WHY ISN’T A, B, C, AS EASY AS 1, 2, 3?: WHY THE EDUCATION LAWS IN SOUTH AFRICA REGARDING LANGUAGE DISCRIMINATION ARE INEFFECTIVE.

Morgan Lear

Over two decades have passed since Apartheid, but racial tensions still linger in South Africa’s inclusive democracy, particularly in the education system. In an effort to combat the racial climate of the preceding era, South Africa adopted 11 official languages during the reconstruction of the constitution and passed the South African Schools Act of 1996 requiring that necessary accommodations must be made for learners who wish to be taught in their language of choice when reasonably practicable. However, the enforcement of this Act is illusory due to the infrastructure of the South African school system and the statutory interpretation of educational administration.

This note will focus on possible solutions to the linguistic medium issues that face South Africa’s basic education system. This note acknowledges that drawbacks to this proposal exist and inequalities in the South African education system are not exclusively limited to the linguistic medium of instruction. The deeply rooted apartheid initiatives are visible in all facets of the education system. This note only attempts to help resolve one area of inequality.
I. INTRODUCTION ............................................................................................. 375
II. APARTHEID BACKGROUND ................................................................... 376
   A. Legislative Segregation Timeline .......................................................... 377
      i. The Bantu Education Act of 1953 .................................................... 378
      ii. Extension of University Education Act of 1959 ......................... 379
      iii. Soweto Uprising of 1976 ............................................................. 380
   i. Dismantling of Apartheid................................................................. 381
   B. Constitutional, Legislative, and Structural Transformation of South African Education System ....................................................... 382
   C. Cases That Have Defined South African Education ...................... 387
      i. The Western Cape Minister of Education v. The Governing Body of Mikro Primary School (2005) (Mikro Primary School Case) ....................................................... 387
      ii. Seodin Primary School and Others v. MEC of Education, Northern Cape and Others (2006) (Seodin Primary School) .............................................................................. 388
      iii. Head of the Department, Mpumalanga Department of Education and Another v. Hoerskool Ermelo and Another (2009) (Ermelo Case) ........................................................ 389
      iv. Relating to Certain Aspects of the Law on the use of Languages in Education in Belgium (Belgium Linguistic Case) ................................................................................. 391
III. PROPOSAL .................................................................................................. 392
   A. Predominate Provincial Language in Basic Education Schools ........ 393
   B. The Role of the Governing Body ......................................................... 396
   C. Multilingualism is Still a Pillar in the South African Identity ......... 399
   D. Norms and Standards Enforcement ................................................ 400
   E. Drawbacks ......................................................................................... 401
      i. Linguistic Imperialism ...................................................................... 402
      ii. Resources Available for Teaching Indigenous Languages 403
      iii. Some Provinces Do Not have a Predominate Language... 403
IV. CONCLUSION ............................................................................................ 404
I. INTRODUCTION

In the mid-1900s, when many countries were looking toward a more inclusive and integrated cultural environment, the Afrikaner National Party (the National Party) saw segregation as an opportunity. Instead of repealing the segregation policies that existed long before the National Party came to power, the National Party chose to make these segregation policies and oppressive behaviors the law of the land. Given the economic woes that captivated the world in previous decades, such as the Great Depression and World War II, South Africa found segregation to be a necessity in order to maintain economic growth. In order to accomplish this objective, the National Party implemented Apartheid.

The word apartheid originated from the Afrikaans language, spoken by the National Party. When translated into the Afrikaans meaning, apartheid means “apartness.” Apartheid became a system of regulation in South Africa in 1948 when the National Party came to power. The regime was created on the ideology that racial segregation was essential and no contact between white and non-white South Africans should take place. Although non-white South Africans were the majority of the population in South Africa, Apartheid remained the law of the land for the next 50 years. Beginning in 1991, Apartheid system was dismantled, and the widespread oppression of non-white Africans ceased, at least by law.

Over two decades have passed since Apartheid ended, but racial tensions still linger in South Africa’s inclusive democracy, particularly in the education system. In an effort to combat the racial climate of the

2. Id.
3. Apartheid, HIST. CHANNEL (2010), http://www.history.com/topics/apartheid#.
6. Apartheid, supra note 3.
7. Id.
8. Id.
9. Id.
preceding era, South Africa adopted 11 official languages during the reconstruction of the constitution and passed the South African Schools Act of 1996 (SASA), requiring that necessary accommodations must be made for learners who wish to be taught in their language of choice when reasonably practicable. However, the enforcement of SASA is illusory due to the infrastructure of the South African school system and the statutory interpretation of educational administration.

This note will focus on possible solutions to the linguistic medium issues that face South Africa’s basic education system. However, in order to understand the current issues that face South Africa today, it is important to understand the history. Therefore, this note will begin by examining the history of Apartheid leading to the impact on the current education system. Then, discussion will focus on the structure of the current laws surrounding schools in South Africa, including landmark cases that have defined South African education. Most importantly, this note will offer possible solutions to the current linguistic inequalities in the education system by changing certain laws and their implementation surrounding the South African school system. Lastly, this note acknowledges that drawbacks to this proposal exist and inequalities in the South African education system are not exclusively limited to the linguistic medium of instruction. The deeply rooted apartheid initiatives are visible in all facets of the education system. This note only attempts to help resolve one area of inequality.

II. APARTHEID BACKGROUND

This section will discuss the progression and destruction of Apartheid in South Africa and how the governmental, legislative, and judicial changes affected the education of students.


