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Managing Diversity in Deeply Divided Societies: The Quest for Self-Determination by the Afrikaans-Speaking Community in South Africa

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Abstract

The Afrikaans-speaking community in South Africa is comprised of different races, classes and religions, but they share the common bond of language. Historically, the white section of the Afrikaans community, generally referring to themselves as 'Afrikaners', exercised substantial political, economic and social power through control of government institutions. The new Constitution, which is now in its 22nd year, has brought about democracy, but in the process the Afrikaans community had to adjust to a position of limited political and policy power. This article looks at the complexity of the Afrikaans community and specifically poses the question whether the community is a 'minority' for purposes of international law and if so, whether it is entitled to a 'right' to autonomy. It concludes that although the community is a 'minority' for purposes of international law, there is no general 'right' to autonomy for minorities in international law. The article then considers various constitutional arrangements in South Africa in particular provincial autonomy; mother-tongue public education; the potential for community councils; and the activities of some Afrikaans non-governmental organisations. The article concludes that (a) the South African Constitution complies with international standards in regards to protection of minorities; (b) territorial arrangements in the Western Cape and Northern Cape are consistent with indirect mechanisms to protect minorities; (c) the advisory commissions that have been established under the Constitution have not been effective to protect and promote the multilingual and multicultural nature of the South African population; (d) the possible establishment of a community council for the Afrikaans community requires further consideration; and (e) publicly funded Afrikaans education will continue to be under increasing pressure as the result of demands being placed on the state for equal, basic education in English to the wider community.

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Introduction

The Afrikaans language of South Africa is notorious for the wrong reason. It gave the world the word *apartheid* and at the top of its power (from 1948-1990) the then Afrikaans-dominated National Party was in control of the political, social and economic policy making in South Africa. The dominance of the Afrikaans community,² who constitute a numerical minority of the total population, has forced international law theorists to adjust the definition of the word ‘minority’ to refer to ‘non-dominant’ communities – thereby circumventing the possibility that a dominant, numerical minority (like the Afrikaner), may seek to claim some form of protection under international law while perpetrating *apartheid*.³

The circumstances in South Africa have now changed. The Constitution of South Africa has reached its age (22 years in substantially original form); the Afrikaans-speaking community remains in a numerical minority but is now politically non-dominant; and some parts of the Afrikaans community are now attempting to achieve some form of self-governance to protect and promote their language, culture and traditions. Most importantly, the Afrikaans community is seeking to redefine itself to include individuals from all races that speak Afrikaans and for the community to be accorded rights under international law as a ‘minority’.⁴

This article reflects on the way in which the Afrikaans community have been utilising the provisions of the Constitution to protect and promote the Afrikaans language. (aa 9, 15, 16, 17, 18, 29, 30, 31 and 235 of the Constitution of South Africa.) Since the enactment of the Constitution in 1996, a plethora of initiatives have been undertaken by the Afrikaans community to promote Afrikaans in the non-political domain. These initiatives span areas of public law to private law-based associations and clubs. There is, however, generally speaking, no ‘plan’ or ‘vision’ for the future of the Afrikaans language that has been agreed to within the Afrikaans community. The various efforts by Afrikaans non-governmental organisations, clubs and associations are generally focused on particular outcomes for a segment of the Afrikaans community but without a credible and legitimate vision that directs and integrates the

respective Afrikaans initiatives. Fredericks recently concluded as follows: ‘There can be no doubt that the battle by Afrikaans speakers for the recognition of the status of ‘their’ language is fully in line with international developments as well as with the provisions of the South African Constitution’ (Fredericks, 2011: 208), but one could add that the ‘battle’ is multi-pronged with a lack of specific focus and in many respects internal debates within the Afrikaans community are still characterised by a strong undertone of race and influenced by conservative ideological baggage.

The Constitution of South Africa recognises 11 ‘official languages’ which means Afrikaans, which with English used to be the two ‘official languages’, has in practice suffered substantial diminishment in terms of its previous state-supported position. English has, in effect, become the first-among-equals language with its status being elevated as a common denominator for government, administration, education and commercial activities. Afrikaans-speakers are still coming to grips with the *de facto* change of status since it impacts on Afrikaans as language of education; science, research, governance, policy discourse, administration, mass communication, radio and TV; and public signage, to name but a few areas.

The current debate around the future of the Afrikaans language highlights three distinct questions for the purposes of this article, namely:

- (a) are the Afrikaans speakers a ‘minority’ in terms of international law;
- (b) does international law recognise a ‘right’ to domestic autonomy or self-government for minority groups; and
- (c) are the existing mechanisms in the South African Constitution and the self-governing initiatives by the Afrikaans community consistent with developments in international law?

These questions are not unique to the Afrikaans community. At the international level, the endeavours by linguistic, cultural and religious minorities for various forms of protection, autonomy and self-determination are arguably more credible and widespread than ever. (Weller, 2007; Ghai, 2000; Gal, 2002; and Roach, 2005) It is axiomatic that each minority community cannot be accommodated within the confines of territorial autonomy, which raises the question about what options for autonomy that are available for communities such as the Afrikaans community.

In the following sections the three questions put above are addressed and the conclusions are reached that: the Afrikaans community is a 'minority' for purposes of international law; international law does not recognise a justiciable 'right' to domestic autonomy or self-governance of a minority community; the constitutional mechanisms in South Africa to protect the rights of a linguistic minority such as Afrikaans speakers are consistent with international law and practice; and that the Afrikaans community has, regardless of the absence of an overarching vision, taken creative and remarkable steps to self-organise the protection and promotion of their language. Serious challenges for the Afrikaans community remain, however, since state-supported initiatives for particularly the teaching of children in Afrikaans in public schools are likely to be reduced as a result of the nation's financial woes, and Afrikaans-speaking individuals would have to find alternative sources for funding - particularly for Afrikaans language-based education which previously was funded by government grants.

1. Essentials Facts about the Afrikaans Community

The Afrikaans language community comprises individuals from all racial groups (White, Coloured, Black and Asian), (Census, 2011)⁵ albeit by numbers the white community is the largest. Current population trends suggest that by 2030 the white component of the Afrikaans-speaking community will comprise around 1.8 percent of the total population of South Africa. If account is taken that the Afrikaans community is spread over the entirety of South Africa, it is obvious that major challenges lie ahead for those who wish to retain, protect and promote Afrikaans as a spoken, written, educational and scientific language.

