere.

PART TWO.

CONSTITUTIONAL PROVISIONS RELATING TO LANGUAGE

TEXT AND COMMENTARY

A. CHAPTER 1: SECTION 3 - LANGUAGE RIGHTS

3 [1] Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu shall be the official South African languages at national level, and conditions shall be created for their development and for the promotion of their equal use and enjoyment.

This is a closed and precise list of languages which shall be the official languages at national level. The criteria for selection appear to have been both historical and legal: each of these languages has a recognised degree of implantation and use, and each already has official status in one part or another of the country. Instead of having geographically restricted recognition, however, they are now to be regarded as languages of the country as a whole. This corresponds to the concept of many cultures, one nation.

At the time of Union in 1910 an attempt was made to create a single white nation by entrenching the equal status of English and Afrikaans. The objective now is to enable a non-racial South African nation to evolve on the basis, inter alia, of the equality of the languages spoken by both black and white South Africans.

A developmental perspective is established from the outset. The second part of the provision indicates that having eleven official languages does not imply that everything must automatically be replicated eleven times, or that every civil servant has to be unodecimalingual, that is, fluent in eleven languages. What is required is that conditions be created for the development of all the languages and for the promotion of their equal enjoyment and use.

The names of the languages have been given as they are officially known in each of the languages respectively. In popular use, however, the prefixes are normally dropped, and the term Pedi is used instead of Sesotho sa Leboa. Thus the list would in ordinary speech be: Afrikaans, English, Ndebele, Pedi, Sotho, Swati, Tsonga, Tswana, Xhosa, Venda and Zulu.

Difficulties will exist about official versions of official languages. Thus, there are variants of just about every language, from Afrikaans to Zulu. Problems associated with standardisation, however, are not essentially constitutional in character. It will be up to language communities themselves, and not state officials or the courts, to work out orthographies, dictionaries and rules of good usage. It is not the task of the Constitutional Court to determine problems of spelling or how to say mass action in Zulu. Rights will relate to principles, promotion and practicality, not to pedantry; the right to be pedantic belongs to civil society, not the state.

[2]. *Rights relating to language and the status of languages existing at the commencement of this Constitution shall not be diminished, and provision shall be made by an Act of Parliament for rights relating to language and the status of languages existing only at regional level, to be extended nationally in accordance with the principles set out in sub-section [9].*

Two fundamental principles of the language dispensation are locked together in this section: the principle of non-diminution and the principle of extension. Non-diminution means that existing rights and status should not be undermined. This would be of particular importance in relation to Afrikaans and English, which enjoyed co-equal

official status throughout the length and breadth of the country until the establishment of the TBVC administrations and the homelands governments reduced their legal status in certain zones. Since English is a powerful language both internationally and internally, the practical impact of this principle will be felt mainly in relation to Afrikaans. It implies that neither the ever more extensive use of English, nor the promotion of the use of the nine other languages, should occur at the expense of Afrikaans.

It should be noted that the constitutional protection applies to rights and status only. It does not automatically cover all language policies, practices and usages. Thus, the use of Afrikaans on official documents, in legislative debates and in the texts of laws at all levels of government, would be constitutionally protected [in at least ninety per cent of the country]. The usage of Afrikaans on cold drink cans, however, would be a matter of private commercial decision falling outside of the constitutional sphere. Afrikaans speakers who were dissatisfied would have many courses of action open to them, but not the right to get the courts to intervene. One would have to look at legislation governing areas such as broadcasting and the functioning of para-statal organisations to see whether language rights and status were expressly conferred and as such in existence when the new Constitution came into force. It would also be necessary to examine the precise scope of such rights so as to find out if they related to the functioning of personnel within the organisation, or to the public outside, or both.

The non-diminution clause applies not only to Afrikaans. Should there ever be an attempt to diminish the status of English, this too could be constitutionally resisted. Similarly, the nine other languages would continue to have protected status at least in the territorial areas where they enjoyed it before: Xhosa in the Transkei, Zulu in Kwazulu and so on.