A. Legislative Segregation Timeline

Racial tensions and white supremacy emerged in South Africa long before Apartheid.\textsuperscript{13} When the South African Party (SAP) came to power in the early 1900s, it emphasized a nationalism ideology that supported white supremacy.\textsuperscript{14}

While non-white South Africans constituted over 75%\textsuperscript{15} of the South African population, they were considered inferior to the white race.\textsuperscript{16} The thrust toward segregation and oppression of non-white South Africans began with the passage of the 1913 Natives Land Act by the Union Parliament.\textsuperscript{17} This Act preserved land for the exclusive use of white South Africans.\textsuperscript{18} Since certain property was restricted for the use of white South Africans, overcrowding and poverty started to emerge in the non-white South African neighborhoods.\textsuperscript{19}

While SAP installed many regulations that suppressed non-white South Africans, the formation of a more radical group championed Afrikaner interest and demanded a wider gap between white and non-white South Africans.\textsuperscript{20} This party came to be known as the Afrikaner National Party (National Party) and ultimately took power over South Africa in 1948.\textsuperscript{21} The following Acts are just a few of the oppressive legislations passed by the National Party.

\begin{itemize}
  \item \textsuperscript{14} \textit{Id.}
  \item \textsuperscript{15} \textit{Id.}
  \item \textsuperscript{18} \textit{Liberation Struggle in South Africa, supra} note 13.
  \item \textsuperscript{19} \textit{Id.}
  \item \textsuperscript{20} \textit{Id.}
  \item \textsuperscript{21} \textit{Id.}
\end{itemize}
The Bantu Education Act primarily focused on restricting the quantity and quality of education for non-white South Africans and segregating the education system. The Act began by removing the authority of education and administration decisions from the provincial administration, and placing the authority with the Union government, spearheaded by the Minister of Native Affairs, Dr. H. F. Verwoerd. Under this Act, all non-white schools became state-run schools, also known as Bantu Schools. Dr. Verwoerd was given the authority to close any school at his discretion. Dr. Verwoerd was also given the authority to suspend or withdraw any grants to the school system and redirect the funds to a different area since the government controlled money distribution. Further, the Act made it a criminal offense for any person to open a Bantu school other than government Bantu schools unless the Minister gave permission. However, the Bantu schools primary purpose was not to educate the students but rather to provide non-white South African students with skills for labor jobs or to help people in their own community. Additionally, non-white South Africans were taught exclusively in their mother tongue until sixth grade in order to inhibit them from expanding their knowledge by using one of the two official languages, Afrikaans or English. In the words of Dr. Verwoerd,
[t]here is no place for the Bantu in the European community above the level of certain forms of [labor]. Until now he has been subjected to a school system which drew him away from his own community and misled him by showing him green pastures of European society in which he was not allowed to graze.\textsuperscript{30}

\textit{\small ii. Extension of University Education Act of 1959}

The primary and secondary education systems were not the only educational platforms to oppress non-white South Africans. The Extension of University Education Act of 1959 made it a criminal offense for a non-white South African to attend a University unless he or she was given written consent by the government.\textsuperscript{31} Universities that once accepted all races were now restricted to white South Africans only.\textsuperscript{32} This Act further fragmented the non-white South African population by segregating not only by race but also by ethnicity.\textsuperscript{33} The most impacted areas in South Africa were Cape Town, Natal, and Witswaterand because these cities were more inclusive of all races before apartheid became law.\textsuperscript{34} Further, the quality of education received at the non-white Universities was inferior to the white Universities.\textsuperscript{35} Most of the faculty at the non-white Universities did not have University degrees.\textsuperscript{36} Additionally, the Act imposed over 300 regulations on teachers for misconduct, making it entirely too easy to be disciplined;


\small 33. \textit{Id.} at 154–55. For example, “[t]he University of Fort Hare was opened for Xhosa speaking students only, while the University of North in Turfloop was set up for the Sotho and Tswana students.” \textit{Extension of University Education Act No 45 Commences, S. Afr. Hist. Online} (Mar. 16, 2011), http://www.sahistory.org.za/dated-event/extension-university-education-act-no-45-commences.


\small 35. \textit{Id.}

\small 36. \textit{Id.}
therefore, teaching at non-white schools was less attractive to qualified teachers.\textsuperscript{37} Any administrator or faculty member that opposed this new legislation was fired under the discretion of the minister.\textsuperscript{38}

\begin{quote}
\textit{iii. Soweto Uprising of 1976}
\end{quote}

On June 16, 1976, high school students protested in the Soweto Township.\textsuperscript{39} Non-white South African students were tired of receiving poor education. The recently passed Afrikaans Medium Decree that required all schools to teach the core classes in Afrikaans became the tipping point for students.\textsuperscript{40} Most non-white South African students did not speak Afrikaans, much less respect the language that was labeled “the language of the oppressor.”\textsuperscript{41} Additionally, these students opposed the Bantu Education Act and the numerous other apartheid laws.\textsuperscript{42} This protest did not spontaneously occur; it followed the “silent decade,” where resistance among non-white South Africans was brewing.\textsuperscript{43} Advocate groups and organizations such as the South African Students Organization (SASO) and Black Consciousness Movement (BCM) were created in opposition of Apartheid.\textsuperscript{44} On the morning of June 16, 1976, students, as well as members of SASO and BCM, peacefully protested in the streets of Soweto but were met by armed government officials.\textsuperscript{45} The police officers fired tear gas and live ammunition into the crowd of students.\textsuperscript{46} The police brutality during the protest caused a nationwide

\textsuperscript{37} Extension of University Education Act 45 of 1959 § 30.
\textsuperscript{38} Thompsell, \textit{supra} note 34. The Tertiary Education Act of 1988 repealed the Extension of University Education Act in 1988. \textit{Id.}
\textsuperscript{42} \textit{Soweto Student Uprising, supra} note 39.
\textsuperscript{43} \textit{Id.}
\textsuperscript{44} \textit{The June 16 Soweto Youth Uprising, supra} note 40.
\textsuperscript{45} \textit{Id.}
\textsuperscript{46} \textit{Id.}
response. Revolts all over South Africa ensued in the following months. The death toll of this tragedy, as well as many subsequent protests, is heavily disputed, ranging from as small as 23 deaths to as large as 1,000 deaths. This revolt had a sobering effect on Apartheid regime. A few short years thereafter, the Bantu Education Act was repealed.

### i. Dismantling of Apartheid

After years of protests, riots, and apartheid resistance, the dismantling of Apartheid government began in 1990. President F. W. de Klerk announced the prison release of African National Congress (ANC) leader and future president Nelson Mandela, and by June 1990, the South African parliament voted to stop segregation in public facilities. Additionally, President de Klerk lifted the restrictions set on ANC and other liberation movements that strived for equality. The ANC and the South African government, under President de Klerk’s lead, agreed to the Groote Schuur Minute, which was an agreement to work towards a non-violent resolution between the parties. While President de Klerk embraced a peaceful resolution, he was met with heavy opposition from

---

47. Id.
48. Id.
51. Education and Training Act 90 § 45 of 1979 § 45.
53. Id.
the National Party and extremists. From 1990 to 1994, constant violence erupted from those resisting change. However, in 1994, the ANC won the elections and the ANC leader Nelson Mandela was elected president. That same year, the Constitutional Court of South Africa certified the new Constitution, which embodied the main principle of equality.

