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Transforming education through mother tongue language as a language of instruction in South Africa

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Summary: *The right to receive education in an official language of one's choice is enshrined in section 29(2) of the Constitution. However, the South African education system has not offered sustained learning as well as equal opportunities for most of the population in more than one language. Although language in education determines the language of learning and teaching, language in education remains contentious in South Africa. Jurisprudence supports the idea that schools should be inclusive in language policies. The National Department of Basic Education policy fails to address the need to ensure the sustained use*

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of mother tongue language by prompting a switch to English in grade 4. This article explores how the learning and teaching in schools could potentially perpetuate discrimination in accessing schools, against the backdrop of constitutional rights and values, such as equality and non-discrimination.

Key words: *basic education; language; mother tongue; language of learning and teaching; National Department of Basic Education; discrimination; equality; Afrikaans; English; policy*

1 Introduction

While there are many factors involved in delivering quality basic education, language is clearly the key to communication and understanding in the classroom. Many developing countries are characterised by individual as well as societal multilingualism yet continue to allow a single foreign language to dominate the education sector. Instruction through a language that learners do not speak has been called ‘submersion’ ... because it is analogous to holding learners under water without teaching them how to swim.¹

Access to education through one’s mother language has the potential to transform education. The mother tongue is a key source of identification and self-confidence, edifying an individual learner.² Growing evidence shows that learners who are taught to read and write in their mother tongue are better off in terms of their comprehension of concepts as well as a grasp of a foreign language in its written and oral mode.³

The right to education recognises equality and diversity, which arguably are some of the driving forces of any progressive country.⁴ In general, scholarship on the right to education is not in short supply, covering the different dimensions of the right, such as litigating the right to education,⁵ and the tenets of the right under

1 C Benson ‘The importance of mother tongue-based schooling for educational quality’ Paper commissioned for the EFA Global Monitoring Report 2005, The Quality Imperative, UNESCO 1.

2 A Ouane & C Glanz ‘Mother tongue literacy in sub-Saharan Africa’ Background paper for the Education for All global monitoring report Literacy for Life, UNESCO (2005) 5.

3 As above.

4 L Arendse ‘Unequal access to quality-to-quality education for black and or poor learners in the post-apartheid public school system’ (2019) *Law Democracy and Development* 20.

5 See, eg, A Skelton ‘The role of the courts in ensuring the right to a basic education in a democratic South Africa: A critical evaluation of recent education case law’ (2013) 46 *De Jure* 1; C Churr ‘Realisation of a child’s right in the South

international and African human rights systems.⁶ However, despite the solid framing of the right and the interpretative guidance from hard and soft law as well as judicial bodies, Beiter⁷ argues that the right to education has become problematic to implement, partly because the very configuration of the right in international law is outdated. In part, Beiter notes that the advanced level of normative density around the right to education creates more complexities in the implementation of the right, leading to an argument on the need to reconfigure the right to education under international law.

Despite the suggestions made on the reconfiguration of the right to education, little argument is made regarding the use of mother language as a language of instruction. Yet, the language of instruction is central to the realisation of the right to education. Vos and Fouche note that language is a driving factor in an education system as it determines the language of learning and teaching (LOLT).⁸ This means that an education language policy adopted by any given state has the potential to hinder or transform the delivery of and access to education and, by implication, the enjoyment of all other rights.⁹ There is growing evidence showing how the use of mother language in education is an essential factor for inclusion and delivery of quality learning, as well as improving learning outcomes and academic performance, especially in pre-primary and primary school, in order to avoid knowledge gaps and increase the speed of learning and comprehension.¹⁰ In this contribution we build on existing scholarship, taking the argument further to demonstrate that the right to education can only fully and effectively be realised when the learner understands and comprehends the language of instruction.

African school system: Some lessons from Germany' (2015) 18 *Potchefstroom Electronic Law Journal* 2405; S Liebenberg 'Remedial principles and meaningful engagement in education rights' (2016) 19 *Potchefstroom Electronic Law Journal* 1.

- 6 See KD Beiter *The protection of the right to education by international law: Including a systematic analysis of article 13 of the International Covenant on Economic, Social and Cultural Rights* (2006); KD Beiter 'Is the age of human rights really over? The right to education in Africa – Domesticisation, human rights-based development, and extraterritorial state obligations' (2018) *Georgetown Journal of International Law* 9.
- 7 KD Beiter 'Why neoliberal ideology, privatisation, and other challenges make a reframing of the right to education in international law necessary' (2023) *International Journal of Human Rights* 426.
- 8 L Vos & N Fouche 'Language as contextual factor of an education system: Reading development as a necessity' (2021) 41 *South African Journal of Education* 1.
- 9 Y Fessha 'A tale of two federations: Comparing language rights in South Africa and Ethiopia' (2009) 9 *African Human Rights Law Journal* 2.
- 10 UNESCO 'Why mother language-based education is essential' (February 2022), <https://www.unesco.org/en/articles/why-mother-language-based-education-essential> (accessed 12 November 2023).

South Africa is a member state to international children's rights and other human rights instruments, such as the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (African Children's Charter), to mention but a few. Aligning with section 39 of the Constitution of the Republic of South Africa, 1996 (Constitution),¹¹ this article explores insights from international law regarding the right to education and the use of mother tongue language as a means to realise the right. At the time of writing, the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) is finalising a General Comment on education that provides an opportunity to elaborate on the importance of mother tongue as LOLT.¹² In the domestic sphere, the right to receive education in the official language of one's choice is enshrined in section 29(2) of the Constitution. Mkhize has argued that the education system in South Africa has not offered sustained learning as well as equal opportunities for most of the population in more than one language through schooling.¹³ Furthermore, not sufficient planning and investment has gone into African language development as languages of learning.¹⁴

The hegemony of the use of the English language in education in South Africa, and indeed in most African countries, is entrenched by several factors such as colonial legacies (within the Anglophone countries), globalisation and access to the global market place, as English proficiency is considered 'cultural capital' instrumental for 'social integration and upward mobility'.¹⁵ English linguistic hegemony has contributed to shaping important decisions such as LOLT, which has far-reaching, real and practical implications for African learners.¹⁶ The aim of this contribution is not to argue that English be substituted for another South African language as the dominant language of learning and teaching. Instead, the research explores bilingual education¹⁷ in South Africa and the need to achieve equality between English and other South African languages.

Structurally, the article begins with a search of international law perspectives on the use of mother tongue language as a pathway

11 Sec 39(1)(b) notes that when interpreting the Bill of Rights, a court, tribunal or forum must consider international law.

12 See part 2 below.

13 R Balfour & D Mkhize 'Language rights in education in South Africa' (2018) 31 *South African Journal of Higher Education* 2.

14 As above.

15 L Dalvit, S Murray & A Terzoli 'Deconstructing language myths: Which languages of learning and teaching in South Africa?' (2009) 46 *Journal of Education* 33.