The 2011 census shows that there is a substantial portion of South Africans of all races who speak Afrikaans as their language of choice. If, for example, all mother-tongue languages are collated, then Afrikaans is the third largest home-spoken language after Zulu and Xhosa, with around 6.8 million Afrikaans speakers nationally (Alberts, 2010: 605).⁶ A breakdown of languages spoken by the respective racial groups in South Africa shows that the following percentages speak Afrikaans as a home language: Coloured (75 percent); White (61 percent); Asian (4.6 percent) and Black (1.5 percent). Afrikaans is, when measured on the basis of distribution at the level of language spoken at the level of neighbourhoods, more widespread in its use than any other language in South Africa.⁷

The Afrikaans community is present in substantial numbers in all nine of the South African provinces. When the South African provinces were demarcated in 1993 for the purpose of the federal-type constitution, none of the provinces were demarcated exclusively on the basis of distribution of language residential patterns, albeit that the language and community identity were important criteria that had been taken into account by the Commission of Demarcation that created the provinces.⁸ Although there is an Afrikaans community presence in each of the nine provinces, two provinces have a majority of Afrikaans speakers, namely Western Cape (around 50 percent) and Northern Cape (around 54 percent).

The widely spread residential patterns of the Afrikaans-speaking community present unique challenges to the available policy and institutional arrangements that can be pursued to promote and protect the Afrikaans language. For example, the community is generally not sufficiently concentrated for a form of territorial autonomy, and even when it comes to educational and other language-based services, Afrikaans speakers are so integrated and intermingled with the rest of the population that language-based service facilities by way of territorial arrangements are difficult to provide.⁹

2. Is the Afrikaans Community a ‘Minority’ for Purposes of International Law?

Few concepts in national and international discourse are so simple in its use, yet complex in its meaning and application, than the concept ‘minority’. (Tomuschat, 1983; Musgrave, 2000). Generally speaking ‘minority’ in socio-political science refers to a section of the population with a distinct language, culture or religion who claims some form of protection in order to sustain their unique language, culture and traditions and who constitute a numerical minority. The challenge is, however, to find a universally applicable definition for ‘minority’; to describe the ‘rights’, if any, that attach to a ‘minority’ as a collective entity; and to establish ways to organise the affairs of a minority without undermining the equality principle whereby no individual may be discriminated against on the bases of race, language, culture or religion. (De Villiers, 2012: 67)

The contemporary propositions for minority protection put forward by the Afrikaans community is often problematic, since the same community who previously used race as a

basis for discrimination, is now seeking special protection for their language. Yet, in many instances, the practical organisation of their non-governmental organisations, associations and clubs retain a dominant white character - if not legally, then at least practically. (Davies, 2009)

The notorious attempt by Max Van Der Stoel, European High Commissioner of National Minorities, to define a 'minority', culminated in him stating that he recognised a minority when he saw one (Van der Stoel, 1993). Following in this tradition of proposing protection of minorities without clearly defining the subject of protection, several constitutions refer to 'minorities', 'communities', and 'nationalities' without defining those concepts.¹⁰ The South African Constitution, for example, opted to refer to the rights of a 'community', including the right to self-determination, but without defining who such a community is and what the rights are attaching to 'community' as a collective entity.

International legal instruments also do not offer much assistance to clarify the meaning of the term 'minority'. The International Covenant on Civil and Political Rights refers to 'ethnic, religious and linguistic minorities', but it stops short from defining those minorities and it does not prescribe the nature of the rights that can be exercised by communities collectively. (Roach, 2004)¹¹

As stated above, the contribution made by *apartheid*-South Africa to the international debate on minority protection has been less than helpful, since a numerical minority who is dominant in a political and social sense cannot claim to be the recipients of protections offered by international law (Alen, 1998: 108). Capotorti sought to introduce some consistency when he proposed that the term 'minority' does not necessarily refer to a numerical consideration, although it might include a numerical component, but that the definition also ought to refer to a position of non-dominance by the community in society. A numerical minority may therefore as a result of its position of (political) dominance forfeit any protection under international law. It is safe to say that the Afrikaans community while of the height of their power under *apartheid*, did not qualify as a 'minority' for purposes of protection under international instruments.

The Afrikaans community is however now in a peculiar, transitional phase. The community is no longer in a position of political or policy dominance, but it retains substantial

economic resources and the remnants of *apartheid* in areas such as education, access to land, housing and employment are still visible in the broader society.

Whether the Afrikaans community is a ‘minority’ or not for purposes of international law, the South African Constitution refers to language ‘communities’ that are entitled to certain rights and there is no question that the Afrikaans speakers constitute a ‘community’ for purposes of the Constitution.

In summary, the Afrikaans community can arguably for the following reasons be regarded as a ‘minority’ for purposes of international law and can certainly be regarded as a ‘community’ for purposes of the Constitution of South Africa:

- The members of the community speak a unique language and possess a distinct culture;
- The Afrikaans community is not defined by race or religion;¹²
- The Afrikaans community is a numerical minority;
- The Afrikaans community is no longer in a position of political or policy dominance;
- The members of the Afrikaans community are generally desirous for their language, culture and traditions to be protected and promoted; and
- Membership of Afrikaans educational facilities, clubs and associations are at law based on freedom of association and non-discrimination.

3. Does the Afrikaans Community enjoy the ‘Right’ to Autonomy under International Law?

The concept of autonomy, ‘self-rule’ or self-determination (used interchangeably in debates in South Africa albeit that s235 of the Constitution refers explicitly to the ‘self-determination’ of a community) whereby minorities may be accorded the right in domestic law to make decisions about policy areas that affect their identity is gaining some ground in a socio-political sense, albeit that international law generally prefers for autonomy arrangements to be accommodated indirectly by way of decentralisation to regional and local governments and within existing sovereign borders, rather than by way of secession or non-territorial arrangements (De Villiers, 2012).¹³ A wide range of constitutional techniques are used to informally accommodate demands for internal autonomy, for example decentralisation to regional and local

governments; asymmetry of regional powers; recognition of traditional authorities; special advisory bodies for minority communities; autonomy by way of a cultural council of some sort; and protection of the right of free association to enable communities to establish private clubs, education facilities and organisations to promote their language, culture and traditions (UN Minority Rights, 2010; Frowein, 2001; Lijphart, 1999; and Horowitz, 2000).