B. Constitutional, Legislative, and Structural Transformation of South African Education System

Under the Constitution of the Republic of South Africa there are 11 official languages: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa, and isiZulu. While all 11 languages are the official languages of South Africa, the Constitution takes note that there is a “historically diminished use and status of the indigenous languages [that] the state must take practical and positive measures to elevate the status and advance the use of these languages.” Therefore, in certain situations, single-medium schools are acceptable after evaluating the equity, practicability, and past discrimination. Additionally, SASA emphasizes the need for linguistic equality in the school environment, stating:

55. See Govender, supra note 52.
56. Unit 6. The End of Apartheid and the Birth of Democracy, supra note 54.
57. Id.
58. Id.
59. S. AFR. CONST., 1996, § 6(1). Nelson Mandela found it important that all languages of South Africa become official languages. Karen Emslie, There Are 11 Official Languages in South Africa. Here’s How They’re Making it Work, GOOD PROJECT LITERACY (July 17, 2015), https://www.good.is/articles/mandela-day-south-african-language-literacy. Mandela once said, “[i]f you talk to a man in a language he understands, that goes to his head. If you talk to him in his language, that goes to his heart.” Id.
60. S. AFR. CONST., 1996, § 6(2).
61. Id.

The Constitution of the Republic of South Africa states:

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 practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational
The governing body of a public school must ensure that—

(a) there is no unfair discrimination in respect of any official languages that are offered as subject options . . . and

(b) the first additional language and any other official language offered, as provided for in the curriculum, are offered on the same level.62

After the demise of Apartheid, multilingualism became a cornerstone in Nelson Mandela’s administration.63 In 1995, the Pan-South African Language Board (PANSALB)64 was created by the Pan South African Language Board Act 59 of 1995.65 PANSALB is a constitutionally appointed independent language agency that was given the authority to66 “advise central and provincial governments on all matters pertaining to language policy and language use.”67 Under the PANSALB Act, the agency was established to develop all 11 national languages and promote multilingualism by conducting studies and research on the different languages.68 PANSALB has provincial locations and works directly with the provincial school systems.69 Additionally, PANSALB has the authority to make recommendations to any proposed or current legislation as well as make recommendations to the state at all levels of

alternatives, including single medium institutions, taking into account—
(a)equity;
(b)practicability; and
(c)the need to redress the results of past racially discriminatory laws and practices.

Id.

63. See Emslie, supra note 59.
65. PanSALB History, supra note 64.
66. Id.; S. AFR. CONST., 1996, § 6(5).
68. PanSALB History, supra note 64.
South Africa’s Language in Education Policy (LiEP) was another part of the national plan to promote multilingualism along with PANSALB. LiEP methodology was introduced in 1997. This policy supports “additive bilingualism,” which promotes learning in a student’s mother tongue until third grade before transitioning to English instruction, which is still the current system in South Africa’s basic education system.

On paper, indigenous languages went from being a burden to being an asset for South Africa. However, the ultimate implementation of multilingualism has differed from the overall objective.

While it is important for the Constitution of the Republic of South Africa to acknowledge and address the language barriers put in place during Apartheid, it is even more important to solidify a sound infrastructure in the South African education system that addresses past indiscretions. The South African education system is currently split into two Departments: the Department of Basic Education (DBE) and the Department of Higher Education and Training. Ninety-three percent of the South African education system is public schools. This note will be focusing primarily on the DBE, which encompasses all schools ranging from Grade R (kindergarten) to Grade 12. The DBE is led by the minister and is separated into nine provincial departments: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, North West, Northern Cape, and Western Cape. While each provincial department has its own internal structure, each province has a Member of the

---

70. PanSALB History, supra note 64.
73. Id.
76. About Basic Education, supra note 74.
Executive Council (MEC) and a Head of the Department (HOD). These positions are responsible for the funding and enforcement of the Constitution, SASA, and applicable provincial law. The MEC gives oversight to the governing body, and the HOD gives oversight to the principal of each school.

At the school level, each school has a governing body, which consists of elected members ranging from parents, teachers, and, occasionally, students above eighth grade. As enumerated in SASA, the governing body has the responsibility of governing the school, including choosing the linguistic medium. The principal, on the other hand, conducts the professional management. While SASA does state that the Minister has the authority to “determine norms and standards for language policy in public schools,” it goes on to state “[t]he governing body of a public school may determine the language policy of the school.” Notably, SASA does leave the authority with the HOD to remove the governing body, not exceeding one year, and replace the members. Additionally, it allows the HOD to withdraw certain rights from the governing body.

79. Id. § 18.
82. Id. § 20–21. The professional management of the school entails implementation of academic programs and curriculum, management of teachers and support programs, and record keeping of school performance. Id. § 16(A)(2)(a). The principal is also a member of the governing body. Id.
83. Id. § 6(1) (emphasis omitted).
84. Id. § 6(2) (emphasis omitted).
85. Id. § 22.
(1) The Head of Department may, on reasonable grounds, withdraw a function of a governing body.
(2) The Head of Department may not take action under subsection (1) unless he or she has—
(a) informed the governing body of his or her intention so to act and the reasons therefor;
Through the years, governing bodies have implicitly determined that English is the optimal language for its children; therefore, after Grade 4, most students are taught in English rather than their mother tongue.\textsuperscript{87} This is largely because indigenous languages are still perceived to be inferior to English and Afrikaans.\textsuperscript{88} Some provinces, such as Limpopo, started teaching students in English in Grade R (Kindergarten).\textsuperscript{89} Nonetheless, according to the DBE’s curriculum program, students are starting to engage in English instruction beginning in first grade.\textsuperscript{90}

Currently, public schools may offer instruction in the students’ mother tongue until third grade, at which point the students are transitioned to the school’s medium of instruction, usually English or Afrikaans.\textsuperscript{91} The DBE has recently repackaged its education policy limiting the amount of subjects taught in the earlier years of school in order to promote understanding and retention.\textsuperscript{92} However, by fourth grade students are required to be taught in the school’s medium regardless of the child’s mother tongue.\textsuperscript{93} South Africa has over 12 million students in the public sector, and unfortunately, their schools system is underperforming severely, especially in mathematics and science.

\begin{itemize}
  \item (b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention; and
  \item (c) given due consideration to any such representations received.
\end{itemize}

\textit{Id.} (emphasis omitted).