16 Davit and others (n 15) 34.

17 Noting that Afrikaans is used as a LOLT in some schools, 'bilingual' education is used herein to mean African languages.

to realise the right to education. This is followed by an exploration of the legal and policy framework within which the right to receive education in South Africa in an official language of one's choice is structured. This contribution does not propose the use of only African languages as the language of learning and teaching, but suggests that there is great potential in supplementing the use of English and Afrikaans with a view to ensuring inclusive and transformative education that is fit for purpose in different African contexts. Instead, it promotes the need to develop the nine African languages to the same level as English and Afrikaans, to enable their use as mediums of instruction from early childhood developmental stages to higher institutions. In practice, this would entail the allocation of sufficient resources to develop the nine African languages the same way English and Afrikaans have been developed so that all learners will have the opportunity to learn and to be taught in any of the official languages from grade 4 throughout higher education. The research also presents the need for multilingual education, considering constitutional values such as equality and the need for transformation within South Africa's education system.

2 Language of learning and access to education under international law

The right to education provisions in the African Children's Charter and CRC are mute on the language of instruction and learning.¹⁸ This silence is in line with tenets of international law instruments in that they provide the foundational pillars of fundamental human rights and freedoms and leave the interpretation and implementation to signatory states. Be that as it may, it is critical to note that the agency responsible for education, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) has been emphasising the inescapable move to improve education using mother tongue language as a language of instruction and learning.¹⁹

CRC and the African Children's Charter are explicitly clear on the obligations of states towards the full enjoyment of the right to education.²⁰ For example, article 11(1) of the African Children's

¹⁸ See art 11 African Children's Charter; arts 28 & 29 CRC.

¹⁹ At 1999 UNESCO's General Conference it was agreed that 21 February of every year is a day to celebrate International Mother Language. Many initiatives have been carried out to elevate the importance of mother language in education. See UNESCO 'From rights to country-level action: Results of the tenth consultation of member states on the 1960 Convention and Recommendation' (2022), <https://unesdoc.unesco.org/ark:/48223/pf0000380609> (accessed 12 November 2023).

²⁰ See also art 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) noting that states recognise the right of everyone to education

Charter declares, in peremptory terms, that every child shall have the right to education. The education shall be directed to the promotion and development of the child's personality, talents and abilities to their fullest potential, including the strengthening and preservation of African morals and positive traditional values and culture.²¹ The reference to every child implies that the right must be enjoyed without any distinction or discrimination. Similarly, article 29(1)(c) of CRC notes that the education shall be directed towards, among other things, the development of respect for the child or family's cultural *identity, language* and values. There is little scholarship on this part of the right, and how language is critical in realising one's identity and cultural values in the context of education. The same relates to linguistic identity.

Article 2(1) of CRC declares that states shall respect and ensure the rights provided in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's language or other status. Similarly, article 3 of the African Children's Charter proclaims that every child is entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child's language, among other factors. As such, this implies that the right to education has to be enjoyed without discrimination, even on the basis of language of instruction or linguistic identity.

Regarding the diversity of linguistic identity, the Committee on the Rights of Persons with Disabilities notes that inclusive education should, among other things, ensure the respect for and value for diversity within the learning community,²² including the language and linguistic culture of learners. The Committee further notes that the Convention against Discrimination in Education establishes the right of children to be taught in their *own language*,²³ in line with article 30(4) of the Convention on the Rights of Persons with Disabilities (CRPD), persons with disabilities are entitled, on an equal basis with others, to recognition of and support for their specific cultural and linguistic identity, including sign languages and deaf culture.²⁴

and contending that education shall be directed to the full development of the personality, the preservation of dignity and the strengthening of the respect for human rights and fundamental freedoms.

21 See art 11(2)(c) of the African Children's Charter.

22 Committee on the Rights of Persons with Disabilities General Comment 4 (2016) on the right to inclusive education CRPD/C/GC/4 para 12(e).

23 Art 5(1)(c) Convention against Discrimination in Education, 1960.

24 Committee on the Rights of Persons with Disabilities General Comment 4 (n 22) para 35(b).

The provisions in the treaties discussed above are clear that the right to education must be assured without discrimination, and the right should be enjoyed on the basis of equality of opportunity. Educational language policies that promote single language preferences have the unintended effects of discriminating against other learners and creating barriers to accessing the right to education and, more so other rights.²⁵ The Committee on the Rights of Persons with Disabilities (RPD Committee) urges states to guard against the risk of discriminating against learners, specifically children with disabilities,²⁶ for the reasons that learners with disabilities often experience intersectional discrimination on the basis of disability, gender, ethnic origin or language.²⁷ Thus, states must put in place measures to address all forms of discrimination, including identifying and removing legal, physical, *communication and linguistic* barriers within educational institutions and the community.²⁸ Similar concerns are expressed by UNESCO in its Convention against Discrimination in Education.²⁹

It is critical to observe that the right to non-discrimination is an absolute right subject to no qualification or conditionality.³⁰ Non-discrimination is an inherent right, and is considered a non-autonomous provision without independent existence.³¹ What this means is that the rights to equality and non-discrimination are applicable with reference to and only to be invoked concerning the implementation of all or other children's rights.³² The right to education is one of the rights that must be enjoyed without any distinction on the basis of language of instruction. The Human Rights Committee views non-discrimination as a basic and general principle of human rights protection.³³

The United Nations (UN) and African children's rights treaty-monitoring bodies have not yet authoritatively pronounced the

25 Fessha (n 9) 2.

26 See art 24(1) of the Convention on the Rights of Persons with Disabilities on the right to education for persons with disabilities.

27 General Comment 4 (n 22) para 13.

28 As above.

29 See art 3 of the Convention against Discrimination in Education 1960.

30 G Lansdown 'Article 2: The rights to non-discrimination' in Z Vaghri and others (eds) *Monitoring state compliance with the UN Convention on the Rights of the Child – Children's well-being: Indicators and research* (2022) 12.

31 See W Vandenhoele *Non-discrimination and equality in the view of the UN human rights treaty bodies* (2005) 32.

32 For Achilihu, non-discrimination is a right that qualifies all the other substantive and procedural rights as if it were a part of each one. See S Achilihu *Do African children have rights? A comparative and legal analysis of the United Nations Convention on the Rights of the Child* (2010) 32.

33 See Convention on Civil and Political Rights General Comment 18 on Non-Discrimination 1989 1.

use of mother tongue language in education in their promotional or protective mandates. The African Children's Committee is in the process of finalising a General Comment on education to elaborate on the right to education in the African Children's Charter. The draft General Comment only mentions 'mother tongue' once, in the context of interpreting article 11(2)(c) on strengthening and preserving African morals and positive traditional values and culture. For instance, the African Children's Committee urges states to

incorporate in pedagogy and curricula for teaching, methods, language medium and modules that permeate positive African morals and values. Profound cross-cutting values and traditions that should not be against key African ethos, such as tolerance, resilience, inclusive hospitality, respect, community cohesion, oral tradition, including the introduction of 'mother tongue' education.³⁴

Based on the above context, we note that the draft General Comment relegates the use of mother tongue language in education as a fundamental African, moral, cultural and traditional value rather as a right that state parties should enforce and ensure that children enjoy and access education through the use of mother tongue language as LOLT. This observation is buttressed by the confidence of the African Children's Committee that inclusion of teachings of these values in curricula would play a vital role in bridging the gap between generations and ensuring the transmission of positive cultural knowledge and practices.³⁵ While the General Comment has not yet been finalised, we contend that the omission to elaborate the importance of mother tongue language as a conduit towards the full realisation of the right to education, and failing to reinforce mother tongue language as an indispensable part of the right could be a missed strategic opportunity to pronounce and guide African member states on the need to transform education through the use of mother tongue language as a language of instruction.

