
GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. 410

11 May 2015

INVITATION TO SUBMIT COMMENTS ON THE DRAFT LANGUAGE POLICY

The Department of Justice and Constitutional Development intends to adopt a Language Policy for the Department in terms of section 4(1) of the Use of Official Languages Act, 2012 (Act No. 12 of 2012) ("the Act").

In terms of Regulation 3(2) of the Act, the Department hereby invites interested persons to submit their comments on the proposed draft Language Policy within 30 days of the date of publication of this notice at any of the following addresses:

For attention:

Director General
Ms. TN Sindane
C/O Adv. Elias Mathe / Ms. Nomakhosi Mngaza
Department of Justice and Constitutional Development
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Or

By fax at: 086 692 6313

Or

By email at the following email addresses:

EIMathe@justice.gov.za / NMngaza@justice.gov.za

Signed by:



TM Masutha, MP (ADV)

Minister of Justice and Correctional Services

Date: 29 April 2015



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

POLICY ON USE OF OFFICIAL LANGUAGES OF THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

(Draft v1)

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Preamble

WHEREAS the Use of Official Languages Act, 2012 (Act No. 12 of 2012) requires that every national department, national public entity and national public enterprise must adopt a language policy and establish language units;

AND RECOGNISING THAT—

- (a) Prior to the advent of democracy in 1994, English and Afrikaans were the only official languages of South Africa and their exclusive official recognition resulted in the alienation of speakers of the indigenous African languages from the justice system;
- (b) With the dawn of democracy, the Constitution of the Republic of South Africa embraced the principle of multilingualism with 11 languages being granted official language status. Section 6 of the Constitution recognizes the following languages: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu, as the official languages of the country;
- (c) The Use of Official Languages Act seeks to give effect to multilingualism;

AND IN ORDER TO—

- (a) provide a policy framework to redress the linguistic inequality and imbalances of the past and embrace the country's linguistic diversity;
- (b) ensure that the values underpinning the Constitution are embraced;

The Department has adopted the Policy on the Use of languages in order to regulate and monitor the use of official languages for purposes of conducting its official business as as follows:-

1. DEFINITIONS

In this draft policy, unless the context indicates otherwise –

"Constitution" means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

"Department" means the Department of Justice and Constitutional Development;

"Functional multilingualism" means an approach in which the demographic, economic and attitudinal factors contemplated in section 6(3) of the Constitution are taken into account in language planning and policy development so as to ensure effective communication and participatory democracy;

"Interpreting", in relation to oral utterances, means the transposing of utterances of one language into utterances of another language and, in relation to signed utterances, means the transposing of the sign language into a spoken language and the other way round, with **"interpret"** having a corresponding meaning;

"Language of record" means an official language chosen for record keeping or archiving processes and documentation of the Department;

"Language rights" means the linguistic human rights that are established by legislation, which rights determine the situations in which personnel and clients can elect to use their predominantly spoken language;

"Liaison interpreting" means the process whereby an interpreter interprets from one language into another and back, most often in a short consecutive interpreting mode. This may include sign language interpreting;

"MTEF" means Medium Term Expenditure Framework;

"Multilingualism" means the use of several of the official languages of the country in the written and oral communication;

"Official language" means an official language in terms of section 6(1) of the Constitution;

"PanSALB" means the Pan South African Language Board, established by the Pan South African Language Board Act, 1995 (Act 59 of 1995);

"Service points" means points of customer service administered by the DOJ&CD and the Office of the Chief Justice, which excludes court proceedings and any court processes;

"Translation" means the transposing of a text from one language into another, and

"Working language" means an official language chosen by the Department as the language most practicable to use in a particular circumstance and/or communication event.

ACRONYMS

DAC	Department of Arts and Culture
doj&cd	Department of Justice and Constitutional Development
PAIA	Promotion of Access to Information Act 2000
PanSALB	Pan South African Language Board
SASL	South African Sign Language

2. PURPOSE

2.1 The purpose of the draft policy is to:

- (a) Regulate and monitor the use of official languages for the department;
- (b) promote and develop the use of indigenous official languages within the department and all of its clients; and
- (c) address issues of promoting parity of all languages by effecting the legislative requirements of the Act.