86. \textit{Id.} §§ 21–22.


88. \textit{Id.}

89. \textit{Id.}


92. \textit{Questions and Answer Booklet, supra note 91, at 14–16.}

93. \textit{See id.}
C. Cases That Have Defined South African Education

The following landmark cases have sculpted the enforcement of linguistic mediums offered in the South African education system. Given that inequality in linguistic mediums in the educational setting is a global concern, it is important to acknowledge how other countries have dealt with this issue. The *Belgium Linguistic Case* is included in this note because it was a monumental linguistic case that will help frame South Africa’s issue in a global context.

i. *The Western Cape Minister of Education v. The Governing Body of Mikro Primary School (2005) (Mikro Primary School Case)*

Mikro Primary School (Mikro) is a public single-medium Afrikaans school in the province of Western Cape. The governing body and the school disobeyed a directive from the Department and the HOD by refusing to accommodate 40 English-learning students. The court analyzed the language in Section 29(2) of the Constitution that referred to the right of everyone to receive education in the language of his or her choice. The court explained that while the constitution states, “everyone has the right to receive education in the official language or languages of their choice in public educational institutions,” it is up to the state to either provide the accommodation or a reasonable alternative. The court went on to say that “everyone has a right to be

97. *Id.* para. 28.
98. *Id.* para. 31; *S. Afr. Const.*, (1996), § 29(2).
educated in an official language of his or her choice . . . if reasonably practicable, but not the right to be so instructed at each and every public educational institution subject only to it being reasonably to do so.”100 In other words, even if the accommodation is reasonable a school may not be required to accommodate the student.101

Five years later, in Head of the Department, Mpumalanga Department of Education and Another v. Hoërskool Ermelo and Another, the Minister found a more direct way to accomplish of changing the language medium by simply removing a governing body.102

ii. Seodin Primary School and Others v. MEC of Education, Northern Cape and Others (2006) (Seodin Primary School)

Within a year of Mikro, a language policy dispute garnered attention in Northern Cape.103 In 2004, the Northern Cape MEC wrote a letter to all schools in the Kuruman district announcing that all schools were required to transition to a parallel-medium of instruction offering Afrikaans and English.104 The MEC explained that in order to be in alignment with the Constitution and SASA, all schools must accommodate English-speaking students in order to alleviate the overcrowding in schools outside the district.105 Soon after the letter was distributed, the schools were forced to accommodate English-speaking students.106 While the court rejected the MEC’s authority to change the school’s language policy, the court acknowledged that the students have a constitutional right to continue their education at these schools since accommodations were made; and therefore, the schools had the ability to educate the English-speaking students.107 By the time the court addressed the issue, the students had been attending the former single-medium

100. Id.
101. Id.
102. See Head of the Department: Mpumalanga Department of Education v. Hoërskool Ermelo 2009 (2) SA 415 (CC) at para. 1 (S. Afr.) [hereinafter Ermelo Case].
103. See Seodin Primary School v. MEC of Education Northern Cape 2005 (1) All SA 154 (NC) at para. 9 (S. Afr.) [hereinafter Seodin Primary School Case].
104. Id.
105. Id.
106. Id. para. 11.
107. Id. paras. 54–56.
schools for almost two years; as a result, the school had no reasonably practicable issue that could oppose the accommodation.\textsuperscript{108} Accordingly, the court held the schools must continue to accommodate the students with English-medium instruction.\textsuperscript{109}

\textit{iii. Head of the Department, Mpumalanga Department of Education and Another v. Hoerskool Ermelo and Another (2009) (Ermelo Case)}

Hoerskool Ermelo (Ermelo) is a public high school located in the province of Mpumlanga, South Africa.\textsuperscript{110} By way of the schools governing body, Afrikaans was the sole medium of instruction since the school’s inception.\textsuperscript{111} In Ermelo’s 93 year history it has always been exclusively an Afrikaans-medium school.\textsuperscript{112} Because Afrikaans is closely associated with the devastating apartheid era and has been largely rejected by the non-white South African community,\textsuperscript{113} only 34 black students attended Ermelo in 2005 when this case began, and the students agreed to be taught in Afrikaans.\textsuperscript{114}

This case arose when the HOD sharply disagreed with the actions of the governing body’s repeated conclusion that Afrikaans should be the only medium of instruction available to the students.\textsuperscript{115} The governing body refused to temporarily accommodate 27 English-speaking eighth grade students despite having adequate accommodations.\textsuperscript{116} Since Ermelo refused to accommodate the students, they were enrolled in a

\begin{footnotes}
\begin{enumerate}
\item \textit{Id.} paras. 56–57.
\item \textit{Id.}
\item \textit{Ermelo Case}, para. 1.
\item \textit{Id.} para. 6.
\item \textit{Id.}
\item See \textit{id.} para. 2
\item \textit{Id.} para. 9.
\item \textit{Id.} paras. 12, 82.
\item \textit{Id.} para. 12. Ermelo School was built to accommodate 1,200 students. \textit{Id.} para. 8. However, the enrollment for students in 2007 was only at 685 \textit{Id.} para. 9. Therefore, Ermelo had a substantial amount of room to accommodate the students, but the governing body refused. \textit{Id.} paras. 9–10. Additionally, schools in the immediate area were filled to capacity and enrolled twice as many students. \textit{Id.} para. 11.
\end{enumerate}
\end{footnotes}
neighboring school and were forced to be taught in laundry rooms instead of a classroom setting because it was the only available space.\textsuperscript{117} After many failed attempts to reconcile the issue, the HOD took action by removing the governing body of Ermelo and replacing it with an interim committee that the HOD hand-selected\textsuperscript{118} in order to enact a new language policy that approved of a parallel-medium.\textsuperscript{119} The HOD grounded his authority in Section 22(2), (3), and 25(1) of SASA.\textsuperscript{120} The governing body and Ermelo then filed for an emergency hearing in front

\begin{itemize}
\item[117.] Id. para. 13.
\item[118.] Id. para. 21.
\item[119.] Id. para. 22.
\item[120.] Id. para. 21.
\end{itemize}

Section 22(2) provides that:
The Head of Department may not take action under subsection (1) unless he or she has—
\begin{itemize}
\item[(a)] informed the governing body of his or her intention so to act and the reasons therefor;
\item[(b)] granted the governing body a reasonable opportunity to make representations to him or her relating to such intention; and
\item[(c)] given due consideration to any such representations received.
\end{itemize}
South African Schools Act 84 of 1996 § 22(2) (emphasis omitted).

