

# Language conundrum in higher education institutions in South Africa: One step forward or two steps back?

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## SUMMARY

Over the years, South African Courts have adjudicated on the status of English and Afrikaans in language policies of higher education institutions. This article reflects on the slow efforts by the South African government and higher education institutions towards the development and inclusion of languages indigenous to South Africa. Taking a textual analysis approach, the aim of this paper is to place emphasis on the need to develop and include indigenous languages of South Africa in the language policies of higher education institutions. The paper further seeks to contend that the inclusion of languages indigenous to South Africa will facilitate social cohesion and affirm restorative justice efforts given the historical marginalisation of black people in language and education. Building on a previously co-authored article addressing the use of indigenous languages in higher education institutions, this paper is limited to *Chairperson of the Council of UNISA v AfriForum NPC 2021*, the 2022 Commission of inquiry into allegations of racism at Stellenbosch university also known as the Kampepe Report, and the 2023 South African Human Rights Commission's Investigative Report into Allegations of Unconstitutional Language Practices at Certain Stellenbosch University Residences. The analysis presented in this paper will be grounded in transformative justice and a transitional justice framework.

## 1 Introduction

A medium of instruction in teaching may be understood as the language for oral instruction, written teaching material and assessments.<sup>1</sup> Thus, in the teaching and learning process, language fosters understanding, collaborations and outcomes. In contrast, when used prejudicially and/or strictly, language as a medium of instruction may exclude students from the teaching and learning process.

South Africa is considered a multilingual country. Post-apartheid South Africa constitutionally recognise eleven official languages.<sup>2</sup> This follows centuries when official languages were Dutch, English and Afrikaans

1 Pinxteren "The Relevance of Medium of Instruction and Mother Tongue for Different Types of Educational Systems" 2023 *International Journal of Educational Development* 2.

2 The Constitution of the Republic of South Africa, 1996, s 6(1).

leaving African languages being relegated and disregarded.<sup>3</sup> The historical roots of colonialism and segregation in South Africa demonstrates, amongst other things that language was a tool of racial segregation.<sup>4</sup> English and Dutch are widely accepted as European languages that were imposed on the colonised.<sup>5</sup> In the apartheid period, language was used to oppress and dominate black people. This was made official in 1925 when the Union of South Africa, predecessor of present-day Republic of South Africa, officially replaced Dutch with Afrikaans as one of two official languages of the Union alongside English.<sup>6</sup>

Post-apartheid South Africa took a unique approach to its language heritage. The 1996 Constitution recognises English and Afrikaans, languages historically associated with oppression, as official languages alongside previously marginalised African languages. It may be argued that this approach was undertaken to address the language hierarchy modelled by the colonial and apartheid regimes. However, for some, the approach is questionable as it practically fails to elevate languages that were suppressed by linguistic imperialism.<sup>7</sup> Having said that, post 1994, English and Afrikaans remained as medium of instructions in teaching and learning in South African schools and higher education institutions to the exclusion of African languages.<sup>8</sup> Although South Africa has eleven official languages with equal status, it may be argued that not all languages outlined in the Constitution are native to people of Southern Africa. These languages are English and Afrikaans. Nonetheless, section 6(1) of the Constitution provides that it recognises the use and status of indigenous languages; in doing so, the Constitution urges the state to take practical and positive measures to elevate and advance the status of indigenous languages. In light of this provision, the South African government has the responsibility to realize this constitutional provision. Regrettably, in undertaking this responsibility, there is no benchmark on what amounts to practical and positive measures.

Cognizant of the apartheid-era education system and following the adoption of the 1996 Constitution, there was a need to decolonise curricula and mediums of instruction in order to bring about social change and promote equality. Limited to institutions of higher education, the paper contends that the South African government and institutions of

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3 Braithwaite and Braithwaite *A very South African Odyssey* (2023) 128.

4 Mukama "Rethinking Languages of Instruction in African Schools" 2007 *Policy & Practice: A Development Education Review* 54-55.

5 Mintz *Three Ancient Colonies: Caribbean Themes and Variations* (2010) 194.

6 Coetzee, Henriksen and Garcia-Amaya "Patagonian Afrikaans: A Remnant Variety Spoken in South America" in Carsten and Bosman (eds) *Afrikaans Linguistics: Contemporary Perspective* (2024) 506.

7 See Agyekum "Linguistic Imperialism and Language Decolonisation in Africa through Documentation and Preservation" in Kandybowicz, Major, Harold and Duncan (eds) *African linguistics on the Prairie: Selected Papers from the 45th Annual Conference on African Linguistics* (2018) 87-104.

8 Ndamba "The Status of Indigenous Languages in Higher Education: A Case Study of One University in Zimbabwe" 2021 *African Perspective of Research in Teaching & Learning* 86.

higher education have a transformative duty to decolonise the medium of instruction. This submission considers that institutions of higher education as spaces are not limited to intellectual development, innovation, fostering of knowledge, or knowledge sharing through research and methodologies.<sup>9</sup> In truth, the decolonisation of medium of instruction in institutions of higher education may also be utilised as a social apparatus that contributes to the promotion of social cohesion by challenging the colonial and apartheid legacies, foster empowerment and holistic learning. As will be shown later in the paper, efforts towards the decolonisation process must be grounded on the building blocks of transitional justice with the view of promoting peace and social cohesion.<sup>10</sup>

The apartheid regime exacerbated and formalised already present systems of racial segregation. Overtime, the education system was utilised as a tool of oppression. Following its abolishment, the post-apartheid government established present day Historical Black Universities (HBUs) to empower black students, promote social justice and offer higher learning education to previously marginalised communities. Regrettably, as of 2023, not a single HBU has committed itself to transform or effectively integrate any African language or African languages in its surrounding community as a medium of instruction for the completion of undergraduate qualifications. That said, some snail-paced strides in some universities, not necessarily HBUs, are worth acknowledging for supporting completion of postgraduate qualifications or offering at least an undergraduate module. For instance, the University of South Africa (UNISA) conferred its first PhD in Setswana.<sup>11</sup> In other examples, Rhodes University conferred its first PhD in isiXhosa;<sup>12</sup> and at the University of Cape Town, students studying towards MBChB are required to pass an isiXhosa module.<sup>13</sup>

Over the years, contentious debates and court cases have surrounded the dominance of English and Afrikaans in higher education institutions. This has prompted conversations on the need for transformation of language in higher education institutions. Heeding Prof Phakeng's sentiments that "every university student in this country [should at least

9 Ntlama-Makhanya "Revisiting the Debate on the Constitutionalised Status of Indigenous Languages as Language of Record in South African Judicial Proceedings" 2021 *BLR* 1079.

