



Centre for
**CONSTITUTIONAL
RIGHTS**

CENTRE FOR CONSTITUTIONAL RIGHTS

Upholding South Africa's Constitutional Accord

Patron: The Hon Mr Justice Ian G Farlam

Mr Paul Mashatile, MP
Minister of Arts & Culture
Private Bag 898
Pretoria
0001

Attention: Maseapo Kganedi
Per email: Minister@dac.gov.za
Per fax: 012 441 3614

24 May 2013

Dear Sir,

CONCISE SUBMISSION ON THE USE OF OFFICIAL LANGUAGES ACT 12 OF 2012: PROPOSED REGULATIONS

1. The Centre for Constitutional Rights (CFCR) is a unit of the FW de Klerk Foundation - a non-profit organisation dedicated to upholding the *Constitution of the Republic of South Africa, 1996* (the Constitution). To this end, the Centre seeks to promote the values, rights and principles provided for in the Constitution, to monitor developments including policy and draft legislation that might affect the Constitution and the values, rights or principles provided therein, to inform people and organisations of their constitutional rights and to assist them in claiming their rights.
2. The CFRC welcomes the opportunity to make concise submissions to the Department of Arts and Culture (the Department) on the regulations to the Use of Official Languages Act 12 of 2012 as proposed by the Minister in the Government Gazette of 26 April 2013 (Notice 411 of 2013).
3. It is not the purpose or intention of this submission to provide comprehensive legal analysis or technical assessment of the Bill, but rather to draw attention to key concerns in relation to the Bill, particularly in so far as it relates to constitutional values, rights and requirements.

A UNIT OF THE FW DE KLERK FOUNDATION

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4. Accordingly, please find appended our submission for your consideration. In this regard and if required, the CFRC will be available to engage in oral submissions to the Department in order to elaborate on this submission, whether during public hearings or at any such time as the Department may so require.

Yours sincerely



ADV JOHAN KRUGER
DIRECTOR

CONCISE SUBMISSION ON THE USE OF OFFICIAL LANGUAGES ACT 12 OF 2012: PROPOSED REGULATIONS

CONSTITUTIONAL FRAMEWORK & BACKGROUND

1. The use of the official languages of the Republic is regulated - as a founding provision - by section 6 of the Constitution.
2. Sections 6(1) and 6(2) of the Constitution list the 11 official languages of the Republic and make it clear that as a result of the diminished use and status of indigenous languages, the State must take practical and positive measures to elevate the status and advance the use of these languages.
3. Section 6(3)(a) imposes on national and provincial governments a minimum threshold of at least two official languages to be used for official government business, taking into account:
 - a. Practicality;
 - b. Expense; and
 - c. Regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned.
4. Section 6(3)(b) states that municipalities must take into account the language usage and preference of its residents and section 6(4) makes it clear that all official languages of the Republic must enjoy parity of esteem and be treated equitably.
5. The Act has as its aim, *inter alia*, to provide for the regulation and monitoring of the use of official languages by national government for government purposes, to require the adoption of language policies by such national departments, national public entities and national public enterprises as well as the establishment of a National Language Unit and matters connected therewith.
6. Section 13(1) of the Act states that the Minister, after consultation with the Pan South African Language Board, may make regulations pertaining to a wide range of aspects arising from the Act.
7. Those regulations form the basis of this submission.

GENERAL COMMENTS

8. The CFR welcomes the fact that the regulations make provision for the use of sign language and Braille as these are the only forms of communication available to many South Africans and other individuals in the Republic and wishes to point out that this is in line with the aims and provisions of section 6(5)(a)(iii) of the Constitution.

9. The CFR also welcomes the fact that the regulations leave room for the use of *more* than three official languages for government purposes.
10. We are, however, of the view that it is regrettable that the regulations are only available in English and are further of the view that, given the subject matter and in order to get a true sense of the needs of all South Africans - but also to align the regulations and their enactment with the Constitution - that the regulations ought to be made available in all 11 official languages.

SPECIFIC SUBMISSIONS

Ad regulation 2(1): Timeframes

11. The Centre is concerned that regulation 2(1) - in providing that language units must be established within three months of the coming into effect of the regulations - serves to make it unclear as to when such language policies will (or must) be established by the bodies concerned.
12. As it is unclear when the regulations will come into effect - seeing that no timeframe is provided in regulation 2(1) - it is unclear when such language policies will effectively begin to operate and this also detracts from the sense of importance and true urgency of these issues.

Ad regulation 2(2): Timeframes

13. Regulation 2(2) provides a mechanism for entities to apply to the Minister for an extension period for the period as envisaged in regulation 2(1) pertaining to the drafting of a language policy.
14. The Centre is of the view that although such a provision is commendable, it remains too wide and open for administrative abuse and although it ought to be retained, a *caveat* ought to be inserted in regulation 2(2) to provide for:

14.1 Interim measures regarding official language use, pending such applications for extensions and;

14.2 A provision that any application for an extension as envisaged in regulation 2(2) may only be brought once.

Ad regulations 3, 4, 5 and 6: Exemptions

15. The Centre is of the view that any exemption applications (as well as matters connected therewith in terms of part 3 - 6 of the regulations) and as envisaged in terms of section 12 of the Act, should be considered not only by the Minister alone, but in consultation with the Pan South African Language Board.

Ad regulation 7(2): Complaints mechanism

16. The Centre is of the view that any aggrieved party who, in terms of regulation 7(2)(a), is dissatisfied with a decision of any entity regarding its use of official languages, should also be able to specifically approach the Pan South African Language Board or the Commission for the Promotion of Cultural, Religious and Linguistic Rights directly in this regard and that wording to that effect ought to be inserted as a sub-clause of regulation 7(2) of the regulations.

Ad regulation (8): Process to determine official languages

17. The Centre is of the view that in the determination of official language use not only regulations 6(3) and 6(2) must be considered (as currently provided for in the regulations), but that regulation 6(4) as well as the wording of regulation 6(4) ought to be included as a sub-clause to regulation 8.

Ad regulation 9: Reporting

18. The Centre is of the view that - pursuant to regulation 9(1) of the regulations - where any entity reports on its use of official languages as contemplated in section 9(2) of the Act - such reporting must also be done to the Pan South African Language Board and not only to the Minister.

CONCLUSION

19. In general, the Constitution makes broad provision for multilingualism, the promotion thereof as well as the protection of all languages in South Africa.

20. The Constitution recognises that all official languages shall enjoy parity of esteem and that national and provincial government - in terms of the Constitution - must use at least two official languages and in terms of the Act, at least three official languages.

21. The use of an official language is a vested and justiciable constitutional right and can only be limited as provided for in the Constitution, more specifically as provided for in the limitation clause of the Bill of Rights (section 36).

22. In light of this, it is imperative that the regulations should enhance the use of *multiple* official languages as opposed to *fewer* official languages. The regulations should not limit the use of official languages due to administrative or procedural burdens, or simply to promote ease of administration.

23. The regulations are in general welcomed, although the CFR is of the respectful view that the Department should take the above comments pertaining to the regulations into consideration so as to ensure constitutional compliance regarding the use of official languages.

ADV JACQUES DU PREEZ

24 MAY 2013