Section 22(3) provides that:
In cases of urgency, the Head of Department may act in terms of subsection (1) without prior communication to such governing body, if the Head of Department thereafter—
\begin{itemize}
\item[(a)] furnishes the governing body with reasons for his or her actions;
\item[(b)] gives the governing body a reasonable opportunity to make representations relating to such actions; and
\item[(c)] duly considers any such representations received.
\end{itemize}
Id. § 22(3) (emphasis omitted).

Section 25(1) states:
If the Head of Department determines on reasonable grounds that a governing body has ceased to perform functions allocated to it in terms of this Act or has failed to perform one or more of such functions, he or she must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.

Id. § 25(1) (emphasis omitted).
of the High Court to set aside the HOD’s order.\footnote{Ermelo Case, para. 25.} The High Court upheld the HOD’s order because “the governing body had unreasonably refused to review its language policy, and in doing so prevented the admission of some 113 grade 8 learners.”\footnote{Id. para. 31.} Ermelo appealed, and the Supreme Court of Appeals reversed.\footnote{Id. para. 33.}

The Constitutional Court of South Africa granted review of the Supreme Court of Appeals’ decision, and it held that the HOD does have the authority under Section 22(1) of SASA to withdraw any function from the governing body “on reasonable grounds.”\footnote{Id. paras. 63–64, 68.} However, the HOD was not authorized to appoint an interim committee.\footnote{Id. para. 84.} In dicta, the court noted that the HOD likely had reasonable grounds to withdraw the language policy function from the governing body because it acted unreasonably by using the language policy to keep out English-speaking students.\footnote{Id. para. 82.} However, the court chose not to make a determination on the reasonableness of the HOD’s withdrawal because it found that the interim committee appointment was invalid.\footnote{Id. paras. 84–86.} Notably, the Constitutional Court paid close attention to the underlying discrimination present in this case.\footnote{See id. para. 2.} It repeatedly pointed out the legacy of Apartheid, especially in the education system, and the lack of resources and accessibility available to non-white South Africans.\footnote{See id. paras. 2, 6–11.}

\textit{iv. Relating to Certain Aspects of the Law on the use of Languages in Education in Belgium (Belgium Linguistic Case)}

The following case is about Belgium’s language policy controversy that deals with similar issues facing South Africa. In 1968, the European Court of Human Rights grappled with the issue of whether schools were required to provide children an education in their mother tongue.\footnote{See generally Belgium Linguistic Case.} The
applicants, whose children totaled more than 800, were French-speaking parents who wanted their children to be taught in French. However, the families lived in a Dutch-speaking region, so the school’s primary language was Dutch. The applicants argued that the language in Article 2 of the Protocol No. 1 to the European Convention on Human Rights (P1-2) guaranteed a right to “respect parents’ linguistic preferences.” The court held that Article 2 (P1-2) “in no way guarantees the right to be educated in the language of one’s parents by the public authorities or with their aid.” It reasoned that Article 2 (P1-2) only “guarantees the right of access to educational establishments,” it does not guarantee a right to education in the students preferred language. Therefore, in Belgium, students will be taught in the language of their region.

III. PROPOSAL

The current education system is a product of Apartheid. Certainly, it was a nice gesture to make the indigenous languages of South Africa official languages, but the enforcement is severely lacking. While South Africa has moved away from predominately Afrikaans single-medium schools, English has taken its place. In effect, the indigenous languages remain unused in the school setting and undervalued in society. In order to ensure Section 6(2) and 29(2) of the constitution carry more than symbolic meaning, the predominate indigenous language

131. Id. at 3.
132. Id. at 4.
133. Id. at 29, 33.
134. Id. at 39. Article 2 of the Protocol (P1-2) reads “In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.” Id. at 29.
135. Id. at 39.
136. Id.
137. See id.
140. See id. at 29.
of each province should be the primary linguistic medium at schools. Additionally, the HOD, instead of the governing body, should be given discretion to alter the language policy of individual schools in order to combat oppressive societal views. Indeed, the HOD will be subject to the Norms and Standards mandated by the Minister, but, additionally, those policies should be reviewed by PANSALB on an annual basis. Further, in order to encompass the importance of multilingualism, English should be taught as the secondary language at all schools that use an indigenous language as the primary medium for students.

A. Predominate Provincial Language in Basic Education Schools

South Africa should model a general education structure similar to Belgium, insofar as it offers education in the predominate language of the province. While South Africa is unique in the fact that it has 11 official languages, it is not the first country to struggle with implementing an effective language policy in its education system. As mentioned earlier, Belgium experienced a similar issue in 1968 because it had three official languages: French, Dutch, and German. The European Court of Human Rights held that the Belgian linguistic legislation that mandated students to be taught in the predominate language spoken in each region did not violate Article 2 of the Protocol (P1-2), which assured the positive right of education for students. The court reasoned that Article 2 of the Protocol (P1-2) did not require the legislature to take into account the personal language preference of the parents.