10 Ramirez-Barat and Duthie *Education and Transitional Justice: Opportunities and Challenges for Peacebuilding* (2015) 4.

11 Power 98.7 "Meet Unisa's first Setswana PhD graduate" (2019-11-25) <http://www.power987.co.za/news/unisa-confers-first-phd-setswana/> (accessed 2023-10-25).

12 Skade "Meet the man who wrote Rhodes University's first isiXhosa PhD thesis" <https://www.ru.ac.za/latestnews/archives/2017/meetthemanwhowrotorhodesuniversitysfirstisixhosaphdthesis.html> (accessed 2023-10-25).

13 Anstey "UCT's Professor Mamokgethi Phakeng advocates for compulsory basic languages courses at universities" (2022-11-25) <https://www.usaf.ac.za/ucts-professor-mamokgethi-phakeng-advocates-for-compulsory-basic-language-courses-at-universities/> (accessed 2023-10-25).

be urged] to learn and be fluent in at least one of the nine languages” (nine having excluded English and Afrikaans),<sup>14</sup> this paper seeks to examine the role of transformative justice in navigating the language dilemmas in higher education institutions.

For the purpose of this paper, there are key considerations and meanings to be highlighted. First, colonial languages refers to English and Afrikaans.<sup>15</sup> Second, African languages will be used interchangeably with indigenous languages.<sup>16</sup> Third, reference to indigenous people refers to African or black people native to present day South Africa before the arrival of European explores and/or settlers. Fourth, unless otherwise stipulated, education should be understood within the context of education in higher education institutions. Fifthly, all reference to the Constitution, unless specifically indicated, refers to the Constitution of the Republic of South Africa. Lastly, the South African language dilemma is two-fold. A language policy may offer English and Afrikaans as a medium of instruction or it may offer English only. Over the years, many South African higher education institutions have relegated Afrikaans as a medium of instruction, thus opting for English as a preferred language. Whilst this appears as fostering inclusion-given that English is a universal language – the dominance of English underscores linguistic imperialism in the education system. That said, this paper aims to call for the development and elevation of indigenous languages of South Africa as medium of instructions.

Taking a textual analysis and having engaged relevant literature, the scope of the examination of the language conundrum will be limited to the 2021 *Chairperson of the Council of UNISA v AfriForum NPC* case; the 2022 Commission of inquiry into allegations of racism at Stellenbosch university also known as the Kampepe Report; and the 2023 South African Human Rights Commission’s Investigative Report into Allegations of Unconstitutional Language Practices at Certain Stellenbosch University Residences.

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14 Anstey “UCT’s Professor Mamokgethi Phakeng advocates for compulsory basic languages courses at universities” (2022-11-25) <https://www.usaf.ac.za/uacts-professor-mamokgethi-phakeng-advocates-for-compulsory-basic-language-courses-at-universities/> (accessed 2023-10-25).

15 According to Marle, Afrikaans originates from Dutch (a colonial language introduced by the Dutch coloniser in Southern Africa). See Marle “On the Interplay of Inherited and Non-inherited Features in Afrikaans Derivational Morphology” in Nielsen and Schösler (eds) *The Origins and Development of Emigrant Languages: Proceedings from the Second Rasmus Rask Colloquium, Odense University 1994* (1996) 103.

16 The 2020 Language Policy Framework for Public Higher Education Institutions describes indigenous languages as African languages that are native to people of Africa. These languages are Tshivenda, Sepedi, Sesotho, Setswana, siSwati, Xitsonga, isiNdebele, isiXhosa and isiZulu.

## 2 The language dilemma in higher education in South Africa: A comprehensive review of literature

The concept of a university is Eurocentric. Africa prior to colonisation did not have formalised western institutions that represent present-day universities. Even so, Africa had rich educational traditions that contributed towards the transmission of knowledge. For example, Muslim education was an education system that existed in pre-colonial Africa;<sup>17</sup> ancient Egypt had at least three categories of schools systems: royal schools, religious schools and common schools;<sup>18</sup> and Mansa Musa, emperor of the Mali empire (1312C.E. to 1337 C.E.) built schools, mosques and libraries.<sup>19</sup>

South Africa has experienced years of language oppression. This experience can be traced to the Cape settlement of the Dutch East India Company and the insistence of the settlers that the indigenous people of Southern Africa learn Dutch.<sup>20</sup> When European colonialism ended and internal colonisation began in 1961 following the Union of South Africa, there was a neo-colonial policy of official bilingualism that saw English and Afrikaans implemented with English retaining dominance. This stemmed from the language debate pre-apartheid 1652-1948. Following the rule of the National Party (1948-1994), the latter persisted and attempted to attain equality between English and Afrikaans in response to the struggle of resistance by Afrikaans speakers where English was imposed at the detriment of Afrikaans. This led to the dominance of Afrikaans and subsequently the 1976 Soweto Uprising.<sup>21</sup> The events following the uprising resulted in the exclusion of Afrikaans as a sole medium of instruction in all institutions of learning post-apartheid.

