

## Comprehending the Legality of the Use of the Term “Practicable” in the South African Constitution from the African Languages Perspective

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### ABSTRACT

The Constitution of South Africa is the fundamental guideline determining the way the country should be managed and governed. At the time of its drafting, the main aim of the Constitution was to heal the divisions of the past and establish a society based on social justice, democratic values and basic human rights. However, the use of certain South African languages has been subjected to limitations, making the full implementation of some of the provisions of the Constitution impossible. The Constitutional provisions, especially as they relate to the indigenous South African languages, have given rise to the debate concerning the use of the term “practicable”. Taking sections 29 and 35 of the Constitution as the point of departure, in this article I explore the use of this qualifier, the employment of which sometimes leads to misunderstandings and uncertainties with regard to language rights.

**Keywords:** Constitution, South Africa, Languages.

### INTRODUCTION

The South African Constitution recognises language diversity, thus paving the way for the equitable use of all the South African languages to the benefit of every citizen of the country. The recognition of the 11 South African languages, however, seems to have limited legitimacy when it comes to the practical implementation of its provisions. This matter is to be considered in the light of historical developments, including the defining facts of colonial conquest, racial discrimination and apartheid, which made it possible for English and Afrikaans to become the languages of power in South Africa.

At the time of its drafting, the Constitution was regarded as a legal device that would be at the forefront in determining how to deal with the unequal status of the various languages in the country. The discussion of legality stems from the legal order that the Constitution imposes regarding legislation and law. This is no different from the situation in many countries of the world where the rule of law is weighed against its practice. In South Africa, to ensure that they would be fully implemented, it was necessary to enhance the Constitutional provisions by means of language policies.

In addition, government also established a range of support structures aimed at realising policy implementation, such as the National Language Service, (Beukes 2008:36). The problem associated with the use of particular language, especially indigenous African languages, in a number of spheres relates to the fact that they have been considered mainly in terms of the Constitution and its principles and seldom in terms of the actual rights of South Africans.

### Theoretical Framework

In considering the legality of the use of the term “practicable” in the South African Constitution, I adopt a similar view of legality to that taken by Besselink, Pennings and Prechal, (2011:04). In their words:

Firstly, legality has played a central role in our understanding of the Rule of Law in Europe and must be considered one of its pillars. Secondly, legality is rooted in the idea and concept of nation-State as it arose in the French revolution. Its importance as a principle at the basis of modern European State crucially hinged on the idea of the sovereignty of the nation and of the State embodying that nation.

The situation in South Africa is no different, as South Africans regard the Constitution as central to understanding and implementing the rule of law. This piece of legislation therefore offers the hope that the

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treatment of languages will be dealt with within the framework of the law, which is protected by Constitutional principles.

A consideration of the legality of the use of the term “practicable” in the South African Constitution from the African languages perspective is prompted by the need to understand the extent to which legality in the South African context has been obscured behind legal orders, especially as part of the Constitutional principles. For many, the Constitution of South Africa gives the impression of compromising when it comes to the use of African languages, especially in key public domains, despite its undertaking to ensure that all the South African languages enjoy parity of esteem.

Contributing to this situation has been the use of the term “practicable,” and, in some instances, “reasonably practicable”. Were these terms used when English and Afrikaans dominated most, if not all, public domains? Is “practicability” a criterion only with regard to the use of the African languages? These are some of the questions that become central when the full implementation of the Constitutional provisions is considered.

The use of the terms “practicable” and “reasonably practicable” seems to suggest that multilingualism is a costly problem occasioned by the inferior status of the African languages in spite of the Constitutional provisions. In this article I argue that the use of the term “practicable” seems to have been misinterpreted in a number of fields. My specific focus will be on the spheres of education and law.