In contrast, South Africa’s Constitution and SASA explicitly state that every student is entitled to be educated in the language of his or her choice where reasonably practicable. However, as a result of Apartheid era, most parents want their children to be taught in English or Afrikaans because of the notion that indigenous languages are inferior. This pedagogical perception contradicts Section 6(2) of the Constitution

143. Id. at 29.
144. S. AFR. CONST. 1996, § 29(2); South African Schools Act 84 of 1996 § 6(B).
145. See Evans & Cleghorn, supra note 91, at 10–11.
that states indigenous languages should be promoted and respected. Since Apartheid attitude is deeply embedded in South Africa’s history and social norms, implementation of Sections 6(2) and 29(2) are at odds. An education system that is constructed similar to Belgium’s regional linguistic scheme, however, would help ease the tension between Sections 29(2) and 6(2).

To be clear, Section 29(2), which gives students the right to choose their linguistic medium, is well intentioned, but it is misapplied in the current social climate. Therefore, until the negative perceptions of indigenous languages wane, the dominant language of the province should be the mandatory medium in schools. This would further the constitutional principle enumerated in Section 6(2), which requires the government to take positive measures in order to increase the usage and status of the indigenous languages.

The linguistic education structure of Belgium can function as a general blueprint for South Africa. For example, the Belgian legislation stated “the language of education shall be Dutch in the Dutch-speaking region, French in the French-speaking region and German in the German-speaking region.” Similarly, South Africa is made up of nine different provinces, and each province has a primary language spoken by its citizens. Although English is generally understood by most of the country, it is not most people’s mother tongue. None of the nine provinces have a population that predominately speaks English, and only two provinces have populations that predominately speak Afrikaans. In fact, neither English nor Afrikaans is the most prevalent language in South Africa. Twenty-two percent of South Africans speak IsiZulu, which holds the highest percentage of speakers out of the eleven official languages. The chart below depicts the two most prevalent languages in each province.

---

147. Id.
150. Id.
151. Id.
152. Id.
153. Id.
154. Id.
Unlike Belgium, where a small portion of the community did not have access to educational instruction in their mother languages, most South African students are being taught in something other than their mother tongue.

Additionally, South Africa has made most schools Afrikaans- or English-medium schools through the discretion of its governing body. This has led the South African education system to be one of the worst performing education systems in the world. This provincial approach would guarantee that the majority of South Africans are taught in their mother tongue. As many researchers have established, students have a better understanding of the material when they are taught in their mother tongue. Associate Professor at University of South Australia Kathleen Heugh has pointed out the inherent flaw in the South Africa’s linguistic education system. She states “[c]hildren are expected to learn through

<table>
<thead>
<tr>
<th>Province</th>
<th>Most Common Language</th>
<th>%</th>
<th>Second Most Common Language</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>IsiXhosa</td>
<td>78.8%</td>
<td>Afrikaans</td>
<td>10.6%</td>
</tr>
<tr>
<td>Free State</td>
<td>Sesotho</td>
<td>64.2%</td>
<td>Afrikaans</td>
<td>12.7%</td>
</tr>
<tr>
<td>Gauteng**</td>
<td>isiZulu</td>
<td>19.8%</td>
<td>English</td>
<td>13.3%</td>
</tr>
<tr>
<td>KwaZulu-Natal</td>
<td>IziZulu</td>
<td>77.8%</td>
<td>English</td>
<td>13.2%</td>
</tr>
<tr>
<td>Limpopo**</td>
<td>Sesotho</td>
<td>52.9%</td>
<td>Xitsonga</td>
<td>17%</td>
</tr>
<tr>
<td>Mpumalanga**</td>
<td>SiSwati</td>
<td>27.7%</td>
<td>IsiZulu</td>
<td>24.1%</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>Afrikaans</td>
<td>53.8%</td>
<td>Setswana</td>
<td>33.1%</td>
</tr>
<tr>
<td>North West</td>
<td>Setswana</td>
<td>63.4%</td>
<td>Afrikaans</td>
<td>9%</td>
</tr>
<tr>
<td>Western Cape</td>
<td>Afrikaans</td>
<td>49.7%</td>
<td>isiXhosa</td>
<td>24.7%</td>
</tr>
</tbody>
</table>

156.  The Languages of South Africa, supra note 149. Only 9.6% of South Africans speak English at home. Id.
157.  See Ermelo Case, para. 4.
159.  See id.; Ermelo Case, para. 50; Kathleen Heugh, Mother-Tongue Education is Best, 3 HUM. SCI. RES. COUNCIL 6, 7 (2005).
a second language before they have developed sufficient proficiency or competence in [the second] language.” 161 Heugh explains that students are being taught social and conversational skills in the second language; however, these skills do not translate over to core curriculum classes such as “mathematics, science, geography or history.” 162 Therefore, the students are put in an impossible situation to learn a secondary language in the first three years of school and abruptly switch to a secondary language as an educational medium. 163 Heugh’s study shows that under the current South African multilingual system, students who are taught in a second language after fourth grade “are likely to achieve only between 30% and 40% in their second language by” twelfth grade. 164 Conversely, students who are taught in their mother tongue for a longer period of time while still being taught a second language have a better understanding of the second language and their core curriculum classes. 165 By making the common language of the province the linguistic medium at schools, most students will be learning in their mother tongue and will have the ability to achieve better learning outcomes. 166

B. The Role of the Governing Body

The authority of the governing body is a primary issue in the expansion of indigenous languages. During the reconstruction of the Constitution, South Africa wanted to break away from the prior governing regime that left all authority in the hands of few oppressive government officials. 167 Therefore, SASA gave the power back to the people by composing school governing bodies (SGB). 168 The SGB is given the authority to determine the linguistic medium. 169 Judge

161. Id.
162. Id.
163. Id. at 7.
164. Id.
165. Id.
166. See id.
169. Id. § 6(2).
Mosenekne, one of South Africa’s Constitutional Court Judges, described this approach as “a beacon of grassroots democracy in the local affairs of the school.” Generally, leaving the authority of classroom decisions in the hands of the people closest to the problem is an effective approach. The local people have a better understanding of their neighborhood and community instead of the Minister, MEC, or HOD. However, Apartheid stereotypes still linger. Recall earlier that during the Bantu Education system, non-white South Africans were solely taught in their mother tongue, which did advance diverse linguistic culture. However, the purpose was not to promote diversity but rather to keep non-whites marginalized and prevent them from benefiting from political and economic fortunes that come with learning and understanding English. Therefore, as Rinelle Evans, Associate Professor at the University of Pretoria, South Africa, and Ailie Cleghorn, Professor at Concordia University, Canada, have pointed out, parents are skeptical of having their children learn in their mother tongue. Understandably, when educators and parents are given the opportunity to choose the linguistic medium for their children, they will likely choose English or Afrikaans. This demonstrates an obvious mismatch between policy and practice.