3. CONSTITUTIONAL AND LEGISLATIVE BASIS FOR THE POLICY

3.1 The draft policy is based on the following policies and legislation:

3.1.1 **The Constitution of the Republic of South Africa, 1996, (Act No. 106 of 1996)**

3.1.1.1 **Section 6(3)(a)** sets out the various factors that government departments must take into account when determining which official languages to use for their purposes. The following are some of the factors to be taken into account:

- (a) Usage
- (b) Practicality
- (c) Expense
- (d) Regional circumstances, and
- (e) The balance of the needs and preferences of the population as a whole or in the province concerned.

3.1.1.2 **Section 6(4)** obliges the national and provincial government departments to regulate and monitor the use of official languages by legislative and other measures.

3.1.1.3 **Section 9(3) and (4)** prohibit amongst others, discrimination on the basis of language, ethnicity, race and culture.

3.1.1.4 **Section 30** gives individuals the right to use a language of their choice, and

3.1.1.5 **Section 31** protects the rights of linguistic communities to use their language.

3.2 The Use of Official Languages Act, 2012

3.2.1 The Use of Official Languages Act, 2012 contains various regulatory mechanisms, which include:

- (a) Section 4, the obligation to adopt language policies, and

- (b) Section 7 the requirement that every national department, national public entity and national public enterprise must establish language units;

3.3 The Promotion of Access to Information Act (PAIA), 2000 (Act No. 2 of 2000)

3.3.1 Language of Access

3.3.1.1 Section 31 of this Act provides that a requester whose request for access to a record of a public body has been granted must, if the record—

- (a) Exists in the language that the requester prefers, be given access in that language; or,
- (b) does not exist in the language so preferred or the requester has no preference or has not indicated a preference, be given access in any language the record exists in.

4. OBJECTIVES OF THE POLICY ON USE OF OFFICIAL LANGUAGE

4.1 The policy seeks to achieve the following objectives:

- (a) Promotion of the equitable use of the 11 official languages;
- (b) Facilitation of equitable access to the services offered by the doj&cd;
- (c) Promotion of good language management in the doj&cd for efficient public service administration and service delivery;
- (d) Effective communication in the doj&cd as well as access to services, resources, programmes, information and knowledge for all South Africans;
- (f) Redress the linguistic inequalities of the past which resulted in the underdevelopment of the indigenous African languages and discrimination against speakers of those languages.

5. GUIDING PRINCIPLES / VALUES

The draft policy is based on the constitutional obligations to ensure equal treatment of the official languages of the country which includes:

- (a) Parity of usage
- (b) Development on language
- (c) Ubuntu
- (d) Equity
- (e) Redress
- (f) Non discrimination
- (g) Inclusiveness

6. SCOPE OF THE POLICY

The policy is applicable to –

- (a) All personnel of the DOJ&CD and Office of the Chief Justice; and
- (b) all services offered by the DOJ&CD at all its offices and service points but excluding court proceedings.

7. LINGUISTIC PROFILE OF THE COUNTRY

7.1 Census figures in accordance to Provincial Language Demographics

(a) Figure A - Population by first language spoken per province (number)