The protection of self-governing ambitions of minorities by way of informal mechanisms is preferred by international law since it is complex and even controversial to afford explicit protection specific communities as legal entity. The complexities to protect minorities as a separate legal identity are highlighted by the following: (a) a 'minority' or 'community' does not have an inherent collective, legal capacity that can be recognised in public or private law – only the individual members are legal subjects; (b) there is no agreed definition in international law of the concepts 'minority' or 'community'; (c) there is no 'right' to autonomy or self-government in international law that can be exercised collectively by a 'minority' or 'community'; (d) there is uncertainty in international law to ascertain how a 'minority' or 'community' wish to exercise any self-government if not by indirect, territorial autonomy arrangements; and (e) there is reasonable concern that any form of 'minority' or 'community' collective rights may erode, curb and possibly infringe on rights of free association of individuals (Gilbert, 2002: 308).

The 1992-*Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities* has made some effort to provide greater clarity about the proposed protection of rights of minorities by stating that States are obliged to (a) protect the existence of minorities identities; (b) encourage conditions for the promotion of the identity; and (c) adopt legislative and other measures to achieve those ends (Strydom, 2002: 17).¹⁴ The principles contained in the Declaration are important, albeit that no specific constitutional mechanisms or institutions is prescribed by international law to give effect to those principles.

The following principles can be identified from international law as relevant to the Afrikaans community:

There is no 'right' to collective minority or community autonomy in international law, albeit that states are encouraged to adopt policies that accommodate and respect diversity of the population;

members of minority communities may, in pursuance of their individual rights of free association, establish non-governmental clubs, organisations, and educational facilities with the aim to protect and promote their identity;

the state is obligated to create a culture of tolerance towards diversity, but there is no legal obligation in international law on the state to fund or actively support members of minorities to establish or manage their non-governmental corporate enterprises, clubs or educational facilities;

there is no specific constitutional model for minority protection that is prescribed by or supported in international law since each state is sovereign to develop a system of recognition and protection of individual and minority rights that best suits its circumstances; and

the most common form of ‘autonomy’ or self-government for minorities in domestic law is when powers and functions are decentralised to regional, local and traditional authorities where members of a community live concentrated within the same area.

4. The Afrikaans Community and the South African Constitution

The constitutional drafters of South Africa had the benefit of volumes of international public law and international constitutional experiences upon which to base the South African Constitution (De Villiers, 1994; Van Wyk, 1994; Henrard, 2002). The value of international case studies and experiences was clearly demonstrated in the constitution drafting process in South Africa, with extensive use being made of comparative constitutional law and practice.

The following are the most prominent constitutional provisions of relevance to the Afrikaans community and illustrations of the practical progress that has been made to implement those provisions:

4.1 Decentralisation to Provincial Government

Decentralisation of powers and functions to regional authorities in unitary and federal systems is widely used internationally to accommodate demands by minorities for self-government in

an indirect manner.¹⁵ One of the essential breakthroughs in the 1993-1994 constitutional negotiations in South Africa was the acceptance of a Constitutional Principle that government in a democratic South Africa shall be: structured at national, provincial and local level; that each level of government shall be democratically elected; that the powers and functions of the respective government shall be set out in the Constitution; and that the provinces shall be represented in a second house of the national parliament.¹⁶ This framework provided the basis for the current federal-type constitution. The Commission for the Demarcation of Provinces had to take into account several criteria into account to demarcate provinces, of which language distribution was one such criterion (Report on Demarcation, 1993).

Whereas each of the nine provinces have a substantial number of Afrikaans speakers due to the scattered living patterns of the Afrikaans-speaking community,¹⁷ the two provinces where Afrikaans is the largest spoken language is Western Cape and Northern Cape.

The decentralisation of powers in the Constitution to these two provinces are typical examples of how powers and functions can be allocated to a regional entity where members of a minority community live in substantial numbers and thereby the community can gain the ability to govern in a manner that reflects their language, culture and traditions.

The South African provinces may enact their own constitutions, but so far only the Western Cape has enacted an own constitution.¹⁸ The Northern Cape, as is the case with the other seven provinces, uses the standard provincial constitution that is contained within the national Constitution, to organise their provincial institutions.¹⁹

The Constitution of the Western Cape contains several provisions that seek to accommodate the multilingual nature of the provincial population. Albeit that Afrikaans is the dominant language (around 50 percent) in the province, at least two other languages are spoken in substance, namely English (around 19 percent) and Xhosa (around 25 percent). There are also several other smaller languages spoken.

The provincial Constitution of the Western Cape contains the following provisions that reflect the authority of the government of the province to accommodate and promote the multicultural nature of the provincial population: the Constitution recognises the three official languages for the province (s5); the Constitution empowers the government to develop and

promote symbols that reflect the identity and culture of provinces' communities (s6); the government is empowered to delegate powers to local governments and take into account language and cultural considerations (s53); the government may establish cultural councils or community councils for one or more communities in the province (s70); and there is a general obligation and power on government to protect and promote the language and cultural identities of the respective communities in the province (s81).

The provincial government has taken various steps to give effect to the constitutional provisions in regard to the protection and promotion of language and cultural rights and interests of the respective communities. For example: the Western Cape Provincial *Language Act* has been enacted in which provision is made to promote the official languages of the province (Language Act, 1998). The *Language Act* provides, amongst others, for the following: debates in the provincial parliament may occur in any of the three provincial languages (s2); official notices, bills and Acts of the provincial legislature must be published in the three provincial languages (s3); public offices may service members of the public in the language/s that best suit the local community (s4); a Language Committee is established to make recommendations to promote and enhance the multilingual composition of the population (s13); and the multilingual nature of the community must in general be promoted (Annual Report, 2015/16).

A Western Cape *Language Policy* was adopted in 2017 whereby the provincial government attempts to promote the objectives of the Language Act (Official Language Policy, 2017). The following are some of the key elements of the policy: to promote the three official languages as well as other minority languages; to promote the San language; to ensure interpretation services are available for purposes of official communications; to publish government announcements in newspapers of the particular language; to communicate with individuals in the language of their choice; to allow government departments to choose a language for internal communication; to communicate at a local level in the preferred language of the particular community; to generally encourage multilingualism.²⁰

At a practical level, Afrikaans is widely spoken in the government of the Western Cape; in the provincial parliament; by government departments; and in communications with local authorities. It is estimated that more than 75 percent of the public schools in the Western Cape conduct education principally in Afrikaans. Around 13 government departments have opted for

Afrikaans as the principal language for internal communication and a majority of local governments conduct their business principally in Afrikaans.