The non-diminution clause is balanced out by the extension provision. Theoretically the extension principle would apply to Afrikaans and English inasmuch as there are small portions of the country where they have less status than some of the nine other languages. In reality, this is a principle clearly designed to upgrade the status of the other nine languages. Thus, the idea is progressively to advance the status of the other nine languages until their position is indistinguishable from that of Afrikaans and English.

The principles of non-diminution and extension are clearly intended to balance each other out. The advancement of the nine other official languages should not be a means of undermining the existing two. By the same token, the maintenance of the existing two should not become a mechanism for holding back the advancement of the other nine. What is aimed at is a non-antagonistic relationship between the principles of non-diminution and extension. The harmonious application of the principles is intended to provide mutual reinforcement and security for each, rather than a combative relationship in terms of which the victory of one requires the defeat of the other.

There is an important practical difference between the two principles. The non-diminution concept is a defensive one of immediate application that flows directly from the Constitution. The extension principle, on the other hand, becomes operative only after legislation has been adopted. This corresponds to the notion of facilitating the progressive expansion of language rights where they do not exist, or where they are enjoyed only in limited form. It is not enough simply to declare the existence of language rights: conditions must be created for the rights to be exercised. The idea would seem to be that Parliament would debate the matter in all its concrete detail, taking into account budgetary implications and the practical problems involved.

[3]. *Wherever practicable, a person shall have the right to use and be addressed in his or her dealings with any public administration at the national level of government in any official language of his or her choice.*

This is another example of the balancing out of principles: the rights principle as against the practicability principle. Previous clauses dealt essentially with the languages to be used in official documents. This section refers to non-official communications. It means that persons talking to or writing to officials of national government are no longer restricted to the use of Afrikaans and English, but may employ any of the other nine languages as well. The only limitation is that of practicability. The government and its departments would be under a constitutional duty to take all reasonable steps to make this right a reality by employment policies that take account of the need for diverse language skills, as well as by ensuring that translation and interpretation facilities are progressively made available on an adequate and financially sustainable basis. Sensible means would have to be found to use resources economically. Thus, the number of income tax forms to be printed in Venda could depend on demand; persons wishing to be addressed by an official of national government in a language little used in a particular area, might have to request in advance the presence of someone capable of speaking that language.

[4]. *Regional differentiation in relation to language policy and practice shall be permissible.*

This broad statement serves to introduce later provisions which allow for concrete decisions to be made on language status and policy in the provinces. They do not detract from rights in relation to national government, but do allow for fewer than the eleven languages to have official status in relation to provincial government. This provision should be read with the Legislative Competences of Provinces contained in Schedule Six to the Constitution, which empowers provincial legislatures to pass laws dealing with language policy as well as to regulate the use of official provincial languages.

[5]. *A provincial legislature may, by a resolution adopted by a majority of at least two thirds of all its members, declare any language referred to in subsection [1] to be an official language for the whole or any part of the province and for any or all powers and functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language as existing in any area or in relation to any function at the time of the commencement of this Constitution, shall be diminished.*

Thus, the Western Cape Provincial Assembly could declare Afrikaans, English and Xhosa to be official languages for the whole of the province in relation to all powers and functions exercised at the provincial level. The non-diminution principle means that this recognition could not be withdrawn or limited in terms of geography or powers in relation to Afrikaans and English, which at the time of the commencement of the Constitution enjoyed official status throughout the area that now constitutes the Western Cape. Theoretically, however, the status and use of Xhosa could be reduced. In the Northern Transvaal, on the other hand, no less than five languages would have entrenched positions, but none of them in relation to the whole of the province. Thus, at the very least, Afrikaans and English could continue to be used for all the official purposes they were employed for in the days of the Transvaal Provincial Administration. Venda would retain its status in what was formerly denominated the state of Venda; Pedi in Lebowa; and Tsonga in those parts of Gazankulu presently in the Northern Transvaal. The Northern Transvaal Assembly, on the other hand, could lawfully decide to give Pedi, Venda and Tsonga equal status throughout the Province, or determine that all or any of these languages could be used, say for purposes of agriculture, in certain parts or all of the province. In this respect, Afrikaans and English have entrenched status as provincial languages in most of the country, while the other nine languages have guaranteed positions only in small portions of the provinces.