### **Interpretation of the Term “Practicable”**

In this article I provide a discussion of the use of the term “practicable” in light of expectations relating to its application. A consideration of the use of the term should clear up any confusion relating to the terms “practicable” and “practical,” whose meanings overlap to some extent. The *Collins English Dictionary*, (1991:221) classifies “practicable” as an adjective to describe something that is capable of being done, feasible or usable. “Practical” has a number of meanings, which include being “capable of being put into effect, useful,” which may explain the confusion with “practicable”. However, there is an elusive distinction between these words that we should not lose sight of.

In jurisprudence, “practicable” describes something that can be put into practice with the available means. Therefore, in the legal field, one would typically say that

if something does not cause undue hardship to one party or the other, it is “practicable”. As an instance of using indigenous African languages as the Constitution suggests, it would be **practical** to use your language in a court of law; however, it might not be **practicable** to have your case heard as expediently as you would like if there were no available interpreter fluent in your language at that time. This would mean that the court would have to postpone the case until it was able to engage the services of a competent interpreter. In this context, the term refers to what can be done at a particular time to ensure a fair trial, taking into account and weighing up all the relevant factors, including the Constitutional rights of a person to use the language of his or her choice in a court of law.

This basically means that the court must first consider what *can* be done, in other words, what is *possible in the circumstances*, to ensure that the Constitutional language rights of an individual are upheld. It must consider whether it is reasonable, under the circumstances, to do all that is possible. The same would apply in a school environment where the medium of instruction of the school is different from a learner’s language of choice in which to receive tuition. This means that what can be done should be done, unless it is reasonable in the circumstances for the school or the court of law to do something less. Without infringing on a person’s language right, this means that if there is a reasonable way to provide the services in the required language, it should be done. By this means, the language right of an individual shall have been honoured in line with the Constitutional provisions.

### **The Use of the Language Right**

The term “right” is often associated with jurisprudence and this is one of the factors that cause the issues of rights to be raised within the context of the law. The right that a person has as a human being is protected only within the ambit of the law. However, what should be understood is that the power of using a language that people understand resides not only in the transmission of the cultural values and norms of the people, but also in educating them to become better people. This argument leads us to the distinction between a “legal right” and a “natural right”. With regard to the indigenous African languages in South Africa, the focus seems to be on the legal right, with the natural right being disregarded. The issue of language as a right is normally resolved in the

courts of law, because it is the law that protects a natural right.

Language rights as enshrined in the South African Constitution of 1996, in fact relate to a multiplicity of rights which seem to be privileges, rather than fundamental rights in the genuine sense of the term. In the past this gave tacit consent to those in authority to disregard the African languages if they wished to do so, which further entrenched the supremacy of English and Afrikaans, especially in the public domains.

The issue of language rights must be emphasised because of the erroneous belief that only certain categories of individuals have language rights. It became an important responsibility of the South African government to promote tolerance and social cohesion through the recognition of language rights and to eliminate human differences, as has been done throughout democratic states. This expectation is not confined to the South African situation, but is held in European and other countries as well. De Varennes in Koenig and de Guchteneire, (2007:123) give an account of the emphasis placed by the European Union on language rights as part of nation building:

By providing for language rights..., state authorities are in fact creating a balance that seeks to avoid state preference in linguistic choices (as well as cultural attributes) that would disproportionately or unreasonably impact on segments of their population, and therefore provide for an approach more consistent with principles of tolerance, coexistence and integration.

Central to the provision of language rights as explained above, integration does not imply efforts to eliminate or deny human differences, but rather emphasises taking them into account and accommodating them to the greatest possible and practical extent so that individuals may participate in the life of the community to which they belong, as well as that of the larger national community (De Varennes in Koenig and Guchteneire 2007:123).

Language is a fundamental right of every individual; hence the need for that right to be guaranteed by the Constitution. Every human being has a right to use his or her language when communicating and expressing his or her feelings. A right in jurisprudence is explained in the *Collins English Dictionary*, (1991:1332) as being in

accordance with accepted standards of moral or legal behaviour, justice, and so on. If language is a right, according to the definition given, then it is a legal right. A right is something that cannot be taken away. In other words, if language is a basic human right, then that right should be respected, as it is tantamount to respecting the person himself or herself.