First Language	WC	EC	NC	FS	KZN	NW	GP	MP	LP
Afrikaans	2 820 643	683 410	606 225	340 490	161 876	309 867	1 502 940	289 446	140 185
English	1 149 049	362 502	37 842	78 782	1 337 606	120 041	1 603 464	124 646	78 692
IsiNdebele	15 238	14 854	6 023	10 008	111 657	43 988	380 494	403 678	104 283
IsiXhosa	1 403 233	5 092 152	60 187	201 145	340 832	190 601	796 841	48 993	20 275
IsiZulu	24 634	31 634	8 501	118 126	7 901 932	84 835	2 390 036	965 253	62 424
Sepedi	8 144	14 299	2 431	7 395	20 555	83 999	1 282 896	372 392	2 826 464
Sesotho	64 066	158 964	14 136	1 717 881	79 416	201 153	1 395 089	138 559	80 299
Setswana	24 534	12 607	373 086	140 228	52 229	2 191 230	1 094 599	71 713	107 021
SiSwati	3 208	2 020	648	2 246	8 347	12 091	136 550	1 106 588	25 346
Tshivenda	4 415	3 663	1 083	2 592	4 309	16 255	272 122	12 140	892 809
Xitsonga	9 152	3 092	1 201	8 039	8 936	127 146	796 511	416 746	906 325
Total	5 675 604	6 458 325	1 127 683	2 675 777	10 153 789	3 457 004	12 075 861	3 998 726	5 338 675

Legend: First predominant language – Yellow
 Second predominant language - Green
 Third predominant language – Grey

(b) Figure B - Population by first Language spoken per Province (per percentage)

Language	WC	EC	NC	FS	KZN	NW	GP	MP	LP
Afrikaans	49.7	10.6	53.8	12.7	1.6	9.0	12.4	7.2	2.6
English	20.2	5.6	3.4	2.9	13.2	3.5	13.3	3.1	1.5
IsiNdebele	0.3	0.2	0.5	0.4	1.1	1.3	3.2	10.1	2.0
IsiXhosa	24.7	78.8	5.3	7.5	3.4	5.5	6.6	1.2	0.4
IsiZulu	0.4	0.5	0.8	4.4	77.8	2.5	19.8	24.1	1.2
Sepedi	0.1	0.2	0.2	0.3	0.2	2.4	10.6	9.3	52.9
Sesotho	1.1	2.5	1.3	64.2	0.8	5.8	11.6	3.5	1.5
Setswana	0.4	0.2	33.1	5.2	0.5	63.4	9.1	1.8	2.0
SiSwati	0.1	0.0	0.1	0.1	0.1	0.1	1.1	21.7	0.5
Tshivenda	0.1	0.1	0.1	0.1	0.0	0.5	2.3	0.3	16.7
Xitsonga	0.2	0.0	0.1	1.3	0.1	3.7	6.6	10.4	17.0

8. POLICY RECOMMENDATIONS

8.1 Guiding principles for use of official languages by the doj&cd

The doj&cd has taken the following factors into consideration for purposes of determining languages to be used in its offices and services points, namely:

- (a) Stats SA Census Report 2011;
- (b) Peculiar circumstances pertaining to its service points and sites;
- (c) The recognition that English has become the general language of usage nationally and internationally;
- (d) The acknowledgment that Afrikaans, despite the fact that it does not enjoy popular usage in certain provinces, is an indigenous language that has enjoyed official status in the past and has therefore become a second language to many communities. It is for this reason that Afrikaans has been retained as an additional language despite it being the least spoken language in other provinces so as not to diminish its official status; and
- (e) The historical demographics of the country in terms human settlement caused by the apartheid policy and the establishment of self-governing states pre 1994. This is reflected in the following instances, in particular:

- (i) The Mpumalanga Province incorporates the old KwaNdebele where isiNdebele was the official language of the self-governing territory. Therefore despite the fact that isiZulu is mostly spoken that isiNdebele in the Province, the latter warrants official recognition over the former as the Ndebele community is largely concentrated in the area. The isiNdebele language is the least spoken languages in all other provinces and failure to recognize the language in the Mpumalanga Province will result in the exclusion of the language from the recognized official languages;
- (ii) In respect of the North West Province, Sesotho is preferred over isiXhosa language which is the result of the influence of the old Qwaqwa territory and Free State which border the North West Province.