3 South African historical background on the right to education

Education, and particularly language in education, was used as a vehicle to implement and strengthen the system of apartheid.³⁶ Education during apartheid was structured in a manner that would

³⁴ Draft General Comment on Education on art 11 African Children's Charter – the Right to Education (2024) para 64 (on file with authors).

³⁵ As above.

³⁶ L Arendse 'The South African Constitution's empty promise of "radical transformation": Unequal access to quality education for blacks and/or poor learners in the public basic education system' (2019) 23 *Law Democracy and Development* 20.

not only remind non-whites of their inferiority but also subordinate them.³⁷ Parity was nothing but a foreign term. Education during apartheid became more detrimental when the National Party (NP) took control of South Africa in 1948. The NP reinforced segregation in education in all areas of the country, particularly where language was concerned.³⁸

This was evidenced by the government's establishment of the Eiselein Commission to perpetuate the issue of language in education. The Eiselein Commission's task was to examine the black education system and make suggestions for a national education policy.³⁹ The government thereafter enacted the Bantu Education Act 47 of 1953 (BEA) that established a separate department of education for black education and aimed to standardise control of education across provinces.

Ndimande distinguishes between bantu education (BE) and apartheid. He states that 'apartheid education lumped together the oppressive education system offered to black, coloured and Indian people collectively, while BE was specifically offered only to black people through the Department of Native Affairs and later the Department of Bantu Education'.⁴⁰ Through the BEA, the NP aimed at imposing English and Afrikaans as a medium of instruction (MOI) in secondary schools, but the black students 'revolted' against the decision, resulting in the 1976 Soweto protest.⁴¹

Students identified Afrikaans as the language of the oppressor. The protestors and the government responded with violence, which resulted in the death of many students.⁴² The above occurrences illustrate resistance against the education system during apartheid and, in particular, language policies under the same system. The apartheid government had a method of structuring the language policies in the education system in a manner that prevented black students from making progress.⁴³ Some of these methodologies and

37 D Woodroffe 'When visions of the rainbow nation are not enough: Effect of post-apartheid higher education reform on social cohesion in South Africa' (2011) 86 *Peabody Journal of Education* 2.

38 As above.

39 K Eriksson 'Does the language of instruction in primary school affect later labour market outcomes? Evidence from South Africa' (2014) 29 *Economic History of Developing Regions* 5.

40 B Ndimande 'From bantu education to the fight for socially just education' (2013) 46 *Equity and Excellence in Education* 4.

41 Ndimande (n 40) 5.

42 V Webb, M Lafon & P Pare 'Bantu languages in education in South Africa: An overview. *Ongekho akekho! – The absentee owner*' (2010) 38 *Language Learning Journal* 6.

43 T Reagan 'The politics of linguistic apartheid: Language policies in black education in South Africa' (1987) *Journal of Negro Education* 302.

the effects of the language policies implemented by the state in the education system will be discussed below.

The apartheid government used basic education as a tool of racial segregation. Indeed, one of the objectives was to train and teach people in accordance with what the government perceived as their opportunities.⁴⁴ African language speakers were rarely given the opportunities to reach their full potential. This is evident where 'they could only attend universities if the Minister of Education granted them permission'.⁴⁵ Mda notes that African language students were not prepared to participate in the mainstream economy.⁴⁶ One can infer that the chances of non-whites accessing institutions were slim and if they were allowed to attend, they would have struggled with grasping the content due to the language barriers.

These institutions only provided training programmes rather than research-based content to augment the skills of non-whites.⁴⁷ Erikson asserts that it was more likely for non-whites to obtain semi-skilled employment as there were also numerous restrictions on the type of jobs for which they could apply.⁴⁸ It has also been noted that 'bantus education was aimed at shrinking the minds of African children by denying educational challenges'.⁴⁹ One could, therefore, argue that the language barrier exacerbated the difficulty of being able to think critically. A further impact of BE and its language policies was the lower enrolment rates for non-whites. To illustrate, in 1953 only 15 to 30 per cent of students who were enrolled in the education system were black.⁵⁰ This was because African languages were not accepted as languages of instruction (LOI) during the colonial era.⁵¹ Eriksson also remarks that the language of instruction during these times reflected those of the mission schools because these students were also subjected to be taught in Afrikaans and English.⁵² Therefore, there is evidence to show that language policies adopted before democracy did not accommodate indigenous languages other than Afrikaans and English.

Another impact of BE was that it essentially left African writers with no option but to write in a language that would give their work

44 Ndimande (n 40) 5.

45 Woodroffe (n 37) 3.

46 T Mda 'Issues in the making of South Africa's language in education policy' (1997) 66 *Journal of Negro Education* 5.

47 Woodroffe (n 37) 3.

48 Eriksson (n 39) 5.

49 Ndimande (n 40) 5.

50 Eriksson (n 39) 6.

51 Mda (n 46) 5.

52 Eriksson (n 39) 5.

publicity. They, therefore, chose English, and Lafon is of the view that it 'deprived African language literature [of] potentially creative and original texts arguably thwarted, or seriously compromised, the literacy appropriation process that was in progress'.⁵³ This indicates that African language speakers had no choice but to adjust to the language policy of the apartheid state to remain in the education system. Black teachers were also dissatisfied with the language policy implemented by the state, and they showed their frustrations by not attending school on certain days.⁵⁴ However, the state was determined that the policy would be implemented by sending some of their members to do follow-ups on the policy's enforcement at all schools.⁵⁵

The above indicates the effects of bantu education and the apartheid government's language preference on the education system. The language policies designed by the then apartheid government served as a barrier to education for non-whites.

4 South African legal and policy framework on the right to education

With the enactment of the Constitution, the state was tasked with correcting the injustices in the education system, including the use of languages. This part discusses the constitutional and legislative as well as policy provisions that give recognition to language in the education system in a new South African legal order. The Constitution is the supreme law of South Africa and offers the highest level of protection of the right to education,⁵⁶ as well as equality, and non-discrimination.⁵⁷ Efforts have been made to ensure linguistic diversity in the country. This is behind the backdrop that the Constitution recognises the apartheid historical exclusionary practices of prioritising English and Afrikaans as preferred languages. Constitutionally, local languages are fundamental to ensure tolerance of diversity and inclusion. Section 6(1) of the Constitution provides a list of official languages, such as Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.⁵⁸ However, their use as LOLT was not prioritised. Section

53 M Lafon 'The impact of language on educational access in South Africa' (2009) *The Consortium for Research on Educational Access Transitions and Equity* 15.

54 Eriksson (n 39) 7.

55 As above.

56 See sec 29 of the Constitution.

57 See sec 9 of the Constitution.

58 We note that sec 6 of the Constitution has been amended to now include South African sign language as the 12th official language.