In post-apartheid South Africa, English was and continues to be deemed acceptable in comparison to Afrikaans as a medium of instruction. Nevertheless, the choice of either language as a primary medium of instruction disregards and hinders the development of indigenous languages native to black South Africans. This is emphasised by Ntlama-Makhanya, who asserts the dominance of the English languages affirms the still-born status of indigenous languages reducing these languages and many others, to second-class languages.<sup>22</sup>

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17 Ali "Historical Development of Muslim Education in East Africa" 2022 *Journal of Education in Muslim Societies* 129.

18 Fahim and Zoair "Education in Acient Eqypt Till the End of the Graeco-Roman Period: Some Evidence for Quality" 2016 *Journal of Association of Arab Universities for Tourism and Hospitality* 1-4.

19 Zamosky *Mansa Musa: Leader of Mali* (2007) 25.

20 Alexandra "Overcoming the Language Barrier" 1989 *Communicare* 67.

21 Alexandra 1989 *Communicare* 68.

22 Ntlama-Makhanya 2021 *BLR* 1087 and 1089.

It is imperative to acknowledge that the recognition of indigenous languages of South Africa as equal should not be overshadowed by mere oral communications. The status of equality, as enshrined in the Constitution,<sup>23</sup> should be reflected in institutions of learning to foster redress of historical injustices and contributing towards national economic development. The role of language in economic development of a state is supported by Zhang and Grenier who assert that a dominant language contributes to the economic success and the increase of economic efficiency of a state.<sup>24</sup> Sharing similar sentiments, Madadzhe asserts that, countries that utilise their native language for teaching and learning, for example, Italy, Britain, France, Netherlands, China, etc; are economically and socially advanced.<sup>25</sup> Whereas developing or underdeveloped African countries that were former colonies such as Angola, Benin, Ghana, South Africa, Democratic Republic of Congo, Cameroon, Senegal, Nigeria are plagued with political instability or high poverty and unemployment rates. These former colonies have adopted English or French as their medium of instruction in teaching and learning.<sup>26</sup>

The language problem in South Africa's teaching and learning process is extraordinary: On the one hand, tensions exist between two official languages, English and Afrikaans. On the other hand, tension exists between what Musitha and Tshibalo term "ethnic European" languages (English and Afrikaans) and the African languages native to Southern Africa.<sup>27</sup> The failure to commit towards the development and subsequent usage of indigenous languages beyond oral communication may contribute to the underdevelopment and subsequent abandonment of these languages. Aside from the lack of active political will from the South African government to develop indigenous languages native to present day South Africa, Mphasha *et al* lays out other reasons for the abandonment of indigenous languages native to South Africa to include scarcity in literature and academic textbooks.<sup>28</sup>

Considering the diversity in languages, it may be argued that higher education institutions should pursue having a dominant indigenous language spoken in their specific demographic as a medium of

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23 Section 6(4).

24 Grenier and Zhang "The Value of Language Skills: A Common Language Facilitates Communication and Economic eEfficiency, but Linguistic Diversity has Economic and Cultural Value too" 2021 *IZA World of Labour* 1.

25 Madadzhe "Using African Languages at Universities in South Africa: The Struggle Continues" 2019 *Stellenbosch Papers in Linguistics Plus* 209.

26 Madadzhe 2019 *Stellenbosch Papers in Linguistics Plus* 210.

27 Mavhungu, Musitha and Tshibalo "The Politics of Language in South African Institutions of Higher Learning" 2016 *European Journal of Research in Social Sciences* 3.

28 Mphasha, Nkuna and Sebata "The Impact of English Language as Medium of Instruction versus South African Indigenous Languages Offered as Modules on Academic Progress of First Year Higher Education Students: A Case Study of the University of Venda, Limpopo Province, South Africa" 2022 *Gender & Behaviour* 19258.

instruction, alongside the universally accepted English. For example, the Northern regions of Limpopo and the geographical location of the University of Venda is predominately Tshivenda speaking people; Tshivenda could be one of the medium language of instruction. In other study conducted by Musitha and Tshibalo, they found that in the Western Cape, Coloureds are the majority population (48%) followed by Black Africans with 32%. They recommended that in such a province, medium of instruction could be both Afrikaans for Coloureds and isiXhosa for Black Africans.<sup>29</sup> Whilst Afrikaans has long being considered a primary language of instruction, this recommendation supports the development and preservation of the isiXhosa. Aside from this, Mphasha *et al* take a holistic view and recommend that provinces may decide and determine what language medium they will adopt for institutions.<sup>30</sup>

The extreme poverty conditions of South Africa has also contributed towards inadequate education and illiteracy.<sup>31</sup> Numerous South African students, in primary and secondary education, who come from poor or disadvantaged backgrounds, are often taught in their mother-tongue for better understanding. When they transition to higher education institutions where English and/or Afrikaans are medium of instructions, language proficiency proves to be challenging.<sup>32</sup> Students who are not fluent in English, are not only marginalised, the inadequate use of either English or Afrikaans will most certainly affect their academic performance.<sup>33</sup> This is illustrated in the findings by Mphasha *et al*. Their study found that students of the University of Venda are not coping with using English as a medium of instruction as they are mostly native speakers of Tshivenda. Secondly, the study found that these students do not understand the lecturer during delivery of a lesson. Third, the study found that first entering students who were taught in their mother-tongue in primary and secondary education struggle with their academics at the university.<sup>34</sup>

It is regrettable that in nearly 30 years since gaining independence, the language dilemma continues to be a sensitive and complex issue that has led to education related disruptions post 1994. These post-independence outcries are a reminder of the racial categorisation or classification which contoured the colonial-apartheid history of South Africa.<sup>35</sup> This is centred on the reality that both English and Afrikaans speaking students are

29 Mavhungu, Musitha and Tshibalo 2016 *European Journal of Research in Social Sciences* 5.

30 Mphasha, Nkuna and Sebata 2022 *Gender & Behaviour* 19257.

31 <https://www.statista.com/statistics/1263290/number-of-people-living-in-extreme-poverty-in-south-africa/> accessed 2023-25-10.