All of the South African provinces are in effect multilingual. None of the 9 provinces has a single-medium language policy due to the highly diverse nature and scattered living patterns of the South African population. The Western and Northern Cape are, albeit Afrikaans dominant, also a microcosm of other communities. The language policies pursued in the two provinces, particularly so in the Western Cape, are consistent with other international case studies such as South Tyrol (German and Italian); the canton of Bern (German and French) and Brussels (French and Dutch) where a multilingual policy is adopted at a sub-national level to cater for the specific needs of several communities within the region.

So far, the Western Cape has not enacted legislation to establish any community cultural council, as it is empowered to do by the provincial constitution. One of the proposals that is made below by the author is for the Afrikaans community in the Western Cape to consider establishing a community council to provide language, education and cultural services not only to the Afrikaans community within the province, but also to Afrikaans-speaking communities in other provinces on a contractual or agency basis.

The statutory arrangements in the Western Cape and the language policy that have been adopted by the province, are pertinent examples of how decentralisation of powers and functions to a regional entity where members of a language community are concentrated in large numbers, can contribute to indirect autonomy or self-government by way of provincial institutions. The scope of powers of the Western Cape legislature is wide-ranging and includes policy areas such language of administration and service delivery; education; local government; provincial symbols; museums; recreation; and signage. Albeit that a sizeable number of Afrikaans speakers live outside the Western Cape and Northern Cape, the powers and functions of these two provinces are consistent with international examples where language communities are afforded indirect autonomy by way of regional and local government.

4.2 Advisory Bodies – Underutilised Potential

An advisory body can play a useful role to propose policies; undertake research; make recommendations; and give general advice to government about issues that affect a minority

community. Although an advisory body may not have legislative or executive powers, its advices may, if given due consideration, play an essential role to assist a government to comply with its international obligations in regard to the treatment of minorities. Refer, for example, to the advisory bodies that have been established in Germany and Singapore. In Germany the Secretariat for Minorities is an advisory body that was established in 2005 and gives advices in regard to the minority groups that have had a long association with Germany (Minority Council, 2018). The advices can be given to all levels of government and representatives of the Secretariat can make submissions and give evidence in legislative proceedings. The functions of the Secretariat are principally non-political, in the sense that it aims to create and encourage a policy atmosphere wherein the diversity of the population is recognised and celebrated. The Council for Minorities in Singapore was established in 1972 (Constitution Amendment, 1972). The Council is not tasked as in Germany to make general recommendations about the treatment of minorities, but rather to review draft legislation and to comment on any aspect that may be discriminatory to members of minorities (De Villiers, 2018).

These two advisory bodies in Germany and Singapore respectively have different albeit important functions: neither acts on behalf of a particular minority, but both can make recommendations to promote the interests of minorities as a whole. In Germany the Secretariat is principally involved in promoting a general culture of tolerance and acceptance of diversity, while in Singapore the Council is principally directed to scrutinise legislation to ensure it does not discriminate against individuals. In Australia an Advisory Council to promote the interests of Aboriginal People is currently under consideration, but the powers and functions are yet to be clarified (De Villiers, 2017).

The South African Constitution provides for two advisory bodies that can, if properly utilised, contribute substantially to protect and promote the multilingual and multicultural nature of the South African population. The Pan South African Language Board (s6(5)) and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Language Communities (s185) were created in acknowledgement of the diversity of the South African population. The bodies do not have any law-making, policy or governance powers, but they can give advices; initiate investigations; commence litigation; and propose policies. Neither of the bodies has achieved remarkable success. This is perhaps not surprising given the divergent opinions held by the respective language, cultural and religious communities about

the approach to be taken to diversity. Many in the Afrikaans community are of the opinion that these two bodies have become ‘talk-shops’ and even hostile towards the Afrikaans community.

The Pan African Language Board is briefed to promote all the official languages; to encourage the equal treatment of languages; and to eradicate discrimination against languages (a3/1996). The Board may also undertake investigations; initiate litigation; and give advices to any of the three spheres of government (a8/1995).

The Board has, regardless of its potentially wide-ranging powers, been the subject of controversy which has curtailed its effectiveness. The previous Board was dissolved in 2016 and a new board appointed in an effort to re-start and address issues that led to internal conflict (Raborife, 2016; Thamm, 2016). The Board has powers and functions that could potentially see it becoming a key policy body in the context of the multilingual and multicultural arrangements in South Africa. So far, however, it has failed to live up to its constitutional mandate.

The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Language Communities has a wide brief to promote diversity; to encourage tolerance; to assist communities to protect their rights; to investigate complaints and commence litigation; and to establish community councils.²¹ The Commission can also receive complaints from members of the public and investigate complaints (aa4 and 5, Commission; Morrow, 2005). Although there has been some criticism from within the Afrikaans community against the Commission for being biased and generally inactive, the Commission has been more successful in the discharge of its functions than the Pan South African Language Board.²² The Commission has, however, not had the success to develop a strategy to promote the multicultural nature of the South African population. It has to a large extent been re-active and engaged in limited community-based activities, but without a comprehensive strategy to promote the respective languages, cultures and religions.

The Commission has also been largely inactive about the establishment of community councils for those communities that may consider the establishment of a council (aa4(e) and 36, Commission).²³ The power of the Commission to create community councils must be read with the constitutional right to self-determination that is granted to communities (a235 Constitution; and De Villiers, 2014). There has been criticism from within the Afrikaans

community that the Commission should be more proactive to consult with communities and propose legislation and release funding to enable those communities that elect to establish a cultural council that can look after the interests of the community, in similar vein as takes places in Belgium, Hungary, Estonia and Serbia (Malloy, 2015). Legislation could even ensure that a community council is elevated from the level of a private, non-governmental organisation, to the level of a governmental organisation (or organ of state as it is called in South Africa), that can enact by-laws for its members.

The two constitutional advisory bodies, the Pan South African Language Board and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Language Communities which were conceived in the midst of the transition to democracy, have been underperforming in light of the promising constitutional mandate. It is arguable that South African institutions are still in a process of working out whether the diverse nature of the population is something to be promoted and encouraged or merely tolerated. The respective mandate of the two commissions is promising, but the commissions have lacked a vision and program to protect and promote the multicultural nature of the South African population. In general, both institutions have so far failed to promote the languages other than English as languages of education, administration and government.

4.3 Community Council: an Unfulfilled Promise

The possibility of a community council with a non-territorial jurisdiction for the Afrikaans community has been on the agenda for some time, but with little practical progress made to develop the concept (Cloete, 1981; De Villiers, 1989: 144-146).²⁴ Cultural or community councils are not entirely new to international constitutional law, but the practical application remains relatively scarce and are limited to the European domain and in particular to central Europe (De Villiers (b), 2017).