The problem of using a language, and especially indigenous African languages, tends to be viewed in terms of the Constitution and its principles, and seldom with reference to language as a fundamental right. Giving practical form to the language opportunities created by the 1996 Constitution remains a challenge.

### **The Significance of Linking Language Rights with Human Rights**

The term “human rights” refers to the complex system of general individual and group rights inaugurated by the 1948 Universal Declaration of Human Rights (UDHR) and subsequently spelled out and codified in binding international human rights law (Francioni and Scheinin, 2008:19). The Universal Declaration of Human Rights was formulated in response to the gross violation of human rights by member states of the United Nations, and was aimed at establishing a culture of recognition of human dignity and the inalienable rights of all members of the human family. South Africa, during the apartheid period, was numbered among those member states that violated the basic human rights of their citizens, which outraged the conscience of humankind. Language rights are underpinned by human rights and form part of the Universal Declaration of Human Rights, and should not be divorced from basic human rights.

According to the Universal Declaration of Human Rights, no person should be prevented within the bounds of reasonableness from using the language of his or her choice. The use of the word ‘reasonableness’ in this context is no different from the use of the word “practicable”. The democratic state is duty bound to protect this right and to assist the citizens if impediments to the exercise of their rights arise through no fault of theirs. In an analysis of the issue of language as a fundamental right, attention is drawn to basic human rights, as Article 2 of the Universal Declaration of Human Rights states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, **language**,

religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

The proclamation of this basic right illuminates the meaning of Article 27(1) and (2) of the *Universal Declaration of Human Rights*:

Everyone has the right to participate freely in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The use of the term “practicable” in the context of languages matters is an infringement of the basic human right as contemplated in the Universal Declaration of Human Rights. It also has a bearing on the exercising cultural rights which are carried out through the use of language. The issue of culture cannot be dealt with properly if the issue of language rights remains a stumbling block.

When dealing with language as a fundamental right, the inclination to reflect on the status of languages in South Africa is natural. In the case of South Africa, that right was infringed by previous policies that recognised only two languages, namely English and Afrikaans. As a result, the development and promotion of African languages were simultaneously neglected, and these languages came to be regarded as inferior.

### **The Official Status of Languages in South Africa**

A theme gaining increasing prominence in both international and South African parlance is “unity in diversity” (Henrard in Koenig and Guchteneire 2007:185). Granting languages official status is crucial in the interests of affirming multilingualism and equality in multilingual countries such as South Africa. This action further acknowledges individual language rights in South

Africa, which is important for protecting and promoting diversity and strengthening true democracy. The selection of an official language is usually seen as the choice among competing languages or language varieties for various roles, (Cooper 1983:18). The challenge of deciding on an official language for a nation falls within the domain of language planning, and it is the responsibility of government to ensure that the process is undertaken in a transparent and democratic manner. In trying to address the issue of the status of languages in South Africa, the Constitution affirms the status of the eleven languages of South Africa. Section 29(2) of the South African Constitution contains the stipulation “practicable” with reference to receiving education in a language of one’s choice and also in legal dealings. This could be interpreted as suggesting that if circumstances do not allow, one will not receive education in the language of one’s choice.

### **Educational Sphere**

A sensitive issue in terms of the right to education is the policy governing the language of instruction, which is backed by the Constitution. The recognition and the use of language is a highly emotive issue (Wiechers 1996:8); not recognising and respecting a person’s language is tantamount to not recognising and respecting the person himself or herself. Language is the most important means of communication and the means to convey deep sentiments, since it finds expression in, and indeed inspires, the highest forms of literary art (Wiechers 1996:8). The section of the constitution dealing with language and the right to education is an important tool in the educational sphere, because it is through language that learners learn and comprehend content.

Section 29(2) of the *Constitution of South Africa* makes provision 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 practicable”.