29(2) of the Constitution promotes multilingualism in the education system. It provides:

Everyone has the right to receive education in the official language of their choice in public educational institutions where the education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account (a) equity, (b) practicability and (c) the need to redress the results of past discriminatory laws and practices.

As noted above, accessing education through the 'official language' of choice refers to those listed in section 6(1) of the Constitution. Furthermore, sections 30 and 30(1) uphold the rights of citizens to use the language of their choice.⁵⁹

The right to access education through the language of one's choice, also referred to as mother tongue language in this contribution, has also been under contest resulting in litigation. In the case of *Matukane & Others v Laerskool Potgietersrus*⁶⁰ the respondents refused to admit the appellants, who were seeking to be instructed in English, into their school. The appellants argued that their refusal was unfair based on section 8(1) of the interim Constitution (now section 9) which prevented discrimination based on various grounds, including race and language. The respondent argued that even though they are an English/Afrikaans parallel-medium school, the school predominately is Afrikaans. They, therefore, had the authority to refuse to admit the learners to protect the culture of the school based on international law principles.⁶¹ The Court, however, stated that the argument was far-fetched and that admitting the learners would make the school more diverse. The Court directed that the learners be admitted and mentioned that all languages should be treated equally, and Afrikaans students should not have more rights than English students.⁶²

Another important case that dealt with section 29(2) of the Constitution is the case of *Western Cape Minister of Education & Others v Governing Body of Mikro Primary School & Another*.⁶³ The respondents in this case refused to change their language policy as requested by the appellant head of department (HoD) to accommodate learners who needed to be instructed in English because it was an Afrikaans-

59 This is closely linked to the importance of sec 29(2) and its link with the right to equality.

60 *Matukane & Others v Laerskool Potgietersrus* [1996] All SA 468 para 4.

61 As above.

62 *Matukane* (n 60) para 8.

63 *Western Cape Minister of Education & Others v Governing Body of Mikro Primary School & Another* 2005 (10) BCLR 973 (SCA).

medium school.⁶⁴ The appellant then instructed the respondent to register the learners, but the respondents refused and made an urgent application to the High Court to set aside the appellants instruction.⁶⁵ The High Court granted the order sought, leading to the appellant appealing to the Supreme Court of Appeal.

The appellants argued that, in terms of section 29(2) of the Constitution, it was reasonably practicable for the 40 learners to be instructed in English.⁶⁶ They also argued that the school's language policy was subject to the provisions of the Constitution and the Constitution supersedes any policy.⁶⁷ The Court interpreted the right in section 29(2) of the Constitution to mean that the state and not the school had a duty to provide education in the official language to the learners. Based on the Court's interpretation, the state should have considered an English-medium school in the area as an alternative for the learners. The Court also stated that even if it was reasonably practicable for the learners to receive education from the respondent, they did not have the right to be instructed in English at the school.⁶⁸

In addition, the Court mentioned that the School Governing Body (SGB) is the only body that can determine the language policy of a school and that, on that basis, the school's language policy was not contrary to the Norms and Standards for Language Policy in public schools and standards of the South African Schools Act (SASA).⁶⁹ The norms and standards are merely guidelines and therefore, they do not provide an automatic right to be instructed in the language of one's choice.⁷⁰ The Court held that the appellant acted unlawfully by not using the provisions or procedures in the Schools Act to withdraw the functions of the SGB to change the language policy.⁷¹

The Court in the case above provides a narrow interpretation of the powers of the state over schools in relation to the right in section 29(2) of the Constitution. The case of *Head of Department v Ermelo* provides a clearer interpretation of the state's power in terms of determining school language policies.

64 *Mikro* (n 63) para 2.

65 *Mikro* (n 63) para 5.

66 *Mikro* (n 63) para 29.

67 *Mikro* (n 63) para 49.

68 *Mikro* (n 63) para 31.

69 *Mikro* (n 63) para 34.

70 As above.

71 *Mikro* (n 63) para 59.

In *Ermelo* the HoD requested that the school (Ermelo) admit several learners who wanted to be instructed in English because the schools in the surrounding areas were oversubscribed. The school stated that its language policy only catered for Afrikaans students, and it would only admit the learners if they agreed to be instructed in Afrikaans.⁷² Based on the school's refusal to amend its language policy, the HoD revoked the powers of the SGB and appointed an interim committee to amend the policy to accommodate the learners.⁷³ The matter reached the Constitutional Court where it had to decide whether the HoD had the authority to withdraw the functions of the SGB in determining the school's language policy.

It was confirmed that SGBs have the power to determine a school's language policies, but the policies should give effect to the values of the Constitution and enhance historical redress.⁷⁴ The purpose of the SGB's power to develop language policies is to transform and develop the education system in South Africa to be more inclusive.⁷⁵ The Court also stated that where the SGBs unreasonably execute the power, the HoD is entitled to intervene to ensure that the constitutional right to receive education in one's language is granted. Moreover, when developing language policies, the needs of the community should be taken into consideration.⁷⁶ A flexible approach should be adopted when developing language policies. The applicants' (the head of department, Mpumalanga Department of Education) application to overturn the Supreme Court of Appeal (SCA)'s ruling that upheld the language policy of Hoërskool Ermelo was dismissed, but the school was obliged to revisit its language policy in a manner that gives effect to section 29(2) of the Constitution and section 6(2) of the Schools Act.⁷⁷ This judgment gives clarity that language policies need to promote multilingualism and be more inclusive.

The courts have emphasised that the SGB has the power to determine the language policy of a school. In *Ermelo*, however, there is a shift in that the Constitutional Court clearly mentioned that the power to determine a school's language does not rest solely in the hands of the SGB. The Constitutional Court in *Ermelo* pointed out that the SCA had erred in its finding that the HoD had no power to withdraw the power of the school governing body to determine

72 *Head of Department: Mpumalanga Department of Education & Another v Hoërskool Ermelo & Another* [2009] ZACC 32; 2010 (2) SA 415 (CC), 2010 (3) BCLR 177 (CC).

73 *Ermelo* (n 72) para 22.

74 *Ermelo* (n 72) para 61.

75 *Ermelo* (n 72) para 55.

76 *Ermelo* (n 72) para 92.

77 *Ermelo* (n 72) para 99.

a school's language policy.⁷⁸ The Court read section 22(1) (the reasonable grounds requirement) together with section 22(3) (the procedure fairness requirement) and showed that the department's power to withdraw a function of a governing body extends also to the language policy of a school.

The Court in *Ermelo* added that section 29 of the Constitution required school language policies to be designed in such a way that they consider the complex relationship between the right to education, the right to education in a language of one's choice, the right of access to basic education by all children, the duty not to discriminate unfairly against a learner upon admission to school, and the importance of historical redress and transformation in the schooling system.⁷⁹

Furthermore, the Court reminded the parties that a public school is a public resource and had to be managed in the interests of the learners, parents and the broader interests of the members of the community in which the school is in light of the values enshrined in the South African Constitution.⁸⁰ Considering that the *Ermelo* judgment was given in 2009, the view that the power to determine a school's language policy is not vested solely in the SGB should long have been incorporated in SASA.