The counterweight to the legally privileged position presently enjoyed by English and Afrikaans does not come from any requirement at the provincial level for the extension of language rights in relation to the other nine. Rather, the balancing out is guaranteed to a large degree by the political predominance of speakers of the African languages at the Provincial level. Thus, the rights of Xhosa speakers are constitutionally guaranteed in the former Ciskei and Transkei, and politically underwritten in the rest of the Eastern Cape. Similar situations exist in relation to Sotho in the Free State, Tswana in the North West, and, probably, the Northern Cape, and Zulu in Kwazulu Natal.

The nature of language communities in the Eastern Transvaal and the PWV, however, does not provide either constitutional or political guarantees for languages other than English or Afrikaans outside of the territorial areas of what were called self-governing states. Since the achievement of a two thirds majority in each of these respective legislatures would require the concurrence of speakers of many languages, it is to be expected that solutions to these problems will be based on an appropriate degree of give and take.

[6]. *Wherever practicable, a person shall have the right to use and be addressed in his or her dealings with the public administration at the provincial level of government in any one of the official languages of his or her choice as contemplated in subsection [5].*

This reduces the number of languages that can be used in dealings with the officials serving the Provincial government from 11 but increases it from 2.

No definition is given of public administration. Some clue is given by section 236 of the Constitution, which, dealing with transitional arrangements, states the following:

Transitional arrangements: Public Administration

236 [1] A public service, department of state [including a police force], administration, military force ..... or other institution [excluding local government] which .... performed governmental functions under the control of a [defined executive] authority shall continue to function .....

The exclusion of local government in section 236 does not necessarily presuppose its exclusion from section 3. The fact is that language rights in relation to local government are not directly spelt out in section 3. Nor are they referred to in the Chapter on Local Government [Chapter 10]. They will have to be determined by applying the six general principles contained in paragraph 9. Presumably, these principles will be implemented in a manner consistent with policy in the province concerned.

[7]. *A member of Parliament may address Parliament in the official South African language of his or her choice.*

For this provision to be effective, Parliament will have to provide the necessary translation facilities. There is no qualification of practicability. M.P.'s have an unrestricted right to address the House in any of the 11 languages. There is no equivalent right, however, to have all speeches translated into all languages. This would require 110 interpreters at a time working in shifts. Instead, Parliament is left free to adopt its own rules with regard to interpretation, as it is in relation to the Hansard record of proceedings.

Parliament includes the National Assembly, the Senate and the two bodies meeting jointly [Chapter 4 of the Constitution].

[8]. *Parliament and any provincial legislature may, subject to this section, make provision by legislation for the use of official languages for the purposes of the functioning of government, taking into account questions of usage, practicality and expense.*

There is no automatic requirement that all official languages must be used at all levels of government in relation to all government documents and transactions. Parliament at the national level and the Provincial assemblies at the regional level may adopt laws that select out certain languages as languages of record, bearing in mind usage, practicality and expense. Unlike subsection [3] which deals with relations between the government and the public, this subsection would appear to refer to the internal workings of government. This would cover internal memos and notices, minutes of meetings, the languages to be used at departmental meetings, over the internal telephone and so on. Documents such as income tax forms would appear to be covered by subsection [3] rather than this one. The fact that it is Parliament and the legislative assemblies that decide, and not the executive, means that the issues have to be publicly debated and the principles to be followed must be laid down in law.

[9]. Legislation, as well as official policy and practice, in relation to the use of languages at any level of government shall be subject to and based on the provisions of this section and the following principles:

[a]. The creation of the conditions for the development and the promotion of the equal use and enjoyment of all official South African languages;

[b]. the extension of those rights relating to language and the status of languages which at the commencement of this Constitution are restricted to certain regions;

[c]. the prevention of the use of any language for the purposes of exploitation, domination or division;

[d]. the promotion of multilingualism and the provision of translation facilities;

[e]. the fostering of respect for languages spoken in the Republic other than the official languages, and the encouragement of their use in appropriate circumstances;

[f]. the non-diminution of rights relating to language and the status of languages existing at the commencement of this Constitution.