Evans and Cleghorn conducted a study on parental perceptions regarding the linguistic medium used in basic education. The study concentrated on People’s Primary School in Gauteng with over 1,800 students. Gauteng is one of the most diverse and rich provinces in South Africa. Evans and Cleghorn used a smaller sample size of 600

171. *Id.* para. 31.
172. *Id.*
175. See id.
177. See id.
178. *Id.* at 1.
179. *Id.* at 4–5.
Evans and Cleghorn did conclude that younger parents believe it is “extremely important’ that the school encourage use of the mother tongue outside the classroom,” indicating that parents may interpret the classroom as an environment for the global language and the playground for the local language. However, this study demonstrates the stark divide between the constitutional language and purpose in terms of multilingualism and the parental perceptions of mother tongues. While the study was only based on questionnaires from parents at one particular school, it is widely known that indigenous languages are still viewed as inferior to English and Afrikaans.

The authority should be taken out of the hands of the SGB, as the HOD did in Ermelo. While the Constitutional Court of South Africa ultimately held in favor of Ermelo, it did hold that it was within the HOD’s authority to remove the language policy function from the SGB when the HOD has reasonable grounds to do so. However, reasonable or unreasonable, the authority to choose the linguistic medium is too fragile to be put in the hands of SGBs. Notably, provinces have passed legislation requiring the SGB to acquire the approval of the MEC before implementing a language policy. However, schools that have existed as single-medium schools, particularly Afrikaans-medium schools, have no desire to change their linguistic policy and therefore do not require the


182. Id. at 10.
183. Id. at 12.
184. Evan & Cleghorn point to multiple reasons why parents chose People’s Primary as the school for their children including location, reputation and medium of instruction. Id. at 11–14.
185. See Patrick Cox, From Afrikaans to Zulu, South Africa’s Languages Have Stories to Tell, PRI (Dec. 9, 2013, 7:00 PM), https://www.pri.org/stories/2013-12-09/afrikaans-zulu-south-africas-languages-have-stories-tell.
186. See generally Ermelo Case.
187. Id. para. 64; South African Schools Act 84 of 1996 § 22(1).
188. See Northern Cape School Education Act 6 of 1996 § 16(1).
approval of the MEC.\textsuperscript{189} Consequentially, these provincial acts only solve linguistic barriers for new schools being opened. Yet, the most common problems arise in reputable schools that have a legacy of being solely Afrikaans-speaking largely due to the disproportionate funding of schools during Apartheid.\textsuperscript{190} Naturally, given that the parents of current basic education students are products of Apartheid, they view English or Afrikaans as a superior language regardless of their mother tongue.\textsuperscript{191} Therefore, the oppressive behavior of Apartheid may be destroyed more easily through mandates.

C. Multilingualism is Still a Pillar in the South African Identity

This is not to say that students will no longer learn English. On the contrary, students should still be learning English as a secondary language. While giving educational instruction in a student’s mother tongue increases understanding and retention, English is a universal language that can be used for business and political gain, as noted by Evans and Cleghorn.\textsuperscript{192} However, the LiEP transition for additive bilingualism should be less aggressive. Heugh has also recognized that additive bilingualism in primary school is still possible; however, the transition to a secondary linguistic medium must be significantly slower and better nurtured.\textsuperscript{193} For example, Heugh states that under ideal circumstances with well-trained teachers and adequate resources, students can switch to a secondary language medium around seventh grade.\textsuperscript{194} In an environment similar to many schools in South Africa with fewer resources and fewer well-trained teachers, students may be able to switch language mediums by ninth grade.\textsuperscript{195} Accordingly, the multilingualism platform would remain a pillar of South Africa’s education system.

\textsuperscript{189} See Seodin Primary School Case, para. 28.
\textsuperscript{190} See, e.g., Mikro Primary School Case; see also Ermelo Case; see also Seodin Primary School Case.
\textsuperscript{191} See Evans & Cleghorn, supra note 91, at 4; see also Laurence Wright, Implications of the National Language Policy in the South African Classroom, ENG. ACAD. OF S. AFR. (2012).
\textsuperscript{192} See Evans & Cleghorn, supra note 91, at 4.
\textsuperscript{193} See Heugh, supra note 159, at 7.
\textsuperscript{194} See id.
\textsuperscript{195} See id.
Another possible alternative available to South Africa’s basic education system is to offer a second language, such as English, as a class rather than switching instructional mediums. Heugh notes that “[t]hose who have [mother tongue education] throughout (Grade 1 to 12) plus the second language taught as a subject by a teacher who is proficient in the language are likely to achieve 60%.” 196 This alternative may ease some limits set on schools with limited resources. However, Heugh strongly contests the notion that teaching in students’ mother tongue is most expensive. 197 According to her research, mother tongue education throughout basic education is the least expensive method while the current methodology of transitioning students to a secondary linguistic medium in fourth grade is the most expensive. 198 Nevertheless, multilingualism is essential in a country with 11 official languages; therefore, students should have a solid comprehension and fluency in a second language.