In addition, SASA⁸¹ is a pivotal statute enacted to give effect to the Constitution and language policies that should be adopted in the education system. SASA aims to provide education of high quality to all learners.⁸² Currently, section 6(1) of SASA gives the Minister the authority to determine certain norms and standards for language in public schools. In terms of section 6(2), the school governing body of a public school may determine the language policy of the school but this is subject to the Constitution, SASA and any applicable provincial policy. We note and discuss the amendments to this requirement under the Basic Education Laws Amendment Bill (BELA Bill),⁸³ which has been passed by Parliament, later in this article.

Section 6(3) of SASA further states that no form of racial discrimination may be practised in implementing the policy, and section 6(4) provides that sign language has the status of an official

78 *Ermelo* (n 72) paras 63-81.

79 *Ermelo* (n 72) paras 76-78.

80 *Ermelo* (n 72) para 80.

81 Act 84 of 1996.

82 See the Preamble to SASA.

83 Department of Basic Education 'The Draft Basic Education Laws Amendment Bill' (December 2021) *Government Gazette* 45601.

language for purposes of learning at a public school.⁸⁴ SASA is a pivotal piece of legislation as it specifies which role players are responsible for promoting the use of language in basic education.

In terms of the powers given to the Minister in section 6(1) of SASA, the Minister published norms and standards for language policy in public schools – the Norms and Standards Regarding Language Policy, 1997.⁸⁵ The norms and standards are cognisant of the need for diversity and aims to promote and fulfil the language rights of learners. Most importantly, it aims to redress the historically-disadvantaged languages in schools.⁸⁶

The Norms and Standards further provide that a learner (or if the learner is a minor, his or her parents) must choose the language of teaching upon application for admission at a school and if the school offers the language chosen, the school must admit the learner. Where no school in a district offers the desired language as a medium of learning and teaching, the learner may request the provincial education department to make provision for the instruction in the chosen language.⁸⁷

Regarding the rights and duties of the school, the norms and standards provides that the governing body must stipulate how the school will promote multilingualism through using more than one LOLT, through teaching different languages as the first additional language, through immersion programmes, or through any other means approved by the head of the provincial education department.

What is also crucial to note is that the Norms and Standards provide that '[i]t is reasonably practicable to provide education in a particular language of learning if at least 40 in grade 1 to 6 or 35 in grade 7 to 12 learners in a particular grade request it at a particular school'.⁸⁸

84 We note that South African sign language now is recognised as an official language under the Constitution.

85 The Norms and Standards Regarding Language Policy published in terms of sec 6(1) of the South African Schools Act, 1996.

86 The Norms and Standards Regarding Language Policy (n 85) sec C – The rights and duties of the school para 6.

87 The Norms and Standards Regarding Language Policy (n 85) sec B – Protection of individual rights paras 1-4.

88 The Norms and Standards Regarding Language Policy (n 85) sec C – Rights and duties of the school para 2.

It is evident that the Norms and Standards place an obligation on provincial departments to promote multilingualism and to fulfil the rights enshrined in section 29(2) of the Constitution.⁸⁹

Further, the power to determine the national education policy is vested in the Minister in terms of section 3 of the National Education Policy Act (NEPA).⁹⁰ Section 3(4)(m) of NEPA states that the Minister may determine the national policy for language in education. Section 3 of NEPA should be read in conjunction with section 4(a)(vii) of NEPA, which states that the language policy to be implemented by the Minister should reflect the purpose of section 29(2) of the Constitution. More importantly, the policy should protect and advance the right of every person to use the language and participate in the cultural life of his or her choice within an educational institution.

More so, the Language in Education Policy, 1997 (LIEP)⁹¹ aims to promote multilingualism, diversity and to develop the official languages used in the country, including South African sign language. More importantly, LIEP aims to support the teaching and learning of all languages required by learners or used by communities in South Africa.⁹²

In terms of LIEP, the languages of LOLT in a public school must be an official language of languages, and it further provides:⁹³

- (1) All learners shall offer at least one approved language as a subject in Grade 1 and 2.
- (2) From Grade 3 onwards, all learners shall offer their LOLT and at least one additional approved language as subjects.

To promote multilingualism, LIEP states that all language subjects shall receive equitable time and resources.⁹⁴

The Language in Education Policy promotes home language education, especially in grades 1 to 3 (foundation phase) and makes it possible to extend the use of home language education into the intermediate phase.⁹⁵ In most cases, the elected language is English,

89 The Norms and Standards for Language Policy (n 85) sec A – Preamble para1.

90 Act 27 of 1996.

91 The Language in Education Policy in terms of sec 3(4)(m) of the National Education Policy Act 27, 1996.

92 The Language in Education Policy (n 91) The aims of the policy for language in education sec 5 paras 1-6.

93 The Language in Education Policy (n 91) Languages as subjects, sec 6 paras 1-2.

94 The language in Education Policy (n 91) Languages as subjects, sec 6 para 3.

95 The language in Education Policy (n 91) Preamble para 5.

and the language offered by the school is English.⁹⁶ Consequently, learners speaking an African language face an immense challenge regarding their further tuition. The DBE's rationale for the provision that learners must be taught in their mother tongue from grades 1 to 3 is based on the principle of the rights of children to be educated in their mother tongue while having access to a global language such as English.⁹⁷

The DBE terms the transition from mother tongue language to English 'the transitional bilingual education'. Section 29(2) of the Constitution provides that everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practical. As noted above, section 6 of the Constitution proclaims the official languages that can be used for learning and teaching. This position is reiterated in SASA, the National Education Policy Act and the Language in Education Policy. However, since the nine African languages have not been developed to function as languages of learning and teaching, only English and Afrikaans dominate the school system in so far as the languages of learning and teaching are concerned.⁹⁸ Moreover, contestations in school language policies have been about the power tussle between the HOD and SGBs on who has the final say on school language policy determinations. The focus, therefore, is not on the need to develop African languages to bring them at par with English and Afrikaans as languages of learning and teaching.

The DBE has developed the National Curriculum Statement (NCS) Grades 1-12, which makes provision for the equal use of all 11 languages and South African sign language in the schooling system.⁹⁹ According to the DBE, the National Curriculum Statement Grades 1-12 encourages learners to learn through their home language(s) particularly, although not limited to the foundation phase. The DBE

96 See G Steyn 'The transition of grade 4 learners to English as a medium of instruction' LLM dissertation, University of Pretoria, 2017.

97 Parliamentary Monitoring Group 'Language in education policy: Briefing by DBE to the Portfolio Committee on basic education' (2006), <https://pmg.org.za/committeemeeting/7281/#:~:text=The%20Department%20of%20Education's%20Language,global%20language%20such%20as%20English> (accessed 15 July 2023).

98 A Foley 'Language policy for higher education in South Africa: Implications and complications' (2004) 18 *South African Journal of Higher Education* 58. See also B Nzimande 'African languages need to be developed' (2012) Keynote address by Minister of Higher Education and Training at the 10th Anniversary of the Stellenbosch University Language Centre, <https://www.ru.ac.za/schooloflanguagesandliteratures/latestnews/africanlanguagesneedtobedeveloped-bladenzimande.html> (accessed 13 March 2024).