These broad principles repeat, underline and extend the more detailed provisions contained in the earlier paragraphs. They apply not only to legislation but to practice and policy. Thus, they would govern official language policy in relation to schools, the police force and the army. Furthermore, they expressly relate to all levels of government, national, provincial and local.

This appears to be the only provision dealing with language policy at the local government level, which is clearly intended to be guided by the same general principles as apply at national and provincial levels. No provision is made, however, for the declaration of official languages specifically for use at the local government level. These would have to be negotiated with the provincial legislature which, by a two thirds majority, could determine official languages for any part of the province and for any powers and functions within the legislature's competence. Schedule 6 of the Constitution indicates that the competence of the Provincial legislatures extends to cultural affairs, language policy and the regulation of the use of official languages within a province, subject to section 3, and local government, subject to the provisions of Chapter 10. In broad terms, Chapter 10 provides for some degree of autonomy for local government, but always within the context of national and provincial laws.

Sub-paragraphs [a], [b] and [f] repeat the essence of what is contained in paragraphs [1] and [2], that is, the promotion of equal enjoyment, applying the principles of non-diminution and extension.

Sub-paragraph [c] provides a further guiding principle, that of non-domination. At the individual level it should be read with the non-discrimination clause in section 8 of the Fundamental Rights Chapter. At the collective or community level, it is intended to prevent the development of language policies which enforce assimilation, suppress languages and marginalise language communities. These are guiding principles rather than precise formulations: they owe their origin to episodes in South African history where attempts to enforce language policies for purposes of domination and division led to disastrous results. Non-domination is not a completely new principle, but rather the negative counterpart of the positive idea of equal enjoyment.

Sub-paragraph [d] introduces the important elements of multilingualism and translation. This develops the idea of the right to understand other languages and to have your language understood. Legislation must make these rights meaningful by encouraging the learning of several languages and by ensuring the development of adequate translation services. The move from bilingualism to multilingualism is an important one. It means that no languages are automatically privileged. It also implies a much more fluid and adaptive language policy. At a practical level it is possible to handle everything in duplicate, but any attempt simply to extend the old policy by doing everything in eleven languages would fail. Questions of practicality, balance and accommodation become much more important when the number of languages is greater.

Sub-paragraph [e] makes it clear that there should be recognised space for languages other than the eleven official ones. Many language communities have established their own schools. Some publish newspapers in their own tongues. Such activities are to be respected; the Pan South African Language Board is given the specific task of promoting their development. These language speakers do not enjoy the strong rights attaching to the official languages. Nevertheless, their languages are not simply tolerated but welcomed as part of the multicultural character of the country.

[10] [a]. *Provision shall be made by an Act of Parliament for the establishment by the Senate of an independent Pan South African Language Board to promote respect for the principles referred to in subsection [9] and to further the development of the official South African languages.*

[b]. The Pan South African Language Board shall be consulted, and be given the opportunity to make recommendations, in relation to any proposed legislation contemplated in this section.

[c]. The Pan South African Language Board shall be responsible for promoting respect for and the development of German, Greek, Gujerati, Hindi, Portuguese, Tamil, Telegu, Urdu and other languages used by communities in South Africa, as well as Arabic, Hebrew and Sanskrit, and other languages used for religious purposes.

No details are given as to the composition of the PASALB, nor is anything said about how it should function. These are matters that are left to Parliament. The only precise requirement is that the Senate shall be the body responsible for the actual establishment of the Board. This would appear to be related to the importance of the regional element in language development. It would be logical, though not obligatory, that the Senate be the body to which the Board accounts and which ensures that the Board is able to function effectively.

The Board will be independent in its functioning, which means that it does not take its directives from Government, but rather gives a lead through recommendations to Government. In this sense, it joins the family of independent bodies created by the constitution intended to make for better government, such as the Fiscal and Finance Commission, the Commission for Gender Equality and the Public Service Commission.