D. Norms and Standards Enforcement

The Norms and Standards detail when an additional language should be offered at a school, which requires a school to become a parallel-medium school. 199 In 2007, the Minister’s Norms and Standards became binding on all provincial school systems. 200 The Norms and Standards stated that “it is reasonably practicable to provide education in a particular language of learning and teaching if at least 40 in Grades 1 to 6 or 35 in Grades 7 to 12 learners in a particular grade request it in a particular school.” 201 The Norms and Standards requires that schools keep a register of requests made for accommodations, 202 yet the South African courts have dealt with multiple cases dealing with classes of plaintiffs well over 35 to 40 students. 203

196. See id.
197. Id.
198. Id.
199. Norms and Standards for Language Policy in Public Schools, GN 1701 of GG 18546 (15 May 1998) § C.
200. Ermelo Case, para. 33.
201. Norms and Standards for Language Policy in Public Schools § D.
202. Id.
203. See, e.g., Mikro Primary School Case; see also Ermelo Case; see also Seodin Primary School Case.
PANSALB can closely monitor the requests made by parents and require schools to enforce accommodations unless the school is able to demonstrate the accommodation is not reasonably practicable and viable alternatives exist. PANSALB currently has the authority to investigate into language discrimination complaints made by individuals or groups. Additionally, it is able to conduct school inquiries regarding language discrimination complaints. However, even with tremendous authority, PANSALB does not play a very visible role in filing suit for individuals experiencing language discrimination in school settings. PANSALB should play a more active role in the school system considering it is an institution created during the construction of the new Constitution. PANSALB should be a regulatory administrative body. It can monitor the requests of parents for language accommodations on a quarterly basis. Each province has a predominate language, but there will inevitably be students that do not speak the predominate language and need accommodations. With constant migration of families, it is important to keep track of the number of students that ask for accommodations in order to keep the school system current with the neighborhood demographics.

E. Drawbacks

The following sections highlight some drawbacks to implementing a provincial linguistic plan. Nevertheless, this plan would be more effective in properly educating students and improving South Africa’s education system as a whole. This section merely acknowledges that flaws to a provincial linguistic medium approach exist, and notwithstanding those flaws, this approach creates better outcomes.

204. See PanSALB History, supra note 64.
205. See id.
206. See id.
208. See, e.g., Belgium Linguistic Case.
i. Linguistic Imperialism

One of the Department of Education’s biggest issues is the perception of parents and teachers.\(^{209}\) Indeed, taking away the governing body’s power to decide the schools’ language policy makes the perception of the parents less determinative; however, the perception of the teachers creates a more difficult issue. According to Norma Nel, a professor at the University of South Africa, and Helene Muller, a senior research support consultant at the University of South Africa, 65% of teachers prefer teaching in English.\(^{210}\) However, the ability of the teachers to properly educate the students in English does not translate as well as teachers and parents believe.\(^{211}\) Considering that most of South Africa’s population does not speak English as a home language,\(^{212}\) the teachers with an indigenous home language lack proficiency in English which is then passed on to the students.\(^{213}\)

However, if schools are required to teach in the mother tongue of the province there is a possibility that more people can be adequately trained to become teachers. South Africa has a large percentage of people over the age of 20 that dropped out of basic education.\(^{214}\) This is not necessarily because they are disinterested in school or learning but because, among other things, they are being taught in English instead of their mother tongue.\(^{215}\) If the education system is required to teach in the provincial mother tongue, more job opportunities might open up in a much-needed occupation.

\(^{209}\) Language in Education Policy: Briefing by Department, supra note 71.


\(^{211}\) See id. at 638–40.

\(^{212}\) The Languages of South Africa, supra note 149.

\(^{213}\) Nel & Müller, supra note 210, at 639–40.


According to Heugh, the cost associated with mother tongue instruction is somewhat of a misnomer. Heugh proposes that adequately training teachers to teach in a language such as English, keeping in mind English is usually not the teacher’s mother tongue either, is more expensive when the transition to English is done in fourth grade. Heugh is not alone in this view. The United Nations Global Education Monitoring Report also stated that bilingual schooling is more cost efficient because less repetition is necessary given that students will have a better mastery of the material.

The cost that is most worrisome in the South African school system is not the training of the teachers, but rather the cost of tuition and the cost of transportation for students to get to schools with good reputations and qualified teachers. Changing the linguistic medium at schools can decrease this cost because parents will not need to transport their children to different school districts in order for their child to get a better education. Since everyone in the province will learn in the same medium, less overcrowding will occur in schools as well.

iii. Some Provinces Do Not have a Predominate Language

Provinces such as Gauteng and Mpumalanga do not have an overwhelming dominant language. For example, Gauteng has four commonly spoken languages, all of which are equally spoken by the citizens (19.8% of citizens speak IsiZulu, 13.3% speak English, 12.4% speak Afrikaans, and 11.6% speak Sesotho). In order to accommodate for the diverse population, some schools should become parallel-medium schools at the discretion of the HOD. It is likely that in such diverse
settings accommodations will be required in order to abide by the Norms and Standards, but having parallel-medium schools allows students to attend a school closer in proximity to them and limits the amount of accommodations required.

Unsurprisingly, two provinces in South Africa hold a population that predominately speaks Afrikaans: Northern and Western Cape. During Apartheid era, non-white South Africans were limited in the area they could live or own land. Therefore, naturally some provinces undoubtedly have a predominately white population and thus Afrikaans is the predominate language.

These provinces should be treated similar to the diverse provinces with no dominant language. Accordingly, the schools should be parallel-medium schools. In Western Cape, the two predominate languages are Afrikaans and IsiXhosa; in Northern Cape, Afrikaans and Setswana are the most common languages. The schools in these provinces should be required to offer both languages as the primary instructional languages and leave English as a secondary language. Consequentially, two provinces would have the official language medium of Afrikaans even though the language has been associated with oppression of non-white South Africans. However, this already occurs under the current language policy. Requiring all public schools to be parallel-medium schools reduces the superiority of Afrikaans and promotes the indigenous languages.

IV. CONCLUSION

Multilingualism has been a touchstone of the Republic of South Africa’s Constitution, yet its education system allows the indigenous languages to be held inferior to English and Afrikaans. Not only does this perpetuate Apartheid philosophy, but it also leaves the indigenous languages meaningless. The demand and resources for the indigenous languages will disappear, and the languages will likely become obsolete. Therefore, if the schools are required to teach in the predominate

223. Id.
225. See Evans & Cleghorn, supra note 91, at 3.
226. The Languages of South Africa, supra note 149.
227. See Seodin Primary School Case, para. 28.
language of the province, the indigenous languages so rooted in South Africa’s Constitution will remain alive and vibrant. In order to combat a unilingual education system, the authority must be taken away from the governing body. So long as parents carry the oppressive stereotypes perpetuated during Apartheid, they cannot be in control of the language taught to the youth. Additionally, PANSALB must play a more visible role in the school system. The multilingual culture can only remain if there is an actual effort to enforce the language policy. The Republic of South Africa’s Constitution was never meant to be merely symbolic. It is the law of the land and it should be enforced as such.