99 Parliamentary Monitoring Group 'Questions to the Minister', <https://pmg.org.za/committee-question/T8311/> (accessed 8 July 2022).

has explained that the policy does not restrict the use of home language instruction up to grade 3, but emphasises the use of home language in grades 1 to 3 to reinforce the skills of reading, writing, and counting.¹⁰⁰

Yet, English and Afrikaans continue to be the dominant languages in the education system, despite less than 10 per cent of South Africans indicating that English is their home language.¹⁰¹ Desai observes that although it is not explicitly stated in the policy that English should be the medium of instruction after grade 3, parents perceive that should their children be taught in African languages, they will be at a disadvantage in so far as access to economic opportunities are concerned.¹⁰² It has further been found that pupils from grades 4 to 7 have poor writing abilities, indicating that they are not prepared to switch to English or Afrikaans as a medium of instruction in grade 4.¹⁰³ In another study conducted, it was found that African children learn better when instructed in IsiXhosa.¹⁰⁴

Moreover, not only are the learners not proficient in English, but the teachers are also struggling.¹⁰⁵ To illustrate, at a school in Limpopo only 16,5 per cent of the teachers stated they do not encounter difficulties when teaching in English.¹⁰⁶ It is difficult to understand how the learners can be expected to do well when the teachers are finding difficulties with teaching in the mediums of instruction. As a result of the difficulty to understand English as a medium of instruction, the drop-out rate of African learners increased in schools where English is used as the medium of instruction.¹⁰⁷

On the contrary, Afrikaans and English learners have an advantage because they do not have to switch to another language in grade

100 Parliamentary Monitoring Group 'Questions to the Minister', <https://pmg.org.za/committee-question/18311/> (accessed 8 July 2022).

101 Z. Desai 'Local languages: Good for the informal marketplace but not for the formal classroom?' (2013) *University of the Western Cape Research Repository* 9.

102 As above.

103 As above.

104 N Spaul 'Disentangling the language effect in South African schools: Measuring the impact of "language of assessment" in grade 3 literacy and numeracy' (2016) 6 *South African Journal of Higher Education* 4.

105 A Potgieter & C Anthonissen 'The language-in-education policies – Managing the multilingualism of learners in the 21st century' in R Kaschular (ed) *Multilingualism and intercultural communication: A South African perspective* (2017) 12.

106 M Kretzer 'South African teachers switch languages in class: Why policy should follow' September 2019, <https://theconversation.com/south-african-teachers-switch-languages-in-class-why-policy-should-follow-122087> (accessed 7 July 2023).

107 D Greenfield "'When I hear Afrikaans in the classroom and never my language, I get rebellious": Linguistic apartheid in South African higher education' (2010) 24 *Language and Education* 5.

4.¹⁰⁸ This begs the question as to why African learners need to switch to a language in which they are not proficient. Various authors have observed that the education system discriminates against African speakers by not giving them the same treatment as English and Afrikaans speakers.¹⁰⁹ This also indicates that language policies fail to promote mother tongue languages.

According to the Norms and Standards regarding language policy, the parent exercises the minor learner's language rights on behalf of the minor learner.¹¹⁰ The learner must choose the language of teaching upon application for admission to a particular school.¹¹¹ Where a school uses the language of learning and teaching chosen by the learner, and where there is a place available in the relevant grade, the school must admit the learner.¹¹² Where no school in a school district offers the desired language as a medium of learning and teaching, the learner may request the provincial education department to make provision for instruction in the chosen language.¹¹³ The provincial education department must make copies of the request available to all schools in the relevant school district.¹¹⁴

In South Africa the default position is that the LOLT is always going to be either English or Afrikaans,¹¹⁵ which creates inequality for those learners whose home languages are neither English nor Afrikaans. Although education is made available to them, they do not have equal access to it because they are taught in a language in which they do not have a proper grasp and understanding of. Moreover, as argued below, in some instances learners are faced with obstacles when they apply to certain schools because the LOLT is Afrikaans in a community where most residents are not Afrikaans speaking. Despite several international law instruments prohibiting discrimination on various grounds, discrimination in education persists.¹¹⁶

108 B Ntombela 'Switch from mother tongue to English: A double jeopardy' (2020) 8 *Studies in English Language Teaching* 21. We note that the switch from mother tongue education is only applicable to Afrikaans learners if they choose an English medium school, because like English learners, Afrikaans learners can continue to be taught in Afrikaans.

109 Potgieter & Anthonissen (n 105) 12.

110 The Norms and Standards Regarding Language Policy (n 85) sec B – Protection of individual rights para 1.

111 The Norms and Standards Regarding Language Policy (n 85) sec B – Protection of individual rights para 2.

112 The Norms and Standards Regarding Language Policy (n 85) sec B – Protection of individual rights para 3.

113 The Norms and Standards Regarding Language Policy (n 85) sec B – Protection of individual rights para 4.

114 As above.

115 R Wildsmith-Cromarty & R Balfour 'Language learning and teaching in South African primary schools' (2019) 52 *Language Teaching* 296.

116 See, generally, Convention Against Discrimination in Education (n 23). See also arts 3 and 11 of the African Charter on the Rights and Welfare of the Child, and

As discussed earlier, the South African school system has been shaped by unfair discrimination and unequal access, which has created deeper inequalities in the South African school system. Section 9 of the South African Constitution also provides for the right to equality. The right to equality viewed against school language policies should mean eliminating previous patterns of privilege and disadvantage for and against certain groups.¹¹⁷ Equality in terms of language also means amending laws on school language policies that preserve the exclusive use of certain languages to the exclusion of some learners. It also means to prevent previous barriers and practices that were deeply rooted in our school system from forming again.

It has been argued that an important contributor to English and Afrikaans being the LOLT is parental choice. According to De Wet, parents' memories of bantu education, combined with their perceptions of English as a gateway to a better education and economic empowerment, prompt the majority of black parents to favour English as a LOLT.¹¹⁸

There were proposed amendments to the requirement in section 6(2) of SASA that the SGB may determine the language policy of a school in the BELA Bill. Civil society organisations and various stakeholders in the basic education sector made submissions to the effect that SGBs must submit their language policies to the HoD for approval, and further that the HoD may approve the policy or return it to the SGB with recommendations.¹¹⁹ Furthermore, before signing off on a school's language policy, the HoD must be satisfied that the policy considers the best interests of the child (with emphasis on equality and equity); the changing number of learners who speak the language of learning and teaching; the effective use of resources and classroom space; the enrolment trends of the public school; and the broader language needs of the community where the school is located. Civil society organisations also submitted that SGBs must also review language policies every three years, or when circumstances necessitate a change in a school's language policy or

arts 2 and 28 of the United Nations Convention on the Rights of the Child.

117 C McConnachie 'Equality and unfair discrimination in education' in F Veriava, A Thom & T Fish Hodgson *Basic education rights handbook* (2022) 128.

118 C de Wet 'Factors influencing the choice of English as language of learning and teaching (LOLT) – A South African perspective' (2007) 22 *South African Journal of Education* 2.