The broad functions attributed to the Board indicate that it is to be the immediate watchdog of language rights and the principal promoter of language development. The term Pan South African indicates that it is to function in a holistic and integrated way, seeking balanced overall language development. Instead of each language being left to fend for itself, there is to be across-the-board defence of all language rights. The objective is to promote language solidarity rather than language conflict, to deveop a language garden rather than a language snake-pit.

While the Board might have departments concerned with technical questions relating to orthography, standardisation and so on, its main function will be to act as a language Parliament or forum attending to the broad questions of language rights and language development as set out in sub-section [9]. The idea of such a Board is to establish a coordinated approach to language use and development that encourages cooperation across the language divide and tries to prevent language collision. At the very least, it should be responsible for elaborating strategies for the development of all languages; it should find ways and means of promoting multilingualism; it should programme the means for developing translation and interpretation service; it should liaise with non-official language communities with a view to increasing respect for these languages and promoting their development. It should also vet all legislation at all levels of government with a view to recommending improvements or noting objections.

Different proposals have been made for how the PASALB should be constituted. They range from a federation of existing language boards, to a totally non-lingualist body made up of persons dedicated to promoting the advancement of all languages. Some put the emphasis on expertise in relation to the technical aspects of language development, while others focus on problems of adult education and language use in relation to reconstruction and development. All the proposals agree, however, that the Board should have the necessary authority, respect and funding to perform its many functions, and that it should not be regarded as just another government department fulfilling bureaucratic tasks.

One possibility would be for a broadly based national language forum to be created which would propose to the Senate how the PASALB should function and suggest names of persons who could serve on it. The forum would not have statutory powers, but would ensure that all language communities were represented, as well as all groups interested in language issues. The different language communities could then themselves establish assemblies or fora for the purpose of raising issues and nominating representatives to the broader forum. PASALB could in turn establish specialist bodies to deal with themes such as technical language development, language in education, language and the media, language at work, language and the arts.

A variant of this proposal would be to convert the broadly based forum into the PASALB, which would then elect national and regional executive committees to function on a full-time basis to carry out its decisions and give ongoing leadership on the language front.

B. CHAPTER 3: FUNDAMENTAL RIGHTS

8. *[2] No person shall be unfairly discriminated against, directly or indirectly, ... on one or more of the following grounds ...: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.*

This is one of the key clauses of the whole Constitution. In the first place, it means that the state and all its organs is prohibited from discriminating on any of the specified grounds [the list can be added to]. People cannot be excluded from jobs in the public service, or denied access to public facilities or made to receive inferior service from the public administration because of their culture or language. It further opens the way for legislation outlawing such discrimination in the private sphere e.g. in relation to facilities offered to the public, such as restaurants, hotels and cinemas. The law would require a reasonable cut-off point where personal privacy and freedom of choice would prevail, so that it could never be made unlawful to discriminate in relation to the language of your marriage partner or house guest.

Complicated problems can also arise in respect of balancing out non-discrimination principles and community cultural rights. The right to equality in fact protects the right to be different. Difference becomes harmful when it is associated with subordination - what has to be tackled is the subordination, not the difference. Pluralism becomes safe and beneficial when it is detached from political hegemony. The right to be the same in terms of political rights is the foundation of the right to be different in respect of language and culture. As has been pointed out, common citizenship protects language diversity, and language diversity gives texture to common citizenship.

At the same time, there are many aspects of community culture and language that have become suffused with racism and sexism. Holy texts are frequently explicitly sexist and sometimes racist as well. Patriarchy is deeply embedded in virtually all community cultures and reflected in speech. To what extent, if at all, can the law intervene?

Language difference can also be used as a disguised means of maintaining race discrimination. The problem becomes acute at the level of Universities, some of which have official language policies which, even if intended to maintain a certain cultural ethos, have the effect of excluding a large number of potential applicants.