For many, the use of “practicable” in this provision is not easily separated from the objectives of the Bantu Education Act of 1953; as Hartshorne (1987:96) indicates that one of the objectives of the Bantu Education Act of 1953 was to promote Afrikaans among black South Africans. Following the demise of apartheid, the

expectation arose that government departments and structures would develop their own language policies, which were to be informed by the Constitution. This included the powers granted to school governing bodies (SGBs) of public schools in terms of the South African Schools Act of 1996. However, a number of pieces of legislation have contributed to the current situation.

The National Education Policy Act 27 of 1996, the South African Schools Act 84 of 1996 and the Employment of Educators Act 76 of 1998 contributed to this dynamic, (Woolman and Fleisch 2009:26). Clause 2 of section 6 of the South African Schools Act states: "The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law." The term "practicable" is easily misconstrued, in that it seems to give SGBs leeway to decide on a medium of instruction that would deliberately exclude certain races or speakers of certain languages. This is against the backdrop of the Language in Education Policy of 1997, which emphasises the importance of multilingualism in South African schools.

The Constitutional Court ruling in 2009 involving Ermelo High School raises critical questions about the role of SGBs in determining language policy. In this case, it was found that the SGB refused learners admission to the school despite an instruction by the head of the Mpumalanga Education Department to change the school's language policy and use Afrikaans and English as dual mediums of instruction. At the time of the intervention, the school was using the medium of Afrikaans only, and learners were admitted to the school only if they accepted tuition through the medium of Afrikaans, irrespective of their language backgrounds. The SGB claimed that in line with the South African Schools Act, it had the right to formulate a language policy for the school.

The Constitutional Court had to determine the juristic boundaries of this right and also decide whether the head of department has the prerogative to retract this power if it is found that such a policy restricts access to education, and whether, in consequence, it undermines the ethos of the Constitution. Although the decision of the head of the department to override the powers of the SGB and replace a policy formulated by the SGB with another in favour of admitting learners who wanted to be taught via the medium of English was found to be unlawful, the school was nevertheless ordered to revise its language

policy. Government policy in language, as in other aspects of education, will be most effective when it has the acceptance of "the user" and when the latter is involved and participates in taking decisions about education, including those on language, (Hartshorne 1987:82).

The re-affirmation of the right of the SGB to formulate its own language policy is based on the use of the qualifier "practicable", which could be interpreted as a victory for the SGB while disadvantaging learners by preventing them from receiving education in the language of their choice. However, the Department of Education was not entitled to tamper with the right of the SGB and to ensure that schools make provision for education in the other official indigenous African languages in particular. The court ruling that the right referred to here must not serve the education interests of a specific school only, but that of the entire community, has far-reaching implications for education in South Africa in view of the fact that every school has a particular constitutional duty to uphold and promote the values embodied in the Constitution.

The language policy as it relates to education has been and remains a very sensitive issue in South Africa. The court ruling in this case is one of the most important judgments in the history of the Constitutional Court in clarifying the use of the qualifier "practicable" in the South African Constitution. This judgment interrogated important roles of the educational authorities and SGBs in determining language policy in line with the Constitutional provisions and set new trends in accessibility and accountability in the educational sphere. This also sets trends in the workplace, where, during apartheid, the policy regarding the indigenous African population was constructed in such a way as to promote ethnic identity while hampering proficiency in the official languages of the day in order to limit access to employment.

Language policy should be understood in terms of the societal objectives of a language, which are to teach and to communicate. Generally speaking, language has three objectives in education: literacy, medium of instruction and subject, (Bamgbose 1991:62). These objectives are to be achieved when the policies developed are also fully implemented. This is in line with the idea of investing significantly in language education, with significant investment in language education seen as an opportunity to develop and promote the indigenous African

languages. The same objective was realised when the ministry of education announced The Language in Education Policy on 14 July 1997, the main aims which included:

- pursuing the language policy most supportive of general conceptual growth among learners, and hence establishing additive multilingualism as an approach to language in education
- supporting the teaching and learning of all other languages required by learners or used by communities in South Africa, including languages used for religious purposes, languages which are important for international trade and communication, and South African Sign Language, as well as alternative and augmentative communication

Preference for English as a medium of instruction in the school environment is said to be due mainly to economic considerations. Krashen (1996) is of the opinion that bilingual education for each child within a multilingual education policy does not mean a choice between either English or an African language. It means both. It means developing the first language and adding a second language in the best possible manner to ensure the successful learning of the second language.