8.2 Recommended use of official language by the doj&cd

8.2.1 Taking into account the factors mentioned in paragraph 8.1 above the doj&cd has, for purposes of determining languages to be used generally in its offices and services points in the corresponding provinces, adopted the languages reflected in the table below:

Province in Service points are located	Languages adopted per province
National and Gauteng Province	IsiZulu, Sesotho, Sepedi, English and Afrikaans
Eastern Cape	isiXhosa, English, Afrikaans and Sesotho
Free State	Sesotho, Afrikaans, English and isiXhosa
KZN	isiZulu, English, isiXhosa and Afrikaans
Limpopo	Sepedi, Xitsonga, Tshivenda, Afrikaans and English
Mpumalanga	SiSwati, isiNdebele, Afrikaans and English
Northern Cape	Afrikaans, Setswana, isiXhosa and English
North West	Setswana, Afrikaans, Sesotho and English
Western Cape	Afrikaans, isiXhosa and English

8.2.2 The use of official languages as provided in the table under paragraph 8.2.1 above seeks to adopt a minimalistic approach and recognises the need for its progressive implementation to realize the promotion of multilingualism.

8.3 Languages for people with disabilities

8.3.1 In recognition of the historically marginalized languages used by people with disabilities the department will strive to also promote the usage of braille and sign languages. The doj&cd will provide all its official documents in braille upon request and will facilitate the use of braille by blind and partially sighted officials.

8.3.2 In all public events hosted by doj&cd the South African sign language interpreting shall be made available, where necessary..

8.3.3 With regard to any language requirement for non-nationals, the doj&cd will strive to provide services in a requested language to the extent that is reasonable and within its resources.

8.4 Communication (written/spoken)

8.4.1 The doj&cd will for practical reasons, in general, use English to conduct its business and to provide services to all the citizens. However, in order to promote the use and development all other official languages, especially the previously marginalized indigenous languages, the doj&cd will, in addition to English and Afrikaans, provide services in the indigenous official languages which are predominant in the province concerned to the extent that it is able to do this given its resource limits.

8.4.2 Any person including juristic person who writes to the doj&cd shall receive a response in the language in which such person has written.

8.4.3 Interpretation services will be provided where necessary, subject only to limitations imposed by lack of resources.

9. LANGUAGE USE IN COURT PROCEEDINGS (LANGUAGE OF COURT RECORD)

9.1 The use of official languages in court proceedings including court interpretation services, court process, documents and recording of court proceedings shall be regulated by rules of court or any other applicable legislation.

10. COMPLAINTS MECHANISM

10.1 Any person who is dissatisfied with a decision of the DOJ&CD regarding its use of official languages may lodge an official complaint to be addressed to an official to be delegated this function.

10.2 A complaint must be delivered to the street address of the Head Office or by registered post to -

Department of Justice and Constitutional Development.

Private Bag X81

Pretoria

0001

10.3 The complaint should be:

- (a) In oral or writing;
- (b) In the official language that the complainant prefers;
- (c) State the name, address, and contact information of the person lodging the complaint;
- (d) Provide a full and detailed description of the complaint;
- (e) Contain any other additional information that may be necessary to consider the complaint and that may be requested; and

10.4 The delegated complaints official will:

- i. Consider the complaint;
- ii. Investigate the matter; and
- iii. Provide a response to the matter, within a reasonable time period

11. IMPLEMENTATION STRATEGY

11.1 The Department will establish a fully capacitated language unit within the 2015/16 – 2019/20 MTEF cycle to promote the implementation of the language policy.

12. POLICY REVIEW

12.1 The language policy will be reviewed whenever required, but at least within a period of five (5) years after its adoption.

Submissions in relation to the draft Policy on the Use of Official Languages of the Department of Justice and Constitutional Development may be sent on or before 15 May 2015 to the following address:

By hand or post:

Director - General
Department of Justice and Constitutional Development
SALU Building
Cnr Thabo Sehume and Francis Baard Street
Pretoria
002

Or

Director-General
Department of Justice and Constitutional Development
Private Bag X81
Pretoria
0001

By email: ElMathe@justice.gov.za / NMngaza@justice.gov.za

Any enquiries in connection with the draft policy can be directed to the above email. Comments received after the closing date will not be considered.