Another problem relates to political mobilisation around questions of language. Freedom of expression [section 15] and freedom of association [section17] are guaranteed, as is the exercise of political rights [section 21]. The state is limited in interfering, even if it fears that national unity might be disturbed. The battle to establish a common patriotism is won or lost in the conscience of civil society, not through state compulsion. Thus, constitutional space is guaranteed to ensure open debate and the free clash of opinions on these important matters. The law can only intervene where speech and mobilisation exceed certain bounds. Any limitations imposed by the law must satisfy strict criteria: they must be reasonable, justifiable in an open and democratic society based on freedom and equality, and, to the extent that they bear on political activity, be necessary [section 33]. The requirement of necessity means that there must be no other reasonable way of dealing with the problem. The difficulty arises when mobilisation in favour of one language develops into organised hatred directed at speakers of another, or when self-expression takes the form of denying speech to others.

These are the sort of questions that are best sorted out in a spirit of openness and give and take. Since they relate directly to values and attitudes, civil society itself must play an important role in their resolution. At the same time, the spirit of mutual accommodation is not always there. Groups and individuals, both outside and inside government, might seek selfish advantage through manipulation of language passions.

This is where the system of constitutional rights and protections comes into play. The government works in tandem with civil society to ensure that constitutional rights are meaningful to the ordinary citizen, and the courts are there to ensure that constitutional rights are always respected.

31. *Every person shall have the right to use the language and to participate in the cultural life of his or her choice.*

This broad statement underlines the general principle of diversity and choice which runs through the language provisions in section 3. The negotiating process was such that the texts of different sections of the Constitution were completed at different times. The repetition of themes accordingly has no special significance, other than to reinforce their importance for the negotiating parties.

Placing this principle in the Chapter dealing with fundamental rights emphasises its importance. In general, section 3 deals with official language policy and the rights of persons in relation to the state. This section, on the other hand, guarantees language rights in the private sphere against interference by the state.

Sections 3 and 31 have equal status as constitutional texts, and should be read together in the light of the overall objectives of the constitution. Thus, the specific provisions contained in section 3 should be seen as qualifying or concretising the way in which the citizen uses his or her language in dealings with the state. At the same time, any legislation adopted or state action undertaken in terms of section 3 should take cognisance of the broad sweep of section 31.

32. *Every person shall have the right -*

a. to basic education and to equal access to educational institutions;

b. to instruction in the language of his or her choice where this is reasonably practicable; and

c. to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the grounds of race.

This section establishes the broad constitutional framework within which educational policy has to be developed. Once more, the concept of balance is introduced. The general principle is that of the right of all to basic education and to equal access to places of education.

At the same time, a high value is given to language choice within this context. Paragraph b. would refer in the first place to choice of language as a medium of instruction in state schools. It is not an absolute choice, but one qualified by reasonable practicality. What is reasonably practicable will depend on the number of persons involved and the resources available.

Mere inconvenience to the educational authorities is not enough to absolve them of responsibility for making best efforts to give real choice to students. It might be cheaper and easier, for example, to print all textbooks in English only. Yet to adopt this approach in the face of reasonable demand for instruction in say, Zulu or Afrikaans, would be a denial of fundamental rights.

On the other hand, it would not be reasonably practicable to provide instruction in all subjects at all schools in all eleven official languages. Demand and resources have to be balanced out. A Tsonga speaker in Cape Town would not be able to demand that Jan

van Riebeeck school, or S.A.C.S or the Khayelitsha High School or the University of the Western Cape provide physics lessons in Tsonga. If there were enough Tsonga speakers in Cape Town, however, they could demand that at least one school in the Peninsula provided at least basic literacy and numeracy instruction in Tsonga. Similarly, the absence of textbooks should not serve as a reason for effectively excluding a language as a means of instruction, but rather as motivation for the educational authorities to commission the production of such materials.

This is another area where it would be unfortunate to reduce the choice to that between either one or fourteen. A graduated and developmental approach is required. If it is correct that there are educational advantages in promoting mother tongue instruction in the first four years of schooling, then this could be encouraged. The pressure by parents for the use of English thereafter need not be resisted, save that a policy of promoting the development of the nine African languages must be resolutely followed, so that choice becomes real. At the same time, those parents and students who wish for the retention of Afrikaans as a medium of instruction, should feel secure that their language rights are not in any way being undermined. It will be equally important to promote multilingualism in schools, technikons and universities. Thus, a single school could offer instruction in several mother tongues up to a certain level, and then reduce the number thereafter. Universities could retain a certain core language ethos, while using flexible language arrangements to prevent that ethos from becoming exclusionary.

