



FW de Klerk
FOUNDATION

THE FW DE KLERK FOUNDATION

Upholding South Africa's National Accord

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Ms Thoko Nonhle Mkhwanazi-Xaluva
Chairperson

The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

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Dear Ms Mkhwanazi-Xaluva

Submission to the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

1. Introduction

- a. The FW de Klerk Foundation ("the Foundation") is a non-profit organisation which incorporates the Centre for Constitutional Rights. The Foundation seeks to defend and promote the Constitution and the Bill of Rights and works for harmonious relations in multicultural societies. In this context it monitors any actions, statements or developments that might affect the Constitution, the Bill of Rights or harmonious relations between communities in our multicultural society.
- b. In terms of section 185(1)(a) of the Constitution, one of the primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities is "to promote respect for the rights of cultural, religious and linguistic communities";
- c. In terms of section 185(2) of the Constitution "the Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on any issue concerning the rights of cultural, religious and linguistic communities";
- d. In terms of section 4 of the Commission for the *Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities Act (2002)* ("the Act") the Commission's objects are, *inter alia*, "to promote respect for and further the protection of the rights of cultural, religious and linguistic communities."

- e. In terms of section 5 of the abovementioned Act, “the Commission may do all that is necessary or expedient to achieve its objects referred to in section 4, including to:
 - (e) monitor, investigate and research any issue concerning the rights of cultural, religious and linguistic communities;
 - (h) receive and deal with requests related to the rights of cultural, religious and linguistic communities;
 - (i) make recommendations to the appropriate organ of state regarding legislation that impacts, or may impact, on the rights of cultural, religious and linguistic communities;
 - (k) bring any relevant matter to the attention of the appropriate authority or organ of state, and, where appropriate, make recommendations to such authority or organ of state in dealing with such a matter”.

Against this background the Foundation has decided to bring to the Commission’s attention the following requests that relate to the mother-tongue educational rights of all South Africa’s linguistic communities, with particular reference to events relating to the rights of the Afrikaans-speaking linguistic community.

2. The rights of official linguistic communities have their basis in the following Constitutional and Legislative Framework

- a. The Constitution of the Republic of South Africa, 1996:
 - i. Section 6(4)(2) states: “all official languages must enjoy parity of esteem and must be treated equally”;
 - ii. Section 9(3) of the Constitution in terms of which the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including language;
 - iii. Section 29(2) states: “everyone has the right to receive education in the official language or languages of their choice” and that “in order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, into account”;
 - iv. Section 29(3) states: “Everyone has the right to establish and maintain, at their own expense, independent educational institutions that -
 - 1. Do not discriminate on the basis of race;
 - 2. Are registered with the state”.
 - v. Section 30 states: “Everyone has the right to use the language and to participate in the cultural life of their choice”;
 - vi. Section 31(1) states: “Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community -
 - 1. To enjoy their culture, practice their religion and use their language; and
 - 2. To form, join and maintain cultural, religious and linguistic associations and other organs of civil society”.
- b. The *Promotion of Equality and Prevention of Unfair Discrimination Act 4, 2000* (“PEPUDA”):
 - i. PEPUDA seeks “to give effect to section 9 read with item 23(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, so as to prevent and prohibit unfair discrimination; to prevent and prohibit hate speech; and to provide for matters connected herewith”;
 - ii. Section 6 states: “Neither the State nor any person may unfairly discriminate

against any person”.

- c. The *Language Policy for the Department of Higher Education, 2002*:
 - i. Section 4 states: “The role of language and access to language skills is critical to ensure the right of individuals to realise their full potential to participate in and contribute to the social, cultural, intellectual, economic and political life of South African society”;
 - ii. Section 6 reads: “The challenge facing higher education is to ensure the simultaneous development of a multilingual environment in which all our languages are developed as academic/scientific languages”;
 - iii. Section 15(4) reads: “The Ministry acknowledges that Afrikaans as a language of scholarship and science is a national resource.”
- d. The *International Covenant on Civil and Political Rights*:
 - i. Article 27 reads: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.
- e. The *International Covenant on Economic, Social and Cultural Rights*:
 - i. Article 2(1) states: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