32 Mphasha, Nkuna and Sebata 2022 *Gender & Behaviour* 19252.

33 Mphasha, Nkuna and Sebata 2022 *Gender & Behaviour* 19251- 19265.

34 Mphasha, Nkuna and Sebata 2022 *Gender & Behaviour* 19251- 19265.

35 Alexander "Afrikaans as a Language of Reconciliation, Restitution and Nation Building" 2009 [https://www.sahistory.org.za/archive/afrikaans-langu age-reconciliation-restitution-and-nation-building](https://www.sahistory.org.za/archive/afrikaans-langu-age-reconciliation-restitution-and-nation-building) (accessed 2023-10-26)

taught in their mother-tongue; however for black African students, this reality is not translated.<sup>36</sup>

As asserted by Alexandra, it is imperative to determine whether the state can transform indigenous languages as a resource.<sup>37</sup> In other words, can the state commit to transform [indigenous] languages into instruments of unification instead of division as they have been.<sup>38</sup>

### **3 The role of transitional and transformation justice in education systems.**

Transitional justice may be understood as justice that is associated with political change, grounded by legal responses to address the wrongdoing of the repressive predecessor regime.<sup>39</sup> There are numerous strategies, mechanisms or approaches that may be adopted in post-conflict societies or societies of previously repressive regimes. The process to address the human rights violations of the predecessor regime may include judicial (retributive approach) mechanisms such as prosecutions and non-judicial mechanisms (restorative approach) such as reparations and truth-seeking mechanisms.<sup>40</sup> Despite the fluidity of transitional justice approaches, scholars such as Molloy contend that at times, transitional justice mechanisms do not address violations of economic, social, and cultural rights thus ignoring socio-economic rights violations.

Following the abolishment of the apartheid regime, South Africa opted for a restorative justice approach to investigate human rights violations perpetrated during the apartheid regime. This approach was facilitated by the Truth and Reconciliation Commission established by the Promotion of National Unity and Reconciliation Act 34 of 1995. Essentially, a restorative justice approach is a victim centred approach that seeks to repair harm experienced by victims as a result of injustices and human rights violations. This form of justice is grounded on measures that seek to ensure prevention of future violations through cooperative processes that often include the victim, community and perpetrator; in order to secure truth, justice, reparations and guarantees of non-recurrence.<sup>41</sup> The focus of restorative justice is repairing the damage caused by the wrongful action and how to restore the well-being of those involved with

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36 Mphasha, Nkuna and Sebata 2022 *Gender & Behaviour* 19251-19265,19256.

37 Alexandra 1989 *Communicare* 67.

38 Alexandra 1989 *Communicare* 67.

39 Haldemann *Transitional justice for Foxes: Conflict, Pluralism and the Politics of Compromise* (2022) 17.

40 Robinson "Conceptualising Historical Legacies for Transitional Justice History Education in Postcolonial Societies" 2022 *History Education Research Journal* 2.

41 Chidhawu "A Turning-point for Transitional Justice? Political violence in Zimbabwe, and Transformative Justice as a Way Forward" 2024 *Law Democracy & Development* 135.



“emphasise on restoration of respect, equality, dignity, and the relationships affected by the harmful event”.<sup>42</sup>

Transitional justice and education can be employed simultaneously and contribute towards transformation.<sup>43</sup> In other words, education may be utilised as a tool for social change and cohesion in order to foster peacebuilding and guarantee non-occurrence.<sup>44</sup> For South Africa, the consideration of education as a tool for peacebuilding is particularly important considering marginalisation of languages indigenous to South Africa and the oppressive nature of schooling system under the apartheid regime. One may contend that the post-apartheid South Africa has taken a glacial approach to transform the education system that continues to reflect the colonial and apartheid legacy. This was buttressed in the 2015 #FeesMustFall, a student-led protest movement calling for the decolonisation and transformation of higher education institutions.<sup>45</sup> The movement put to the fore the deficit of the South African government in transforming the education system. Thus, though the movement had various goals, unrests on languages in higher education institutions nearly 30 years since attaining democracy highlighted the existence and impact of language marginalisation post-apartheid. This unending dilemma also contributes to disagreements and differences amongst individuals on the nature and existence of the colonial legacy.<sup>46</sup>

The snail-speed efforts by the South African government on its commitment to realise section 29(2) of the Constitution, continues to impact students particularly those from economically disadvantaged backgrounds. This could be attributed to the findings that economic backgrounds has an impact on reading proficiency. For instance, the National Assessment of Education Progression, a statistical agency in the United States of America, reported that grade 12 students from low-income families read four years below middle-class students.<sup>47</sup> For South Africa, and many other African countries, this has led to teachers, particularly in rural communities, translating learning materials in the classroom in order to ensure understanding of concepts.<sup>48</sup> The challenge arises when first year students from economically disadvantaged backgrounds begin their higher education. The lecturers often do not, or may not translate concepts or learning materials or allow students who understand the concept or material to explain it in their mother tongue.

42 Chidhawu 2024 *Law Democracy & Development* 135.

43 Robinson 2022 *History Education Research Journal* 2.

44 Ramirez-Barat and Duthie (2015) 6.

45 See Mutongoza, Mutanho, Linake and Makeleni “Reflections on Decolonising of Medium of Instruction at South African universities” (2023) *Research in Education Policy and Management* 95-108.

46 Robinson 2022 *History Education Research Journal* 2.

47 <https://www.booksourcebanter.com/2015/05/08/reading-achievement-gap/> accessed 2024-10-06.

48 See Montjane “The Influence of English on Mother-tongue in Learning and Teaching in Secondary Schools (Fet Band) with Specific Reference to Sepedi in Mankweng Circuit in the Limpopo Province” (Degree of Master of Arts 2013 University of Limpopo).