A distinction also needs to be made between language as a medium of instruction and language as a subject. The development of languages means that they should all be available as subjects for study, and that appropriate materials be produced and teaching skills provided for. More than that, citizens of South Africa should be encouraged to know and respect languages across the old divides. Quality teaching of English and Afrikaans will be important, but equally urgent is the effective familiarisation of all South Africans with at least one African language.

Paragraph c refers to the character of the institution rather than the nature of the student's choice. It expressly permits the establishment of private schools based on a particular religious denomination or language or culture. This would give constitutional protection to a Catholic, Moslem or Jewish school, or to a German, French or Portuguese school. It would also permit, say, Sotho speakers in Durban to establish a Sotho language school if they so wished. The one thing these schools cannot do is to practice race discrimination, so that an Afrikaans language school could not close its doors to black Afrikaans speakers. Single sex schools, on the other hand, are not prohibited.

The question of state aid or subsidies for such schools is not expressly dealt with. The right to establish such schools must include the right to receive curricula and to purchase textbooks, as well as to participate in the examination system. It seems, however, that there is no guaranteed constitutional right to state subsidies, nor is there any constitutional prohibition against such subsidies.

As far as the language orientation of state schools and colleges is concerned, this will be governed by the policy of national and provincial education departments. Dissatisfied students or parents will have a number of possible remedies: if their constitutional rights are being violated, for example, by arbitrary reduction of language rights, they can approach the courts. Alternatively, they can campaign at a political level or as a pressure group for policy to be changed. The third alternative which section 32 gives them is to set up their own establishment. The phrase `where practicable' in this context is puzzling, since they would be using their own resources, and the practicability of state action does not come into play. Perhaps it is intended to connote that persons cannot just declare schools to exist and expect state recognition. The educational enterprise must not only be wished, it must be viable.

C. CHAPTER 7: THE JUDICIAL AUTHORITY AND THE ADMINISTRATION OF JUSTICE. SECTION 107 - LANGUAGES.

107 Languages

[1] A party to litigation, an accused person and a witness may, during the proceedings of a court, use the South African language of his or her choice, and may require such proceedings of a court in which he or she is involved to be interpreted in a language understood by him or her.

This paragraph guarantees language rights to a litigant in a civil matter, an accused in a criminal trial and witnesses in any court proceedings. It starts with a right to use any of the South African languages during the proceedings. At first glance, this right is not qualified either by considerations of practicability, or of regional differentiation. Thus, on the face of it, any of the eleven official languages may be employed in any court in any part of the country. Language is used both for giving evidence and for placing documents before the court. The question is whether section 107 should be read together with section 3 so as to introduce a certain degree of qualification to what otherwise might be a situation which could lead to abuse and defeat the interests of justice.

The first qualification would seem to be based on determining the objective of language choice. The goal is either to enable the person concerned better to understand and participate in the proceedings, or, as a matter of language dignity, for a person to feel that his or her rights are being dealt with in his or her language. Applying these considerations would stop any bad faith insistence on the use of languages with little local presence, simply for the sake of inconveniencing the opposition and dragging out the trial. It would prevent a Xhosa speaker in East London who was fluent in English from obstructively demanding the right to use Pedi or Tswana in the court.

Secondly, a limitation of reasonable practicability could be read into the provision. Where the person concerned would be prejudiced in the conduct of the trial if the language use were in any way curtailed, then the provision must be given full force, however inconvenient the results. Where it is just a matter of language dignity - important though this is as a value in itself - then a developmental perspective could be justified. The introduction of true multilingualism into the court system will take time. The priority at this stage must be to ensure that the restricted language capacities of most court functionaries does not lead to any prejudice in respect of litigants, the accused or witnesses. At the same time, the Ministry of Justice will be obliged to take serious steps to promote forensic multilingualism.