Generally speaking the rationale for cultural councils is often found in the desire of a community to self-government in regard to matters affecting its language, culture or traditions, but without having the benefit of a territorial area where it constitutes a majority.²⁵ A cultural council offers the opportunity for the community to establish a legal entity that can be empowered to develop policy; make decisions; administer policies and projects; and promote the interests of the community (De Villiers, 2016: 1). The members of the community, who

may live intermingled with the rest of the population, can therefore receive services; attend facilities and participate in activities that are organised and presented by the cultural council with which they associate. Examples of various forms of cultural self-government can be found in Brussels, Estonia, Serbia, Hungary and South Tyrol (Malloy, 2015: 251).

The idea of a cultural council for the Afrikaans community was placed on the agenda during the constitutional negotiations that commenced in 1990 and culminated with the acceptance of the current Constitution in 1996. Examples of references to the notion of a form of community autonomy for the Afrikaans community (and other communities) are found in the Constitutional Principles that were contained in the 1993 Interim Constitution; (De Villiers, 1994) the current 1996 Constitution; (aa185 and 235 Constitution) the Constitution of the Province of the Western Cape; (a40 Constitution of Western Cape) and the objectives of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Language Communities (a4(e) Constitution).²⁶

International experience shows that a community council may offer several benefits to the Afrikaans (and other) community, of which the following may be the most relevant:

- (a) It may enable the Afrikaans community to enact a legal entity, possibly with status in public law as an organ of state, that could promote the cultural and linguistic interests of the community; develop policies; lobby government; make by-laws; cooperate with other organs of government; and administer policies on behalf of the community;
- (b) It can enhance public accountability within the Afrikaans community whereby representatives of the council are elected according to democratic norms and standards; accountability applies; and transparency serves as a norm for governance processes;
- (c) Services can be tailored to the needs of different Afrikaans communities as they live concentrated in local areas, for example in education; monuments; historic days, symbols, place names, art, recreation and culture;
- (d) Services can be tailor-made to serve the interests of local communities according to their needs and requirements, which means the services in the Western Cape may be more wide-ranging than those in a rural community in the Limpopo province; and
- (e) The community council could liaise and cooperate with other levels governments for purposes of policy formulation; coordination of activities; and provision of services on an agency basis.

The possible creation of an Afrikaans community council is yet to be embraced by the broad Afrikaans-speaking community in particular, and by the general South African polity. The Constitution contains the legal basis for the establishment of community councils, but the operation of the concept requires more deliberation, consultation and public support. Time will tell whether it is too late for an Afrikaans community council to be established or whether the time is yet to dawn for the potential merit of it to be explored.

4.4 Individual Rights – the Challenges of Afrikaans Education in Public Schools

The South African bill of rights contains various provisions that serve as the basis to protect individual rights and freedoms in regard to culture, religion and language.²⁷ Although the rights are generally formulated in a ‘passive’ manner, the question that arises is to what extent, if any, the state is obligated to actively support, both financially and administrative, the realisation of rights. For example, in regard to the right to be educated in an official language in public education facilities, three pertinent questions arise for the Afrikaans community, namely: (a) is the state under a legal obligation to provide funds for Afrikaans mother tongue education in public schools; (b) what is the interaction between the rights to education in mother tongue and the protection of equality as set out in ss9 and 36 of the Constitution; and (c) to what extent are school boards autonomous to determine the language of teaching in public schools?²⁸

These questions have to a large extent been addressed by the courts since the enactment of the Constitution (Fredericks, 210).

In one of the earliest judgments, the court explained in the matter of *Gauteng Education Bill* that the Constitution contains two fundamental relevant principles, namely the recognition of diversity and the recognition of equality.²⁹ Sachs J emphasised that the ‘dominant’ theme in the Constitution, particularly in light of South Africa’s background, is that of equality, albeit that ‘considerable importance’ had to be given to the recognition of diversity. Although these two principles must as far as possible be harmonised, if there is an irreconcilable conflict, diversity in public education must make room for equality between students in public education. This standard applied by Sachs J, in effect, continues as benchmark. The state may

therefore fund mother tongue education in public schools, but it is not obliged to do so if in the process inequality may arise or if resources are scarce to provide for multilingual public education.

This judgement has directly impacted on the way in which school boards in public education have been exercising their powers. School boards have wide management jurisdiction, including determining the language of instruction for a school; to appoint teachers; and to manage the school in general. In *Seodin Primary School v MEC Education, Northern Cape*³⁰ and *The Western Cape Minister of Education and Others v The Governing Body of Mikro Primary School*³¹ (Joubert, 2009: 7) the courts emphasised that a school board is in effect an ‘organ of state’ and not a private entity. As an organ of state, school boards must therefore comply with and adhere to the Constitution. In *Departement van Onderwys en Andere v Hoërskool Ermelo en 'n Ander*³² (Snayders, 2006) the court accepted that mother tongue education is a sound principle for purposes of education, but that school boards may not exclude pupils solely on the basis of the language they speak. The school board, as an organ of state, must therefore also serve the wide community and not only the language community to whom it intends to provide an education service.³³

The response of the courts to the questions raised above can therefore be summarised as follows: (a) the State is under no justiciable duty to fund mother tongue language-based public education if the provision of such education conflicts with the principle of equal access by individuals to educational facilities (Woolman, 1015: 2080). This does not mean that all education is provided in English, but it does imply a preference towards English as language for tuition since it is the largest common denominator to facilitate equal access to public education.³⁴ (b) Although the Constitution acknowledges diversity of languages within public education, the context of basic education must be pursued on the basis of equality; eradication of past discrimination and injustice; and providing basic education to the widest possible proportion of society.³⁵ (c) School boards may determine the language of instruction of their school, but as an organ of state account must be taken by school boards of the general needs of the wider society and the boards may not in the exercise of their powers discriminate against children on the basis of language.³⁶

The effect of cumulative court judgements in regard to Afrikaans education in public schools has left many in the Afrikaans community disillusioned. In areas such as the Northern

Cape and Western Cape where Afrikaans is widely spoken, the prevalence of Afrikaans-based primary and secondary education is widespread. In other provinces where the Afrikaans community is more scattered and intermingled with the rest of the population, Afrikaans educational services are under pressure and it is likely that relatively few secondary schools where Afrikaans is the primary language of instruction, will remain in the medium to long term. The demographic and economic realities are impacting severely on the provision of Afrikaans primary and secondary education, and closely associated therewith is the preference of substantial numbers of Afrikaans speakers to be educated in English due to the perceived commercial and international value of the language.