Considering that English is the medium of instruction, these students are likely to underperform academically.<sup>49</sup>

Consequently, it may be argued that the unavailability of indigenous languages in the higher education institutions may conjure up remembrance of student protests on accessible, free and decolonisation of education corroborated in the 2015 #FeesMustFall and 1976 Soweto uprising. The continuous neglect of education as a vehicle and apparatus for a transformative society contributes in the narrative of failure to redress legacies of conflict and repression, inequality and social division.<sup>50</sup> Characterised by being a multilingual and multicultural nation, revolutionary solutions ought to be explored and adopted in an attempt to address interethnic and interracial tensions amongst South Africans post-apartheid.<sup>51</sup>

The 1996 Constitution of South Africa provides that the state must take practical and positive measures to elevate the status and advance the use of indigenous languages.<sup>52</sup> Section 29(2) provides for the right to receive education in the official language(s) of choice in public education institutions. However, the caveat of the provision is that the choice must be reasonably practicable. This caveat offers black South African students the Hobson's choice: a choice to choose between English or Afrikaans (linguistic imperialism) or nothing at all.<sup>53</sup> As a duty-bearer, the state must consider educational alternatives including single medium institutions. In doing so, it must consider: equity, practicability, the need to redress the results of past racially discriminatory laws and practices.<sup>54</sup> The failure of the state to realise this obligation may prompt one to contend that linguistic imperialism exists in democratic South Africa.<sup>55</sup> Thus for Madadzhe, the new era of a democratic South Africa was accompanied by optimism that native languages of South Africa will be languages of teaching and learning. However, in practice, as Madadzhe states:

[T]his optimism was not misplaced, it was however doused to some extent as proponents of African languages were confronted by multifaceted complexities that are often associated with language use in higher education such as the lack of support from officials and students, and the entrenched dominance of English in all key areas (study materials, technology and funding).<sup>56</sup>

49 See Mphasha, Nkuna and Sebata 2022 *Gender & Behaviour* 19251- 19265.

50 Ramirez-Barat and Duthie (2015) 5.

51 Vora and Vora "The Effectiveness of South Africa's Truth and Reconciliation Commission: Perceptions of Xhosa, Afrikaners, and English South Africa" 2004 *Journal of Black Studies* 301-322.

52 The Constitution, s 6(2).

53 Musitha and Tshibalo "The Politics of Language in South African Institutions of Higher Learning" 2016 *European Journal of Research in Social Sciences* 1-11.

54 The Constitution, s 29(2).

55 Canagarajah and Ben "Linguistic Imperialism' in Simpson (ed) *The Routledge Handbook of Applied Linguistics* (2011) 388.

56 Madadzhe 2019 *Stellenbosch Papers in Linguistics Plus* 206.

It is not sufficient to acknowledge English as an imperialist tool. The South African government and higher education institutions need to redesign language policies and the development of indigenous languages with consideration of the pedagogical and epistemological access of these languages.<sup>57</sup> Having said that, it may be argued that the South African government lacks the necessary active political will to realize the provisions contained in section 29(2) of the Constitution. Furthermore, the government and higher education institutions are complicit in the lack of developing indigenous languages due to either their vague approach on implementation of existing policies and lack of monitoring or non-monitoring mechanisms.<sup>58</sup> This lack of commitment enables and contributes towards the development and continued dominance of English.<sup>59</sup> As argued above, in the 30 years since independence, none of the HBU have adopted their demographic native language as a medium of instruction, consequently resulting in English as the sole medium of instruction. This remains to be determined whether this is a true reflection of a transformed society. Notwithstanding this reality, some Afrikaans and English medium of instruction universities have attempted to rewrite the narrative as seen in Stellenbosch University. The university has formally recognised in their language policy isiXhosa as its third official language, however, only where it is reasonably practicable. Language policies of South African universities that promote indigenous languages may be perceived as tools of social redress and a response of the exclusion and marginalisation of such languages by the apartheid system.<sup>60</sup> The implementation of indigenous languages in language policies of higher education institutions is a challenge in South African universities. One of the primary challenges can be attributed to mainly the delay by the state to promote and prioritise publication of scientific research material in those languages.<sup>61</sup> Thus, according to Theledi and Masote, there is very little effort towards challenging the status of the dominant languages such as English in the education system.<sup>62</sup> Consequently, this is contributing towards the alienation, underdevelopment and possible extinction of other indigenous languages.<sup>63</sup>

It is imperative for the South African government to escape the international capitalist systems which continues to restrict the social and economic growth of the country. Certainly, it is an undisputed reality that

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57 Cele "Understanding Language Policy as a Tool for Access and Social Inclusion in South African Higher Education: A Critical Policy Analysis Perspective" 2021 *South African Journal of Higher Education* 35.

58 Cele 2021 *South African Journal of Higher Education* 25-26.

59 Cele 2021 *South African Journal of Higher Education* 25-26.

60 Cele 2021 *South African Journal of Higher Education* 28-29.

61 See Theledi and Masote "Indigenous Language Policy in Academic Writing at South African Higher Education: The Issue of Publishing and Accessing Scientific Material in Setswana" 2024 *African Journal of Inter/Multidisciplinary Studies* 2.

62 Theledi and Masote 2024 *African Journal of Inter/Multidisciplinary Studies* 3.

63 Theledi and Masote 2024 *African Journal of Inter/Multidisciplinary Studies* 4.

English has been accepted as a universal language useful for international commerce, diplomacy and globalisation. Consequently, South Africa's official languages can, with the necessary political will, coexist with English and be utilised concurrently in teaching and learning in order to prevent isolation of the global scholarship.<sup>64</sup> However, the development of other official languages contained in the Constitution will remain unfeasible if these languages are not developed scientifically and for academic scholarship to ensure implementation as mediums of instruction.<sup>65</sup> In truth, whilst most universities have formulated language policies that include the development of at least one indigenous language for academic purposes, the implementation of such language policies presents significant challenges.