The legacy of colonial education policies can still be detected in the South African education system, as English remains the language of instruction and learning in many institutions of higher learning. However, the University of KwaZulu-Natal has introduced isiZulu as a requirement for all undergraduate programmes as from the 2014 academic year. This step appears to have taken in response to the Constitutional imperative to ensure that education becomes accessible to the speakers of African languages. In terms of this initiative, the new policy will apply to all undergraduates, irrespective of the programmes for which they have registered.

Technically, this announcement implies that, unless they are granted exemption, all students registering for undergraduate degrees at the University of KwaZulu-Natal from the 2014 academic year will be required to pass or obtain a credit for a prescribed isiZulu module before they can graduate. This rule constitutes a practical implementation of the university's language policy, which aims to promote and facilitate the use of isiZulu as a language of learning, communication, instruction and administration in the institution. The university's response to the Constitutional obligation to ensure that indigenous African languages are given just treatment in

institutions of higher learning is articulated as follows by the deputy vice-chancellor of the University of KwaZulu-Natal, Professor Renuka Vithal:

At a University where more than 60 percent of students are isiZulu-speaking, the institution has an obligation to ensure linguistic choices result in effective learning solutions. Additionally, in a country that continues to be divided on the basis on linguistic identities, language should serve to bring diverse learning communities together and promote social cohesion. (Zulu to be compulsory for UKZN students 2013).

If the languages spoken by the people are not used, it becomes impossible to transfer important skills and knowledge, including numeracy. This in turn has a bearing on the availability of much-needed skills in South Africa, and so influences unemployment in the long term.

On the other side of the coin, Afrikaans is also stamping its authority on certain institutions, often referred to as historically white universities (HWUs). This situation creates a gap between the previously marginalised languages of South Africa and the languages that were developed at the cost of these languages. The language policies of these institutions follow the path of unilingualism in most cases, with practicability or feasibility habitually cited as being among the difficulties encountered in accommodating the other languages.

### Legal Sphere

Another area in which the use of the indigenous African languages as enshrined in the Constitution of South Africa is critical is the legal sphere. Den Hartigh (2009) notes:

English and Afrikaans have always been dominant languages in the courtroom, often at the expense of South Africa's other official languages. The practical difficulties of using all 11 languages in court have in the past been offered as an excuse for the continued use of English.

The use of the qualifier "practicable" could be regarded as infringing on some people's basic rights in the very court that should defend the highest law of the country. This perception may have been the result of the interpretation of the word and the expectations attendant on this interpretation. The fact that court proceedings

were previously conducted in English and Afrikaans only is an indication that the indigenous African languages were sidelined and not taken seriously as languages that could be used in court.

On the issue of the language of one's choice in South African courts of law, Judge Hlophe (2003:2), the Judge President of the Cape High Court, just over a decade ago expressed concern regarding the situation in which two languages continued to dominate. He ascribed this to the lack of a clear policy or commitment to the language issue. When exploring the erstwhile state of affairs in the South African courts, section 6 of the Constitution is relevant: it is the sole law that should pave the way for individual language rights.

These rights are, in a way, entrenched in the Constitution, but the problem appears to lie in providing mechanisms to secure them. From the legal point of view, the state has an obligation to provide interpreters to facilitate access to all eleven official languages in courts of law. However, the impression is created that the provision of an interpreter is something of a favour rather than a duty to enable an individual to exercise his or her rights in terms of the Constitution.

There was little awareness of or openness to any other perspective. In the words of Majeke (2002:153):

We all know that no legal system will ever succeed in establishing itself as a social system efficiently if it is not founded on the fundamental cultural rhythms of the majority of the population in its borders. Yet we continue to teach young indigenous Africans how to be good Roman, Dutch, and English law specialists. They are becoming foreigners in their own land.