119 See clause 5(c) of the 2022 Draft BELA Bill. See also the Equal Education Law Centre and Equal Education's joint submission on the Basic Education Laws Amendment Bill (2022) para 111, https://eelawcentre.org.za/wp-content/uploads/eelc-ee-submission_draft-bela-bill-2022_final-1.pdf (accessed 14 March 2024).

at the request of the HoD. This is to ensure that language policies remain in line with the Constitution and provincial law.¹²⁰

In September 2023, after extensive deliberations and public participation campaigns, the National Assembly adopted the BELA Bill. Potential amendments to the school language policy include the requirement that SGBs submit their school language policies and amendments to the head of department for approval.¹²¹ The DBE also confirmed that school language policies must consider the language needs of the broader community in which a school is located, and that the head of department, after consultation with the school governing body, has the final authority to admit a learner to a school.¹²² Perhaps one of the most important amendments in the BELA Bill is the insertion that the best interests of the child and the right to equality must be considered when the HoD is considering the language policy of a public school or any such amendments to language policies in public schools.¹²³

These amendments are largely reflective of the submissions made by civil society organisations on school language policies.¹²⁴ Section 6(2) of SASA will eventually be amended to clarify that the HoD, and not the SGB, has the final say in school language policies.¹²⁵ With this amendment, it is hoped that school language policies will be more inclusive and conscious of the needs of communities and learners, thereby allowing for accessibility by learner groups who previously faced obstacles due to language barriers.

The Constitutional Court in *AfriForum & Another v University of the Free State* has stated:¹²⁶

It would be unreasonable to slavishly hold on to a language policy that has proved to be the practical antithesis of fairness, feasibility,

¹²⁰ See clause 5(c) of the 2022 Draft BELA Bill. See also the Equal Education Law Centre and Equal Education's joint submission on the Basic Education Laws Amendment Bill (2022) para 111, https://eelawcentre.org.za/wp-content/uploads/eelc-ee-submission_draft-bela-bill-2022_final-1.pdf (accessed 14 March 2024).

¹²¹ Parliamentary Monitoring Group 'BELA Bill adoption with deputy minister' (September 2023), <https://pmg.org.za/committee-meeting/37584/> (accessed 2 December 2023).

¹²² The Basic Education Amendment Bill B2B – 2022 sec 5(7)(a), <https://pmg.org.za/bill/1055/> (accessed 11 December 2023).

¹²³ As above.

¹²⁴ Examples of such amendments are the need to consider the best interests of the child; the changing number of learners who speak the language of teaching and learning at the public school; and the enrolment trends of the public school when the HoD is considering school language policies.

¹²⁵ See sec 5(c) of the Basic Education Amendment Bill B2B – 2022 <https://pmg.org.za/bill/1055/> (accessed 11 December 2023).

¹²⁶ *AfriForum & Another v University of the Free State* [2017] ZACC 48 para 50.

inclusivity and the remedial action necessary to shake racism and its tendencies out of their comfort zone. Section 29 of the Constitution ... is fundamentally about ... the impermissibility of racial discrimination, intended or otherwise, in all our educational institutions.

The Court also explained that the decision-making process under section 29(2) is a 'critical need ... to undo the damage caused by racial discrimination'.¹²⁷ The Court also pointed out the danger in allocating scarce resources to a few students, thus placing them in advantageous positions while other students are crowded in classrooms.¹²⁸

5 Concluding remarks

From the discussions in this article, the most rational solution would be to continue with the use of African languages as LOLT from grades 4 onwards, so that it can eliminate the issue of language barriers in accessing schools, and place black learners in the same position as their peers who are taught in English or Afrikaans, thereby resolving the problem of inequality. Realistically, none of the nine African languages have been developed to the level of academic discourse to enable them to stand as languages of learning and teaching, in the same way English and Afrikaans have developed.¹²⁹ As Foley notes, for the most parts, African languages were standardised for purposes of converting Africans to Christianity by missionaries, and later by the apartheid government, as a means of oppressing and suppressing the education rights and levels of education that black South Africans received. Therefore, the existing forms in which African languages were standardised remain archaic and limited to the context in which they were initially written, which were for proselytisation and control.¹³⁰

The fact that one cannot rely on the existing standardised forms of African languages as springboards to advance their position as fully-fledged languages for purposes of learning and teaching is obvious. A report by the Department of Higher Education and Training in 2015 indicated that little progress had been made in exploring the potential of African languages to 'facilitate access and success

¹²⁷ *AfriForum* (n 126) para 52.

¹²⁸ As above.

¹²⁹ A Foley 'Language policy for higher education in South Africa: Implications and complications' (2004) 18 *South African Journal of Higher Education* 57-58. See also Ministry of Education 'The language policy for higher education' (2002) 4-5, https://www.gov.za/sites/default/files/gcis_document/202011/43860gon1160.pdf (accessed 14 March 2024).

¹³⁰ Foley (n 129) 61.

in higher institutions'.¹³¹ However, African languages can still be elevated to the same level as that of English and Afrikaans, but before African languages can be included as LOLT beyond grade 3, resources will need to be developed. The details of such resources are beyond the scope of this article. However, we submit that for indigenous languages to be advanced to the same level as English and Afrikaans, the level of resourcing that the government must put into it needs to be comparable with that used in the past to develop Afrikaans as a medium of instruction.¹³² By the development of African languages, perhaps one needs to observe how Afrikaans came to be developed and adopt a similar strategy. Therefore, we recommend that like the apartheid government, the current government must be the driving force behind the goal of developing African languages.¹³³ Using this approach, African language development in higher education means:

- the mobilisation of intellectuals who speak the nine African languages, promoting and speaking to them;
- the establishment of an academy to drive the development of the nine African languages as a scientific language;
- organising politicians to support the elevation of the nine African languages;
- introducing the nine African languages as mediums of instruction at all levels of education;
- establishing lexicography units to promote the development of dictionaries, in different subjects and disciplines and for all levels of education;
- finally, promoting print culture in all nine African languages.¹³⁴

At the primary and basic education level, the Incremental Introduction of African Languages draft policy (IIAL),¹³⁵ introduced by the DBE in 2013, aims to, among others, promote the use of African languages by all learners in school through the incremental introduction of an African language to learners from grades 1 to 12. This is to ensure that all non-African home language speakers can speak an African language. It also aims to strengthen the use of African languages at

131 Ministry for Higher Education and Training 'Report on the use of African languages as mediums of instruction in higher education' (2015), https://www.dhet.gov.za/Policy%20and%20Development%20Support/African%20Languages%20report_2015.pdf (accessed 14 March 2024).

132 Ministry of Education 'The language policy for higher education' (2002) 10, <https://www.dhet.gov.za/Management%20Support/Language%20Policy%20for%20Higher%20Education.pdf> (accessed 14 March 2024).