Building on the arguments and case law analysis in a previously co-authored publication on the same issue,<sup>66</sup> this paper will focus on the developments since that publication, specifically the 2022 *UNISA v Afriforum* case and the 2022 and 2023 commission reports on Stellenbosch University.

## **4 Language policies in higher education institutions: A Synopsis of *UNISA v Afriforum* and Commission reports on Stellenbosch University**

### **4 1 *Chairperson of the Council of UNISA v AfriForum* 2022 (2) SA 1 (CC)**

In this case, UNISA approached the Constitutional Court to decide if its 2016 language policy decision was constitutional, reasonable, and procedural. The aforementioned language policy promoted indigenous African languages, phased out Afrikaans, and removed the requirement that courses be taught in both Afrikaans and English.<sup>67</sup>

Before the matter was heard in the Constitutional Court, it was initially heard in the High Court where AfriForum NPC (AfriForum), filed an application in the High Court to review and set aside the language policy arguing procedural irregularities and its inconsistent application of section 29(2) of the Constitution. AfriForum further disputed the 2016 language policy's constitutionality and rationale. AfriForum further submitted that the language policy violated section 29(2) of the

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64 Madadzhe 2019 *Stellenbosch Papers in Linguistics Plus* 214.

65 Neethling "Xhosa as Medium of Instruction in Higher Education: Pie in the Sky?" 2010 *Journal for Language Learning* 68.

66 Munyai & Phooko "Is English Becoming a Threat to the Existence of Indigenous Languages in Institutions of Higher Learning in South Africa?" 2021 *De Jure* 298-327.

67 *Chairperson of the Council of UNISA v AfriForum NPC* 2021 32 ZACC SA 1 (CC) para 3.

Constitution since it does not accommodate Afrikaans pupils' who wish to be taught in their language, even though it is reasonably practicable.<sup>68</sup> The High Court concluded that UNISA was justified in discontinuing Afrikaans as a language of teaching and learning for equity, practicability, and redressing previous racially discriminatory actions. It held that section 29(2) of the Constitution was not violated.<sup>69</sup> The High Court found the language policy reasonably tied to UNISA's authority under section 27(2) of the Higher Education Act 101 of 1997 and the National Language Policy. Furthermore, the High Court stated that although the National Language Policy supports Afrikaans as a language of university and science, it does not prevent policies that remove Afrikaans.<sup>70</sup>

AfriForum appealed the High Court's decision to the Supreme Court Appeal (SCA). Citing *Ermelo*, the SCA stressed that the state has a negative responsibility not to reduce a student's right to be taught in their preferred official language without justification. It claimed UNISA failed to prove that the dual English/Afrikaans teaching and learning approach was unsustainable to warrant its termination.<sup>71</sup> The SCA found UNISA's resource-based argument unsatisfactory in light of section 29(2) of the Constitution's normative substance. The Court stressed that section 29(2) of the Constitution compliance goes beyond the availability of resources.<sup>72</sup> The SCA overturned the imposed language policy as unconstitutional and unlawful. It ordered UNISA to resume Afrikaans modules that were suspended by the language policy.<sup>73</sup>

Unsatisfied with the SCA decision, the matter proceeded to the Constitutional Court (ConCourt). This court held that UNISA as an organ of state, is obliged in terms of section 29(2) of the Constitution to "consider all reasonable educational alternatives, including single medium institutions, taking into account (a) equity; (b) practicability; and (c) the need to redress the results of past racially discriminatory laws and practices".<sup>74</sup>

For the ConCourt, UNISA's decision to drop Afrikaans as a language of instruction must be reviewed against section 29(2)'s objective standards of reasonableness. An evaluation of whether UNISA considered all reasonable educational alternatives, taking into account paragraphs (a), (b), and (c) above, needed to be made. The ConCourt held that UNISA cannot simply announce that a decision was taken, regardless of how it was taken and without providing any account of what was discussed, and then leave it to the ConCourt to determine its objective reasonableness.<sup>75</sup>

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68 Para 3.

69 Para 32.

70 Para 33.

71 Para 34.

72 Para 34.

73 Para 36.

74 Para 54.

75 Para 56.

Whilst the court held that there was no evidence that Afrikaans tuition will stigmatize students or inhibit English students from fully participating in UNISA's studying and other possibilities; it appears for the ConCourt, there was no threat of marginalisation, stigmatisation, or exclusion.<sup>76</sup>

The ConCourt held that to meaningfully implement section 29(2), all acceptable educational alternatives have to be considered, along with equity, practicability, and the need to address our apartheid past. According to the ConCourt, UNISA failed to do that.<sup>77</sup> The ConCourt held that UNISA's decision in 2016 to implement the new language policy and phase out Afrikaans as a language of learning and instruction violated section 29(2) of the Constitution, rendering that decision null and void. The ConCourt held that the SCA was correct in setting aside the 2016 decision to implement a new language policy.<sup>78</sup>

## **4 2 The 2022 Sisi Kampepe Report: Commission of inquiry into allegations of racism at Stellenbosch university**

In May 2022, Stellenbosch University experienced two separate racial motivated incidents. These incidents prompted the Rector and Vice-Chancellor to set up the Commission of Inquiry into Allegations of Racism (the Commission) on June 2022.<sup>79</sup> The Commission established that despite the University's extensive demographics transformation efforts, it was reported that some black members of the University experienced alienation and exclusion within the University environment.<sup>80</sup>

The Commission made several findings. Amongst others, the Commission found that there was a perception that the University reflects heritage and symbolic significance of the Afrikaans community. Moreover, it was determined that this perception affects the support of transformation efforts as the latter is viewed as a threat to the community subsequently leading to resistance to challenge any process of transformation.<sup>81</sup> The Commission also found that some staff members were subjected to intimidation, which resulted in their reluctance to report any grievances.<sup>82</sup> The Black staff members were reported to frequently encountering instances of covert racism and marginalisation, which instil in them the perception that they must exert additional effort to advance in their professional trajectories and garner the esteem of both their students and colleagues.<sup>83</sup> In light of this, transformation processes aimed to redress past inequalities in historically white universities are often met with numerous challenges. Acknowledging this,

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76 Para 63.