The future of Afrikaans as a language of education in public schools, particularly at the secondary and tertiary levels, is therefore uncertain. The constitutional provision for mother tongue based education is in practice not actively pursued by many in the African community, whereas in the Afrikaans community where there is a strong desire for Afrikaans education. The pressure of equal access to public schools is reducing the number of Afrikaans-based schools on a yearly basis.³⁷ Afrikaans secondary public schools in the future are likely to be limited to a few major regional towns where substantial numbers of Afrikaans students can congregate to justify an Afrikaans-medium secondary school; and in larger urban areas where the concept of a local neighbourhood Afrikaans secondary school will be replaced with fewer, larger, secondary Afrikaans schools.

4.5 Free Association and the Afrikaans Civil Society

The loss of political power by the National Party in 1994 as the main political vehicle for the Afrikaans community, has contributed to a mushrooming of non-governmental, civil society based initiatives within the Afrikaans community. These NGOs may have different strategies and programmes, but in general they share a common objective; namely, the promoting of Afrikaans language, music and culture. The plethora of Afrikaans NGO's function freely without undue interference by the state and within the protections offered by the Constitution.

The following are examples of important educational and cultural initiatives undertaken by the Afrikaans community to protect and promote their language and culture:

A secondary, privately-funded, Afrikaans school has been established to service the needs of Afrikaans-speaking students in Johannesburg. *Helpmekaar Kollege MSV (RF)* has as its main focus the provision of education at the secondary level in Afrikaans.³⁸ *Helpmekaar* has been established as a not-for profit company³⁹ pursuant to the Company Act.⁴⁰ *Helpmekaar* is entirely privatised; it receives no state grants or other assistance; and it is controlled by its members and directors in consultation with a parent committee.⁴¹ *Helpmekaar* may, in addition to the provision of education, also undertake commercial activities and other initiatives that support and relate to its main objective. Teaching and examination of students are conducted in Afrikaans, but under the supervision of the Independent Examination Board of South Africa.⁴² *Helpmekaar* accommodates around 1,000 students with 125 staff members. Although *Helpmekaar* is an example of a fully-privatised Afrikaans school, the reality is that few Afrikaans families can afford to send their children to a private school without receiving some form of state grant. The *Helpmekaar*-option is therefore of limited application to Afrikaans speakers, unless the cost of education can be brought to a level where middle-class Afrikaans-speakers can afford it or if an arrangement can be entered into with government whereby some funding is provided to privatised education (Chetty, 2014).

A tertiary institution, *Akademia* (meaning ‘academic’) was established in 2012 to cater for Afrikaans-speaking students. *Akademia* is based in Pretoria but it teaches via telecentres and 11 study locations in South Africa. Although the institution offers lectures to residential students, it seeks to attract a wider audience by way of distance education. *Akademia* is entirely private and does not receive any state grants or subsidies. It is however accredited with the Council of Higher Education which is tasked to oversee and regulate all tertiary teaching in South Africa.⁴³ The scope of courses on offer is fairly limited and focuses on areas such as commercial studies; project management, accounting and office management. It is anticipated that in the course of 2018/9, additional areas will come on offer, such as law; teaching; and financial planning. *Akademia* accommodates around 850 students. *Akademia* is, like *Helpmekaar*, an interesting experiment with privatised education for Afrikaans speakers. A major challenge to *Akademia* is however whether middle-class Afrikaans speakers can afford to attend a tertiary institution without any government assistance. Privatised universities in South Africa are generally seen as the domain of the wealthy. *Akademia* is however of the

opinion that modern communication technology can enable it to provide a tertiary education at a budget price to a wide Afrikaans audience. There are several challenges that face *Akademia*, for example: the cost to offer a privatised tertiary service at an affordable level; to attract top class academics; and to attract Afrikaans students who may otherwise be looking at English tertiary education as an entry to the world.

Although there are a plethora of Afrikaans-based private clubs and non-governmental organisations, one of the most prolific in its activities is *Afriforum*.⁴⁴ Afriforum comprises around 200,000 fully paid members which makes it one of the largest membership-based non-governmental organisations in South Africa (Kriel, 2017). Membership of Afriforum is open to all, but in practice it is dominated by white Afrikaans speakers. Afriforum employs around 170 staff and functions by way of its 120 branches nationwide.⁴⁵ It strives to be a grass-root organisation with a new branch requiring 100 persons to express interest and to identify issues that are of local importance. Afriforum has, generally speaking, adopted two main strategies; local community service delivery and self-management of the Afrikaans community.⁴⁶ The local activities are influenced by what is perceived to be a failure of service delivery at a local level in areas such as infrastructure, community safety and public health. In many rural towns, Afriforum has become an essential provider of services to the wider community. At a national level Afriforum agitates for a form of collective Afrikaans self-government pursuant to constitutional provisions, including a possible Afrikaans community council. Afriforum finds itself in a unique position with a multiple personality condition. On the one hand, it functions as a typical cultural organisation with Afrikaans music, feasts and concerts. On the other hand, it is a *quasi* political organisation that seeks to develop a form of self-government for the Afrikaans community. Finally, Afriforum also provides a wide range of governmental services at a local level in areas such as provision of water; maintenance of roads; maintaining and repairing of infrastructure.

The numerous non-governmental organisations that promote Afrikaans is typical of an active civil society operating under the rule of law. There are however several aspects of the Afrikaans organisations that are unique, namely: (a) the Afrikaans community is spread over a vast territory which means a variety of options to protect and promote Afrikaans need to be pursued; (b) the Afrikaans community has not shed its 'race' tag and much remains to be done for Afrikaans NGOs to develop a non-racial strategy that includes all of those of speak Afrikaans; (c) government supported teaching in Afrikaans is, except for areas where there is

a very high concentration of Afrikaans speakers, likely to decline which means Afrikaans parents would increasingly be required to privately fund education in Afrikaans; (d) there is no agreement within the wider Afrikaans community as to whether a form of self-government should be actively pursued and if so, what form it would take; and (e) organisations such as Afriforum are developing into alternative-governments particularly at a local level due to concerns at the decline of local government services.

There are few, if any, language communities internationally that experience this combination of unique characteristics and challenges.