Despite sentiments such as these, almost two decades into democracy there is no clear policy regarding language use in courts of law. Yekiso (2004:3) points out that section 30(5) and 31(6) of the Constitution seek to protect language, cultural and religious communities, but that neither is capable of entrenching the eleven official languages as a fundamental right. Nevertheless, it is accepted that language is the fundamental element in the provision of legal justice as borne out by the provisions of section 35 (3)(K) of the Constitution, which provides that:

Every accused person has a right to a fair trial, which includes the right to be tried in a language that the accused person understands, or if that is

not practicable, to have the proceedings interpreted in that language.

Moeketsi (1999) has argued that the linguistic deficiencies in courts of law at the time prevented individuals from participating in their own trials, ironically forcing them to relinquish whatever legal rights they would have been entitled to. She further noted that the above-mentioned section is well-positioned to rectify this irregularity. However, this does not seem to have been the interpretation given to this section in South African courts. This has led to the use of interpreters, many of them not properly qualified and unable to facilitate a fair trial.

Regarding the use of African languages in South African courts of law Judge President Hlophe (2003:89) commented:

For all official languages to be promoted and used equitably a professional interpretation service must be provided by the Department of Justice for all courts. The ideal situation would be of course the provision of a simultaneous interpretation service... and should be investigated by the Department.

He further observed that the Department of Arts and Culture has recommended that by 2010:

...any accused person in criminal proceedings, applicant or respondent in civil proceedings, as well as any witness in court, shall have access to a professional accredited interpreter.

This is, then, set to be a long-term process. Nevertheless, at present, despite the linguistic and cultural diversity which exists in South Africa, Afrikaans and English remain the main languages used in trials, and the sole languages in the keeping of records. Yekiso (2004:7) states that a significant segment of the population still finds itself up against a language barrier in so far as court proceedings are concerned. He goes on to question whether it is in fact possible to attain parity of esteem among the various South African languages in the courts of law.

An accused person's right to be tried in a language that he or she understands, entrenched in section 35(3) (K), is essential in order for those charged with crimes to defend themselves adequately and answer properly to any charges raised against them by the state. This section

provides that every accused person has a right to a fair trial, which includes the right to be tried in a language that he or she understands or, if that is not **practicable**, to have the proceedings interpreted in that language. The protection of the right to a fair trial in South African constitutional jurisprudence follows international legal principle. Article 14(3)(a) of the International Covenant on Civil and Political Rights as quoted in Kemp (2010:153), for example, provides that in the determination of any criminal charge every person shall be entitled to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her. Legally speaking, the state has an obligation to provide interpreters to facilitate access to all eleven official languages in courts of law.

The Constitution of South Africa, in keeping with international legal and human rights standards, further stipulates that if those who are charged with crimes do not understand the language in which their case is being tried, they have the right to have the proceedings interpreted into a language they understand. This implies that judicial authorities in South Africa must provide adequate interpreters and translators throughout the hierarchy of the South African court system in order to give effect to this right. The impression created by the stipulations of the Constitution is that trials would be heard in a person's mother tongue, and that individuals could indeed request this. In addition, the expectation is that the presiding judge and all the legal practitioners would be fluent and competent speakers of that mother tongue. The problem, however, is that the term "practicable" is understood to refer to the expectation of having all the languages simultaneously in a court of law. If not, the term is being used in a manner that institutions such as the court consider an excuse not to uphold people's language rights.

Arguably, it is precisely these "practical" problems as outlined by Carbaugh (1990:151) that are encapsulated in the term "practicable" in section 6 of the Constitution, and are perceived to have undermined the use of the indigenous African languages in courts of law. This is seen as threatening not only the freedom to speak, but also to be heard in one's own language, without the use of interpreters, or, alternatively, with the use of an effective and properly trained interpreting team.