3. Background and Details

- a. Akademia
 - i. Akademia is an independent higher education institution within the Solidarity Movement;
 - ii. Akademia is registered with the Department of Higher Education;
 - iii. Akademia offers various programmes, registered in terms of section 54(3) of the *Higher Education Act*;
 - iv. Akademia’s programmes are accredited by the Council for of Higher Education and the Council for Quality Assurance in General and Further Education and Training;
 - v. The Department of Higher Education has approved of Akademia’s last three annual reports;
 - vi. The operational language of Akademia is Afrikaans;
 - vii. Akademia’s registration process does not discriminate on any grounds.
- b. Afrikaans
 - i. In terms of section 6(1) of the Constitution Afrikaans is an official language of the Republic which in terms of section 6(4) must enjoy parity of esteem with all the other official languages and must be treated equitably;
 - ii. According to StatsSA’s census findings (2011) there are 6.85 million Afrikaans speakers in South Africa;
 - iii. With 13.5% of the population Afrikaans is the third most spoken language after isiZulu (22.7%) and isiXhosa (16.0%);
 - iv. Among Coloured people 75.8% speak Afrikaans as their first language; among White people it is 60.8%; among Black Africans it is 1.5% and among Indian or Asian people it is 4.6%;
 - v. Accordingly, 50% of Afrikaans-speakers are Coloureds, 40% are whites, 9% are black South Africans and 1% are Asians or Indians.

- c. The comment of Minister of Higher Education and Training Blade Nzimande (“the Minister”)
- i. On 30 November 2014 *Rapport* featured an article in which the Minister comments on the use of Afrikaans at higher education institutions. In the article the Minister insists that there is no place for a private university in which Afrikaans is the only language of tuition;
 - ii. The Minister expresses his disapproval of any institution where Afrikaans is the sole language of instruction, inferring that others will thereby be excluded. The Minister is quoted as saying: “Dus, nee. Een Afrikaanse Universiteit sal eksklusief wees deur ander studente uit te sluit”;
 - iii. In direct reference to Akademia the Minister threatens to close it, if its only language of tuition remains Afrikaans. The Minister is quoted as saying: “Ek sal julle toemaak”;
 - iv. The Minister threatens to revoke Akademia’s registration due to its use of Afrikaans as the sole language of tuition. The Minister is quoted as saying: “As dit die geval is, sal ons hul registrasie terugtrek. Ek gaan nie eens jammer sê daaroor nie”;
 - v. The Minister explains that he will not support an Afrikaans university, saying that all universities must be open to everyone. Herein the Minister says that universities will only be non-exclusive when they offer tuition in the English language. The Minister is quoted as saying: “Ons wil hê universiteite moet vir almal kan toegang gee. Vir enige taal om vandag te oorleef, moet dit kan funksioneer binne die konteks waarin Engels ‘n oorheersende taal is”;
 - vi. The Minister then states that whereas the establishment of private institutions is Constitutional, no institution may discriminate against any person. The Minister is quoted as saying: “Dit is sodat die Grondwet mense in staat stel om private (onafhanklike) instellings op die been te bring, maar dit mag nie teen iemand diskrimineer nie”;
 - vii. In making the abovementioned statements the Minister alleges that a university that provides tuition only in Afrikaans will necessarily be racist. This association is expressed in the following words of the Minister: “Daar is ongelukkig geen plek vir rassistiese instellings nie - geen plek nie. Ons sal nie so ‘n instelling toelaat nie”.
- d. Related prior comments by the Minister
- i. The Minister has on previous occasions made similar pronouncements regarding the Afrikaans-only universities. Below are two examples indicating that the article from *Rapport* does not represent an isolated incident:
 1. On 16 July 2009, on the occasion of the 3rd Colloquium of the Anti-Racism Network, the Minister equated the establishment of an Afrikaans University with racism: “Ladies and gentlemen, we face a new danger now that some of the cornerstones and principles of our democracy are being used to perpetuate racism. Rights and principles entrenched in our Constitution can be manipulated to discriminate against sections of society. The one distinct example of this is around language and arguments for the continuation of single-medium schools and Afrikaans-only universities. The proponents of these campaigns use constitutional rights guaranteeing the existence of all official languages to perpetuate the exclusion of, and racism against, black students”.
 2. In a *Mail & Guardian* article from 28 November 2014 the Minister rejects the establishment of a university that teaches only in