Conclusion

The following concluding observations can be made based on the foregoing assessment of the way in which the South African Constitution has been implemented in the context of protecting and promoting the Afrikaans language:

The Constitution complies at a technical level with minimum international constitutional standards for the recognition and protection of language, religious and cultural rights.⁴⁷ The way in which the constitutional protections are implemented and policies are pursued, is however not always consistent with the potential of those provisions. There are in particular three areas where the promise of the Constitution in regard to acknowledging of diversity is not coming to fruition, namely: (a) the lack of action by the national government; the government of the Western Cape province; and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Language Communities to encourage and pursue the establishment of community councils for those communities that may benefit from such councils; (b) the lack of policy measures by particularly the Pan South African Language Board and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Language Communities to encourage and protect the multi-language character of the South African population, particularly in the field of education in mother-tongue; and (c) the limitations – financial, policy and judicial - imposed on school boards to determine the language of education of public schools.

The autonomy enjoyed by the provinces, and in particular for purposes of this article the Western Cape and Northern Cape, is consistent with international case studies where

decentralisation to regional governments is used as an indirect way to protect and encourage language and cultural diversity. The Western Cape has been more active than the Northern Cape to use its constitutional powers to develop a language policy that suits the province. The Western Cape is yet to commence steps to facilitate the establishment of community councils pursuant to the provincial constitution. If, for example, an Afrikaans community council were established, such a council could not only provide services to the Afrikaans-speaking community in the Western Cape, the council could also contract with organs of state in other provinces to provide services to the Afrikaans community in an area such as education.

The Constitution complies with international norms in regard to its protection of individual rights and freedoms, particularly concerning the practice and enjoyment of language, culture and religion. A profound question, which is not limited to South Africa, is to what extent state agencies can be obliged to provide funding and support to communities to protect and promote their unique identity. Due to a variety of reasons the basic approach of the South African government is that community activities ought to be self-funded and that public services such as education must cater for the widest possible denominator, which generally turns out to be English. This policy inevitably means that languages other than English are likely to diminish in areas of science, education, media and literature. The Afrikaans community is unable to rely solely on private funding for education which means there will in future be fewer instances of Afrikaans teaching in primary and secondary schools, and limited if any Afrikaans teaching at tertiary level.

The Afrikaans civil society is arguably more active than under *apartheid* since the community is now reliant on own initiatives rather than on government support. The ability of the Afrikaans community to protect and promote the Afrikaans language outside the realm of a household language, is however limited unless a form of government support is received in areas such as education. The quagmire in which government finds itself is not unique – on the one hand there is the constitutional promise of recognition and promotion of diversity, while on the other hand scarce resources dictate that funding be directed to reach the widest possible section of society to reduce inequality. It is therefore likely that basic governmental services in its widest sense are increasingly likely to be delivered in English, with the other official languages receiving symbolical recognition.

Finally, the Afrikaans community is yet to develop a comprehensive vision for the protection and promotion of the Afrikaans language. The community is divided in many respects, for example race, education, ideology, geographical concentration, urbanisation and prosperity. In the absence of an integrating vision for the Afrikaans language, the promises that some constitutional provisions hold are not being pursued. It is likely, in light of the limited resources available to government, the acute levels of inequality, and the historic (and ongoing) animosity to the Afrikaans and particularly the Afrikaner community, that the Afrikaans community would have to rely on private and own sources to fund its educational, cultural and community activities.

Self-determination for the Afrikaans community comprises a mixture of territorial arrangements; a possible Afrikaans community council; and an active Afrikaans civil society. The Afrikaans language does not face a threat of extinction, but its time as a language of education, science and technology may indeed be numbered.

Notes

² It must be noted that within the general Afrikaans-speaking community, sub-groupings exist for example the White Afrikaners and the Coloured Khoisan. The Afrikaans-speaking language community is therefore not homogenous in regard to its cultural expression, with race remaining a pertinent basis upon which different interests are articulated. The desire for a form of self-determination or autonomy is principally expressed by the sections of the White Afrikaner community, albeit that in recent years strong expressions for recognition as an indigenous people has also been made by sections of the Khoisan community.

³ Although there is no agreed definition in international law of the concept 'minority', the most general working definition that has been used is that of Capotorti. An essential element of the definition is that a numerical minority, in order to be the recipient of protection under international law, must also be in a 'non-dominant' position. 'A group which is numerically inferior to the rest of the population of a State and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from the rest of the population who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion and language.' (Capotorti, 1977: 568)

⁴ The author acknowledges the grant received from the *Suid-Afrikaanse Akademie vir Wetenskap en Kuns* that enabled him to conduct interviews with several leading figures in the Afrikaans community during November 2017 and March 2018 about their perspectives on the future of Afrikaans.

⁵ Ironically these racial terms continue to be used in South Africa for purposes of the census; affirmative action, empowerment mechanisms and to measure socio-economic progress in regard to key indicators for each community.

⁶ One of the many challenges faced by the Afrikaans community is whether the traditional 'white' Afrikaans speakers (calling themselves 'Afrikaners') can reach out and effectively include all Afrikaans speakers in the discussions about the future of the language. So far, the institutional side of the Afrikaans community, be it clubs, non-governmental organisations, or education facilities, continue to be dominated by White Afrikaans-speaking persons. The racial 'cloak' of the past has generally speaking in practice not been shed by the Afrikaans community at an institutional-organisational level.

⁷ Alberts (2010: 605) observes that there is no 'general' language in South Africa, but that Zulu and Afrikaans are the closest since they are spoken in substance in seven of the nine provinces.

⁸ The Commission had to take into account various criteria, of which language distribution was one (De Villiers, 2008: 28).

⁹ The author has previously expressed the view that a form of non-territorial self-government may be suited to the Afrikaans community due to their scattered living patterns (De Villiers, 1989; 2014).

¹⁰ See for example the following constitutions: s30 India; s8 Ethiopia; and s53 and 235 South Africa.

¹¹ See <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

¹² There is some debate whether the Afrikaans community is also characterised by the Christian faith. This author holds the view that although the Christian faith has played and continued to play an important role in the Afrikaans community, the Christian faith is not a requirement or distinguishing characteristic to be regarded as 'Afrikaans' or part of the Afrikaans 'culture'. This proposition is supported by the fact that Afrikaans is widely spoken by persons who profess the Islamic faith or who adhere to other beliefs and values than the Christian faith.

¹³ Fredericks (259) points out that 'by granting internal self-determination [eg through some form of regional or local self-government], the threat of external self-determination or secession can thus be averted'. See other examples such as Spain, Canada, Ethiopia, Italy and Indonesia where countries have attempted to retain national integrity by granting and expanding special powers to particular regions (so called asymmetry of regions) within the country. See in this regard special regions such as Catalonia, Quebec, South-Tyrol and Aceh.