77 Para 77.

78 Para 78.

79 Commission of Inquiry para 10.

80 Commission of Inquiry para 156.

81 Commission of Inquiry para 164.

82 Commission of Inquiry para 460.

83 Commission of Inquiry para 460.

the Commission commended the University of the efforts it undertook towards furthering its transformation efforts. Apart from the compliment, the University was criticised for its transformative apparatus appearing to be disjointed.<sup>84</sup>

To offset the possible exclusion of languages other than Afrikaans, the Commission submitted that the University must conduct a full examination and reform of its multilingual language policy. It was suggested by the Commission that the University undertake a thorough examination and revision of its language policy in order to eliminate the potential for language exclusion resulting from a preference for Afrikaans.<sup>85</sup>

The Commission emphasised the necessity for the University community and society to foster an inclusive environment that facilitates the prosperity of all individuals. However, achieving this objective necessitates the collective adaptation of all stakeholders. The Commission proposed the implementation of a mandatory Shared Humanities course aimed at fostering self-reflection.<sup>86</sup> What remains following any policy amendments is change of attitude of a university community. It is imperative, as outlined in the report, that South Africa's history is acknowledged in order to implement transformative processes.<sup>87</sup> To ensure that this occurs, the Commission recommended training of staff to ensure matters relating to discrimination are addressed accordingly.<sup>88</sup> This recommendation is relevant to all institutions irrespective of their historical basis of establishment.

Institutional language policies must reflect the transformation agenda and must buttress on inclusive growth and development. In light of this, the report emphasised on the importance of utilising one's mother-tongue language, however in doing so, context ought to be considered.<sup>89</sup> The Commission recommended Stellenbosch University to take heed of its negative duty not to "deprive Afrikaans-speaking students of their enjoyment of the right to study in their preferred language without appropriate justification".<sup>90</sup> However practically, what amounts to appropriate justification remains to be determined.

Interestingly, with reference to language policies, the Commission cited two principles from the *UNISA AfriForum and Gelyke* judgments. First, generally there is no obligation on universities to teach in a student's language of choice if that student is already benefiting from being taught in their preferred language. Secondly, for a university to

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84 Commission of Inquiry para 414.

85 Commission of Inquiry para 543.

86 Commission of Inquiry para 501.

87 Commission of Inquiry para 501.

88 Commission of Inquiry para 515.

89 Commission of Inquiry para 533.

90 Commission of Inquiry para 535.

deprive one's language of choice in teaching requires a balance of various interests and considerations.<sup>91</sup>

One may content that the first principle does not reflect the current position of most South African students. What most students in South Africa face in higher education institutions is either choosing between Afrikaans or English; or have English as a default language rather than a language of choice.<sup>92</sup> Unfortunately, in either option, some students may remain prejudiced due to their limited exposure of the language. As reflected in various studies including Mphasha *et al*, students from rural South Africa experience difficulty in their quest to attain higher education due to language barriers.<sup>93</sup> Whether this struggle may be perceived as being prejudicial is subjective, nonetheless, the language conundrum in South Africa is much far greater than the confines of higher education teaching. In view of the second principle, universities may further be urged to provide assistance, for example glossaries, tutorials, etc for those students who are likely to struggle with the language in an attempt to enhance their understanding in the learning process. Unfortunately, more often, this may be hindered or dependent on financial constraints.

### **4 3 The 2023 South African Human Rights Commission Stellenbosch University Language report**

The matter before the South African Human Rights Commission (SAHRC) specifically concerned the use of language in various residences managed by the Stellenbosch University during the two opening weeks of the 2021 academic year. The matter before the SAHRC did not concern the use of language in the academic setting of Stellenbosch University.

The complaints received by the SAHRC alleged that students at Stellenbosch University were being prevented from communicating in Afrikaans; specifically in private settings, i.e. residences, and digital platforms such as *WhatsApp*. Afrikaans speaking students called out these actions as violating their cultural and language rights. It was further alleged that those who communicated in Afrikaans were threatened with disciplinary action or subjected to public bullying.<sup>94</sup> Residence leaders submitted to the SAHRC that all new students were requested to speak English during the open week period. It was argued that the purpose of communicating in English exclusively was to promote inclusivity thus enabling students to converse in a language commonly understood. More so, certain leaders in the residences were of the view that the English-only request complied with paragraph 7.2.5 of the 2016 Language policy

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91 Commission of Inquiry para 536.

92 As reiterated in the above discussion, the choice of either English and Africans jeopardises the development of indigenous languages.