133 Foley (n 129) 61.

134 H. Giliomee 'The rise and possible demise of Afrikaans as a public language' (2003) *PRAESA Occasional Paper* 14.

135 Department of Basic Education 'Incremental introduction of African languages: Draft policy' (September 2013), www.education.gov.za (accessed 14 March 2024).

home language level, improve the utility of African languages that were previously marginalised, and increase access to languages by all learners beyond English and Afrikaans.¹³⁶ The IIAL policy aims to develop African languages by –

- providing resources in the form of publication of textbooks at the first additional language level;
- providing all schools with African language teachers, who will teach African languages at first additional language level;
- seeking additional funding from the national treasury to fund resources to support the incremental introduction of African languages;
- monitoring and evaluating the development of African languages from school level, up to the DBE.¹³⁷

Assuming that one or more African language(s) was developed in the same way as Afrikaans and English, to enable their use as languages of learning and teaching, the obstacle remains of which learners would face in the employment world, in that the commercial languages in South Africa are English and Afrikaans¹³⁸ and, in most parts of the world, English.¹³⁹ Therefore, learners who will be taught in their mother tongue language (in this instance being any of the nine African languages) will have no place in the working world.¹⁴⁰ The first problem described is only based on the assumption that the use of African languages as LOLT from grade 4 onwards would continue up to higher education and that students would receive their degrees and diplomas in an African language.

Based on the reality that the national senior examinations (NSC) are only written in English and Afrikaans,¹⁴¹ the other obstacle that learners would face, first and foremost, is how they will be able to write their NSC examinations in English, when they have been taught in an African language all their lives. Second, assuming that the NSC examinations are written in the LOLT to which learners are used in school, the challenge will now be at the tertiary institutions. Which tertiary institution has the required resources (lecturers and

136 As above.

137 As above.

138 See D Casale & D Posel 'English language proficiency and earnings in a developing country: The case of South Africa' (2010) *Conference paper 5*.

139 Casale & Posel (n 138) 3.

140 We note here that learners could learn English as an additional language. However, they would have acquired formal and working terms in the language of learning and teaching and, therefore, may still experience constraints in commercial spaces.

141 See Parliamentary Monitoring Group 'Question NW1087 to the Minister for Basic Education' (2020), <https://pmg.org.za/committee-question/13744/> (accessed 14 March 2024).

textbooks) to accommodate their situation? The question, therefore, remains, where to from here?

First, as Desai notes, although LIEP does not explicitly state that English should be the medium of instruction after grade 3, parents perceive English as a gateway to accessing economic opportunities and, therefore, opt for their children to be taught in English.¹⁴² This raises the question of whether the current position is due to practice created by the DBE, and which has not been challenged. In the alternative, it also suggests whether it is due to parental choice and preference of the English language over African languages. It is recommended that parents need to be educated on the fact that they have a right to opt for their children to be taught in a language of their choice where that is practical. The benefits of learners being taught in their mother tongue can also be taught and encouraged among parents.

Second, it often is the case that the language of learning and teaching can serve as barriers in accessing education and perpetuate historical inequalities in the basic education system. This manifests in instances where single-medium and better-resourced schools are restricted to white learners, while black learners wishing to access them remain in poorly-resourced and overcrowded public schools.¹⁴³ While the BELA Bill has clarified that SGBs must submit their language policies to the HoD for approval, it is recommended that the following factors will aid the HoD in deciding whether to approve a language policy:

- (1) the extent of excess capacity in the case of a single medium school and the trends in this regard;
- (2) the availability of and accessibility to other similarly-resourced public schools, for learners who are language barred from attending the single medium school;
- (3) the geographical areas from where learners attending the single-medium school come, and the curriculum options offered.¹⁴⁴

Third, and finally, it is recommended that parents must be made aware that according to the Norms and Standards, it is reasonably practicable for the provincial department to provide education in a

¹⁴² Desai (n 101) 5.

¹⁴³ See the Equal Education Law Centre and Equal Education's joint submission on the Basic Education Laws Amendment Bill 2022 para 111, https://eelawcentre.org.za/wp-content/uploads/eelc-ee-submission_draft-bela-bill-2022_final-1.pdf (accessed 14 March 2024).

¹⁴⁴ These recommendations were extracted from the Equal Education and Equal Education Law Centre's joint submission on the BELA Bill in 2022, https://eelawcentre.org.za/wp-content/uploads/eelc-ee-submission_draft-bela-bill-2022_final-1.pdf (accessed 14 March 2024).

particular LOLT if at least 40 learners in grades 1 to 6 or 35 in grades 7 to 12 request to be taught in that particular language and bearing in mind that the LOLT must be an official language. The Department of Basic Education needs to be engaged in such instances to give effect to section 29(2) of the Constitution.¹⁴⁵ In particular, it should be made clear that schools should not be permitted to refuse to accept applications from learners whose choice of LOLT differs from a school's language of tuition or refuse to include these learners on admissions waiting lists for consideration by the Department. Schools must further inform the DBE of learners on waiting lists. This will help ensure that the Department has the information needed to aid its understanding of why some single medium schools are not filled, whether single medium schools are favouring learners from outside the school's feeder zone over learners within the feeder zone, and what the demand for the school would otherwise be if parallel/dual medium is offered.¹⁴⁶

The sudden switch from mother tongue education to English in grade 4 is a great disadvantage to African learners who must abandon their mother tongue languages and switch to English. The English and Afrikaans learners are immediately placed at an advantage because for them, such a switch does not exist, and they proceed in their mother tongue.¹⁴⁷ As Ntombela notes:¹⁴⁸

The majority of African learners who attend government schools are double disadvantaged in that those who attend former Model 'C' schools do not experience the switch. What exacerbates this disadvantage is that the English they switch to is inferior to the English in former Model 'C' schools. This does not only imply educational inequality which is the scourge inherited from the infamous apartheid regime, but also linguistic illiteracy where different forms of English language are at play.

When black learners switch to the English medium of instruction, they switch to English first additional language¹⁴⁹ in which learners have not received a sufficient grounding, which perpetually sets them behind. It is recommended that more educational resources such as textbooks and dictionaries should also be developed in learners'

145 EE and EELC submissions on the BELA Bill 2022, https://eelawcentre.org.za/wp-content/uploads/eelc-ee-submission_draft-bela-bill-2022_final-1.pdf (accessed 14 March 2024).

146 For more on feeder zones, see Gauteng Department of Education, <https://www.gdeadmissions.gov.za/> (accessed 14 March 2024).

147 Ntombela (n108) 21.

148 As above.

149 According to the Curriculum and Assessment Policy Statement, a first additional language refers to 'a language which is not a mother tongue but which is used for certain communicative functions in society, that is medium of learning and teaching in education'.

mother tongue languages to foster a culture of multilingualism within basic education. The same funding, time and effort that was put into developing resources for Afrikaans and English should also be given in developing these resources in indigenous languages. This necessitates the inclusion of indigenous languages as a medium of instruction in language policies after grade 3. This does not mean that English should be disregarded. By investing in training, the state will ensure that those students who learn better in their home language can continue to be instructed in these languages.

As argued earlier, parents should be made aware of their children's right to be taught in their official languages where this is reasonably practicable. They should not be put in a position to concede for their children to be taught in another language when provincial departments must explore ways to fulfil this constitutional right, given that parental choice is one of the main reasons why the LOLT is English.¹⁵⁰ Steps can be taken to strengthen foundation phase FAL instruction to ensure that learners are more proficient in the language.

150 V de Klerk 'Language issues in our schools: Whose voice counts? Part 1: The parents speak' (2002) *Perspectives in Education* 4.