Afrikaans: “All universities are supposed to admit whoever wants to be admitted in that institution, provided they meet the minimum academic requirements. You can’t say because you’re not Afrikaans speaking, then you can’t be admitted. It’s a problem”.

4. Request for investigation and remedial action

Although the matter that the Foundation has brought to the Commission’s attention relates primarily to the language rights of the Afrikaans-speaking population, it clearly affects the equally valid rights of the speakers of all of South Africa’s other official indigenous languages. In terms of the Minister’s pronouncements it would, presumably, be equally unacceptable to establish private or public single-medium universities that chose to provide tuition in isiZulu, Setswana or in any of South Africa’s other indigenous official languages.

According to the Minister’s dictum only English is accepted as the general language of access to university and by extension to general education. This accords to English a *de facto* status that approaches that of a sole official language. This approach is irreconcilable with the whole structure and purpose of section 6 of the Constitution and the requirement that all official languages must enjoy parity of esteem and must be treated equitably.

- a. The Foundation accordingly requests the Commission in terms of Section 5(e) of the Act to investigate the Minister’s comments, as detailed here in 3.c.ii to 3.c.vii:
 - i. with regard to the threat that they pose to the rights that South African linguistic communities enjoy in terms of Sections 6, 29(2) and (3), and 30 of the Constitution;
 - ii. insofar as they constitute unfair discrimination against the affected linguistic community on the grounds of language in contravention of Section 9(3) of the Constitution.
- b. The Foundation requests the Commission in particular to investigate:
 - i. the Minister’s contention that single-medium institutions that provide education in any language other than English are impermissible within the context of section 29(2) of the Constitution and section 6 of the Department of Higher Education’s Language Policy - even where such institutions function on the basis of equity, practicability and the need to redress the results of past racially discriminatory laws and practices;
 - ii. the Minister’s contention that single-medium independent institutions that provide tuition in any official language other than English are impermissible even where they do not discriminate on the basis of race; are registered with the state; and maintain standards that are not inferior to the standards at comparable public educational institutions;
 - iii. the Minister’s contention that an Afrikaans institution must necessarily be racist, even though the Afrikaans-speaking community includes large numbers of people from all South Africa’s racial communities;
 - iv. the implications of the Minister’s above quoted statements for the right of Afrikaans - and by extension of any of our other indigenous languages, as official languages - to enjoy parity of esteem and to be treated equitably in terms of section 6(4) of the Constitution;
 - v. The implications of the Minister’s view that single-medium institutions are impermissible for the continued viability of Afrikaans and South Africa’s other indigenous languages and the long-term rights of the communities involved to use the languages and to practise the cultures of their choice in terms of section 30 of the Constitution

- c. The Foundation requests that the Commission should:
- i. in terms of its powers under section 5(i) of the Act make recommendations to the Minister not to adopt any legislation or regulations that may negatively impact on the rights of any South African linguistic community under sections 29(2) and (3) of the Constitution;
 - ii. in terms of section 5(k) of the Act make recommendations to the Minister that in all his policies and actions he should ensure that all South Africa's official languages are developed in accordance with section 6(2) of the Constitution and should, in terms of section 6(4) enjoy parity of esteem and should be treated equitably; and
 - iii. should in terms of section 185(3) of the Constitution report on the results of its above requested investigations to the South African Human Rights Commission for further investigation – particularly where they may involve any breach of the rights of a South African linguistic community in terms of any of the above quoted provisions of the Constitution and the relevant legislation.



DW Steward
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