93 Mphasha, Nkuna and Sebata 2022 *Gender & Behaviour* 19251- 19265.

94 South African Human Rights Commission's Investigative Report into Allegations of Unconstitutional Language Practices at Certain Stellenbosch University Residences (15 March 2023) paras 2, 3 and 4.4.1.



of the university.<sup>95</sup> Interestingly, Stellenbosch University denied having a policy that requires students to communicate in English in residences and further submitted that its university policy does not prevent students from speaking Afrikaans or any other language; and denies issuing an English-only policy to residences.<sup>96</sup>

Having considered the complaints, the SAHRC had to determine whether Stellenbosch University took steps to require the exclusive use of English or prohibit use of Afrikaans at its residences or elsewhere on campus; if so, whether this violated the constitutional rights of students.<sup>97</sup> It was determined that various residences implemented a policy during the two opening weeks of 2021. The policy required all students to only speak English for the duration of the open weeks in all welcoming activities, socialising and presentations led by the residences without the official consent of the university.<sup>98</sup> The SAHRC considered whether students can be instructed on use of language in a formal context, such as welcoming events within the setting of a residence.<sup>99</sup>

Following allegations of students experiencing hostility for communicating in Afrikaans, it was presented to the Commission that an open letter was addressed to Stellenbosch University by its Department of Afrikaans and Dutch. The contents of the letter concerned the allegations of hostilities on the basis of their language of choice and criticising the university for failing to recognise Afrikaans as an indigenous language. The SAHRC determined that a response was issued by Professor De Villiers apologising for the allegations of student prohibition of using the language in a social setting emphasising that this was not only wrong, but inconsistent with the university policy.<sup>100</sup>

The SAHRC was only limited to the application of the 2016 Language Policy within the context of residence policies during the 2021 open day weeks. In other words, the SAHRC was not examining the constitutionality of the language policy provisions. Nevertheless, it was determined that Stellenbosch University residences implemented a policy to regulate the exclusive use of English during the said period.<sup>101</sup> The SAHRC was satisfied that affected students in the residences were prevented from speaking a language of their choice and thus pressured to speak another language in fear of facing consequences or prejudice.<sup>102</sup> Having determined that it was indeed a requirement to speak only English and that pressure was placed to ensure this, the SAHRC had to analyse whether this had a disproportionate impact on Afrikaans

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95 Paras 4.5.1 - 4.5.3.

96 Paras 4.5.9 - 4.5.10.

97 Paras 4.2.1

98 Paras 4.3.1 - 4.3.2.

99 Paras 4.3.10.

100 Paras 4.3.4 - 4.3.10.

101 South African Human Rights Commission's Investigative Report into Allegations of Unconstitutional Language Practices at Certain Stellenbosch University Residences (15 March 2023) para 6.5.1.

102 Para 6.2.8.

students. It was established that indeed, this resulted in the exclusion of Afrikaans and other languages.<sup>103</sup>

According to the SAHRC, Stellenbosch University did not recognise its 2016 language policy could cause the ban of other languages if not interpreted and applied properly. Moreover, according to the SAHRC, the university failed to recognise its positive duty to educate and train stakeholders in the proper interpretation of its 2016 language policy.<sup>104</sup> The SAHRC satisfied itself and found that there was no English-only policy developed by Stellenbosch University to be applied in residences. Moreover, the SAHRC found that it would not be reasonable and practicable to require students to speak, at any time, in a particular language.<sup>105</sup> Considering this, it was found that residence policies were inconsistent with the 2016 language policy of the university.

The SAHRC further found that Stellenbosch University, through its residence policies, unfairly violated the human rights of affected students to freedom of expression, to which the SAHRC determined that when a superior authority or figure forces, requires, coerces or pressures another to communicate in a language other than their own “diminishes the choice of language through which one communicates”<sup>106</sup> and thus limits the Constitutional right to freedom of expression.

Concerning equality and the right not to be discriminated against on the basis of language, there were allegations from non-English speakers that they (students) were discriminated against on the basis of language. The SAHRC determined that the discrimination experienced by non-English students was unfair guided by section 14 of the Promotion of Equality and Prohibition of Unfair Discrimination Act 4 of 2000. It was determined that large number of non-English students were excluded thus leading to tension and division in residences.<sup>107</sup> Concerning human dignity, the SAHRC was satisfied that the right to choose a language of communication is intertwined with self-worth and dignity. Thus, the unfair discrimination on language usage attacked the human dignity of the students as language is an immutable characteristic.<sup>108</sup>

In view of the report, it is unclear how the residence leaders considered how the use of English only and excluding other languages, could foster inclusion. Nevertheless, this consideration further supports the arguments that institutional leaders perpetuate the language hierarchies and linguistic imperialism. Ultimately, the outcome the residence leaders aimed resulted in exclusion and unfair discrimination on the basis of language.

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103 Para 6.3.2.

104 Paras 6.4.3 and 6.4.10.

105 Para 6.4.4.

106 Paras 7.1.7 - 7.1.8.

107 Para 7.3.

108 Paras 7.3.5a and 7.4.

## 5 Conclusion

The reviewed case and reports illuminate the ongoing challenge of language in South Africa's higher education institutions. Notwithstanding the efforts by some institutions such as Stellenbosch to recognise an indigenous language as one of the medium of instruction, the caveat of reasonability and practicability remains. Fundamentally, the same efforts ought to be evident in HBUs.

Whilst the paper argues for the development and inclusion of indigenous languages in the teaching and learning process, the paper is not calling for an anti-Afrikaans environment, particularly in historically white institutions. The contention is that the language debate should not be limited to the choice between English and Afrikaans. Instead, the conversation should be broadened to reflect linguistic diversity of South Africa. For some time, English and Afrikaans have dominated whilst overshadowing indigenous languages that predate colonialism and are spoken by the majority of South Africans. This reality perpetuates linguistic hierarchy despite language equality enshrined in section 6 of the Constitution.

The dialogue on the development of indigenous languages should be addressed delicately as it requires engagement on the need for redress and transformation of societies for the promotion of social cohesion. Moreover, whilst some higher education institutions have revised their language policies to include indigenous languages, the exercise of inclusion should be accompanied by efforts directed towards their development and subsequent usage to enable students to choose to learn in their mother-tongue or any other indigenous language of their choice. Grounded by section 6, the aim of the state and higher education institutions is not to eliminate English or Afrikaans, rather to establish a multilingual academic environment that reflects the language diversity. The utopia of a rainbow nation should not be abstractly inked in black and white. The state must have active political will to support higher education institutions to develop and integrate indigenous languages in the teaching and learning process. This support will illustrate efforts towards the elimination of language imperialism.