¹⁴ GA Resolution 47/135 of 18 December 1992.

¹⁵ The South African provinces are not ethnically homogenous, but each of the main language communities has at least a province where its numbers are substantial. Fessha observes that each major language community has a 'mother' province. (Fessha, 2010).

¹⁶ Constitutional Principle XVIII as contained in the 1993 Interim Constitution. For a discussion about the role and influence of the Constitutional Principles on the final Constitution refer to De Villiers (1994: 37-49).

¹⁷ Western Cape (49.6 percent), Eastern Cape (10.5 percent), Northern Cape (5.4 percent), Free State (12.7 percent), Gauteng (12.4 percent), KwaZulu-Natal (1.5 percent), Mpumalanga (1.6 percent), Limpopo (1.5 percent) and North West (9 percent): see <https://www.gov.za/af/about-sa/south-africas-provinces>.

¹⁸ See ss104, 142 and 143 Constitution of South Africa. See the ratification of the Constitution of the Western Cape in *In re: Certification of the Constitution of the Western Cape, 1997* 1997 9 BCLR 1167 (CC), 1997 4 SA 795 (CC). An effort by the province of KwaZulu-Natal to enact a provincial constitution failed.

¹⁹ One of the principal reasons why only the Western Cape has enacted a provincial constitution is that it is the only province that is governed by a non-ANC government. The ANC-controlled provinces have so far preferred to utilise the standard provincial constitution which is contained in the national Constitution.

²⁰ The enactment of the Western Cape *Language Act* and *Language Policy* is principally the result of a majority party in the province being the Democratic Party.

²¹ The Commission is independent (s181(1)(c) of the Constitution). Its objectives are set out in s185 of the Constitution. <http://www.crlcommission.org.za/papers.html> and <https://nationalgovernment.co.za/units/view/51/Commission-for-the-Promotion-and-Protection-of-the-Rights-of-Cultural-Religious-and-Linguistic-Communities>.

²² In 2015/16 for example the Commission investigated 235 complaints received from members of the public.

²³ Although there is an explanatory memorandum to set out how a cultural council could be established (see <http://www.crlcommission.org.za/docs/community-councils-recognition-guidelines.pdf>), there has been no proactive steps by the Commission to promote the concept to communities that may be interested.

²⁴ These were, arguably, the earliest and most detailed proposals made for a cultural council the Afrikaans community.

²⁵ Salat summarises the general justification of community autonomy as follows: 'Justification of non-territorial autonomy is usually rooted in the commitment for collective or other forms of special rights stipulated in constitutions. (Salat in Malloy, 2015: 251).

²⁶ The Commission has issued a memorandum to guide the establishment of a community council, but so far no community has taken up the option and little has been done by the Commission to popularise the concept - see <http://www.crlcommission.org.za/docs/community-councils-recognition-guidelines.pdf>.

²⁷ See for example freedom of religion (s15); freedom of speech (s16); freedom of association (s18); right to education, including the right to be educated in an official language (s29); the right to private education (s29(3)); the right to language and culture (s30); and the rights of language and cultural communities (s31) in the Constitution.

²⁸ At the time of writing (May 2018) it is estimated that there are 25,000 publicly funded primary and high schools in South Africa, of which 2,500 (10%) uses Afrikaans as a co-teaching language, of which 1,277 use Afrikaans as the sole language of teaching, albeit that English is taught as a subject. (Eloff, 2018; Kruger, 2018).

²⁹ *Ex parte Gauteng Legislature: In re Gauteng School Education Bill 1996* (3) SA 165 (CC) at 189 190. Sachs J emphasised that there is no constitutional 'right' to state funded Afrikaans education albeit that the Constitution allows the State to fund mother tongue language in public schools.

³⁰ *Seodin Primary School and Others v MEC of Education Northern Cape and Others* (2) (77/04/01) [2005] ZANHC 6; 2006 (4) BCLR 542 (NC); [2006] 1 All SA 154 (NC) (24 October 2005).

³¹ [2005] a SA 436 (SCA).

³²2010 (2) SA 415 (CC) par 50.

³³ See the criticism of Malherbe (2013), Serfontein (2013) and support expressed by Frederick (253).

³⁴ It is notable that it is principally from within the Afrikaans-speaking community that demands for education in home language is strongly pursued. There has not been any substantial demand from other language communities for public funded teaching in their language (Stoop, 2017: 12). The lack of demand for mother-tongue teaching can be attributed to several factors, but one major consideration is the perceived benefit of English as language of commerce, government and international access.

³⁵ ‘The future for South African education in the wake of these case [*Gauteng School Education Bill, Laerskool Middelburg, Ermelo*] is difficult to assess because any language or cultural policy is certain to involve the constitutional core values of ‘freedom’, ‘equality’, and ‘human dignity’....What one could argue is tragic about the impending end of single-medium Afrikaans schools is that the loss of language may be viewed as the last remaining distinctive of the Afrikaans culture that, at one time, may have concluded gatherings, activities, religious services and special events...’ (Mawdsley, 2013: 342).

³⁶ See *Federation of Governing Bodies for South African Schools v MEC for Education, Gauteng* 2016(4) SA 546 (CC) in which the balance between autonomy of school boards and the regulating authority of the state is considered. Also Venter (2017: 662).

³⁷³⁷ It is estimated that the number of Afrikaans medium public schools has declined by around 30 percent since 2002. ‘Afrikaans-only schools waning says minister’, *Business Day*, 12 July 2017 at <https://www.businesslive.co.za/bd/national/education/2017-07-12-afrikaans-only-schools-waning-says-minister/>.

³⁸cl 3.1 Constitution of Helpmekaar Kollege. ‘Helpmekaar’ directly translated means ‘to help each other’.

www.helpmekaar.co.za.

³⁹Registration 1993/002120/08.

⁴⁰s8(1) Company Act, Act 71 van 2008.

⁴¹cl. 24 Constitution of Helmekaar College.

⁴²<http://www.ieb.co.za/>.

⁴³See <http://akademia.ac.za/meer-oor-akademia/>.

⁴⁴ A combination of ‘Afrikaans’ and ‘Forum’.

⁴⁵‘Takke AfriForum’, *Forum* (September 2017) 54.

⁴⁶ Interview with the Chief Executive of Afriforum, Mr Kallie Kriel, on 3 November 2017.

⁴⁷ Strydom (28) for example concludes that: ‘If the South African constitution is analysed against international standards for the protection of community interests and aspirations, it is fair to conclude that some minimum standards have found their way into the text of the constitution.’

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