It would seem that section 35 (3) entrenches the right to a fair trial. However, language use in court proceedings

does not necessarily appear to amount to a language right as outlined in the Constitution, although it amounts to an aspect of a right to a fair trial. The recognition of eleven official languages does not imply the status of a fundamental right as envisaged in the on the bill of rights in the Constitution. According to Yekiso (2004:9) a language right within the context of court proceedings is not therefore a right capable of enforcement through the enforcement mechanism provided in section 38 of the Constitution.

Even though the court of law realises and accepts that the majority of people appearing in lower courts speak indigenous languages, there seems to be few members of the prosecution and presiding officers could speak an indigenous language. According to the court's interpretation of the provisions of Section 35(3)(K) of the Constitution, this section does not give an accused person or any other person speaking a language other than the one used in court the right to have a trial conducted in the language of his or her choice. Its provisions are perfectly plain, namely, that he or she has the right to be tried in a language which he or she understands or, if that is not **practicable**, to have the proceedings interpreted in that language.

The South African Constitution seems unambiguous in stating that in a case where a trial is conducted in a language that the accused does not understand, there is a clear need for an interpreter. The right to a fair trial cannot be divorced from the right to be tried in a language that the accused person understands.

## Conclusion

To some, the use of the term "practicable" constitutes a gross violation of language rights which, by law, should be protected by the Constitution. The inclusion of the term in the Constitution is, in most cases, misconstrued to condone a situation in which the speakers of indigenous African languages are unable to exercise their language rights. In this article I not only critically analysed the narrow focus of the use of the term in the Constitution, but also examine the notion that the state has become less willing to intervene in the spheres of education and law to bring about democratic changes through language policies. This is exacerbated in situations where people are prejudiced by the retrogressive thinking that people should be subjected to monolingualism and treated as having no language of their own.

The use of the term “practicable” in the South African Constitution should be understood in terms of the exploration of all avenues to ensure that the language rights of an individual are upheld. Central to an understanding of the Constitutional provision in terms of the right of an individual to use the language of his or her choice is the capability to put that into practice with the available means. The terms “right” and “practicable” are often associated with jurisprudence, and this is one of the factors leading to the issues of rights being raised within

the context of the law. The argument relating to the use of the term “practicable” indicates misunderstanding by some in exercising their language rights as enshrined in the Constitution. In this article I have endeavoured to offer clarity on the interpretation and the use of the term “practicable” in the South African Constitution. I call upon institutions to deal with language issues with great sensitivity with a view to upholding the Constitutional provisions and also affirming the importance and respect for the language right of individuals.

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## روظنم ن م ايقير فأ بونج روتسد ي في "ايلمء" ح لطمه مادختسا تيقورشم اوا دإ تايقير فلأ ت اغللا

لايسنودام ي لئاتسه\*

### صخلم

دالبلأ اهد رادته نأ ي غنبي ي تلا تيقير طلا ديحتل ي سيئرلا مجموعلا وه ايقير فأ بونج روتسد نأ اذه تغيصو تاشن دعب .م كحوتو  
هنم فدهلا ناك بروتسدلا ن اسنلا ق و قحو تيقير قميديلا ميقلو تيقعامتجالا تلامدعلا ي لع مئاق ممتجم س ييسأو ي ضاملا تاماسقنا بوا  
امم ،ايقير فأ بونج ي في تمدختسلا ت اغللا ضعب بسبب مديقتب تماخالا تابقعلا ضعب بروتسدلا اذهض رعت كاذ عمو ،تيساسلا  
و (29) مقر تلاملا نمو ،لايحتسم تماكحا ذيفنت لعد(35).  
ديحتلالو مهفلا عوسنم ت لاهلا كئل لثم ش اقلل تيقير دلا مدهض رعتتسه.  
ت اغللا ،ايقير فأ بونج روتسدلا :تلاملا تاملكلا .

\* ملوقه بخر لتو ، 24/3/2014 ثحبلا م لئاتسا بخر ات .ايقير فأ بونج ،لوقير ب ،ايقير فأ بونج تجماج 2014/4/22.