In particular, the existing system of interpretation and translation in the courts will have to be fully professionalised and expanded.

[2] The record of the proceedings of a court shall, subject to section 3, be kept in any official language: Provided that the relevant rights relating to language and the status of languages in this regard existing at the commencement of this Constitution shall not be diminished.

The effect of this provision is that English and Afrikaans will continue to be officially available as languages of record for court proceedings in most parts of the country, while the African languages could continue to be used in those parts where under the so-called homeland system they presently have official status for purposes of record-keeping. The reference to section 3 indicates that where any other language is to be used, the balancing principles referred to earlier must be applied, namely, practicability and regional differentiation.

D. SCHEDULE 4: CONSTITUTIONAL PRINCIPLES

XI The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

The Constitutional Principles are not directly enforceable at this stage. They point to the future. Their significance lies in the fact that when the Constitutional Assembly drafts a new constitutional text, it will have to comply with the principles set out in Schedule 4. [sec.68]. The Constitutional Court will then have to certify that the new constitution in fact complies with the principles. This will mean that the National Assembly and the Senate, sitting together as the Constitutional Assembly, will have to give appropriate constitutional form to the above language and culture principle. It will not be bound by section 3 and might indeed opt for a different strategy if section 3 turns out to be unworkable or to produce unjust results.

The language question is one of the most difficult in any country. It is particularly complex in South Africa. The Constitutional Assembly will have to devote special attention to the matter and ensure that there is wide public participation in the debate.

At this stage, however, it is difficult to see how the general approach of section 3 could be radically altered. Although section 3 is clearly intended to be developmental, it is not intended to be transitional. It is not one of those arrangements that will automatically come to an end when the new constitution is adopted. Much will depend on the SAPALB and the experience it gains and the recommendations it makes.

The language provisions in the final constitution might inevitably end up as messy as the present ones, and for the same reasons. It should, however, be possible in the calm circumstances in which it is hoped the Constitutional Assembly will work, to introduce a greater degree of textual and thematic elegance.

As Oliver Wendell Holmes, the great American judge, said: the lifeblood of the law is not logic but experience. Nowhere is this more evident than in relation to language rights. It is experience that will tell.

XII. *Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.*

The same general points made in relation to principle X1 apply here. Particular attention could be given to developing the ideas behind the PASALB. The concept of an open government that is responsive to an active citizenry is especially appropriate in relation to the language question. The PASALB, as link between civil society and the government, could gain useful experience which could be incorporated into new constitutional mechanisms of enduring value.

XXXIV *1. This Schedule and the recognition therein of the right of the South African people as a whole to self-determination, shall not be construed as precluding, within the framework of the said right, constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way.*

2. The Constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such a form of self-determination.

3. If a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new constitutional text is adopted, the new Constitution shall

entrench the continuation of such territorial entity, including its structures, powers and functions.

At the time these notes are being written, negotiations are taking place in connection with possible implementation of these provisions. Unlike the other principles, these may be expressly made operational before the Constitutional Assembly has finalised the text of the new Constitution. If so, a new dimension could be added to the general language framework of the Constitution to protect and promote the culture and language of the group contemplated by the Principle.

Bearing in mind that Afrikaans language rights are already strongly protected in the Constitution, the creation of a special body to guarantee the survival and development of what is referred to as the Afrikaners' language and culture, would not require amendment to the constitution. It could even be seen as an extra institutional guarantee for the maintenance of the non-diminution principle. Provided the territorial and governmental integrity of the country is maintained, and the equal rights principle in Chapter 3 is not undermined, representative councils established under this Principle could in fact work in liaison with the PASALB to achieve their aims of cultural self-expression.

E. SCHEDULE 6: LEGISLATIVE COMPETENCE OF PROVINCES

Language policy and the regulation of the use of official languages within a province, subject to section 3.

The spelling out of this competence reinforces the principle of regional differentiation permitted in terms of language policy, already contained in section 3. It also re-inforces the position that it is not the national government which has primary responsibility for determining regional language policy, but the provincial government.