An Analysis of Multilingualism as an Approach to Language-in-Education Policies of the Department of Basic Education in Relation to the Promotion of Indigenous Languages as Languages of Teaching and Learning, in Accordance with Section 29(2) of the Constitution of the Republic of South Africa.

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I Londeka Portia Duma declare that:

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Abstract

The Constitution of South Africa recognises eleven official languages, nine of which are considered indigenous African languages. This recognition seeks to provide for language protection, promote multilingualism and create unity in a diverse country. Furthermore, these rights are tailored to promote the founding values of the Constitution, which are amongst others, the protection of human dignity, equality, and non-racism. The Constitution also provides for language rights that promote multilingualism in education through section 29(2) which provides that everyone has the right to receive education in any official language of choice in a public education institution where that education is reasonably practicable. Further section 29(2) provides that the state has a positive duty to ensure that this right is effectively accessible and implemented through the consideration of various reasonable educational alternatives. This dissertation will therefore critically analyse the Language-in-Education policy (LiEP) measures of the Department of Basic Education, as a measure in the fulfilment of the state's obligation to effectively provide access to section 29(2). The purpose of this analysis is to examine whether the current language policy promotes African languages as languages of instruction. In so doing, ensuring effective access to the right to choose a language of instruction as provided for by the Constitution for all learners.

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CHAPTER ONE: INTRODUCTION

1.1. Background.

> *"Culture embodies those moral, ethical, and aesthetic values, the set of spiritual eyeglasses, through which they come to view themselves and their place in the universe. Values are the basis of a people's identity, their sense of particularity as a member of the human race. All this is carried by language. Language as culture is the collective memory bank of a people's experience in history. Culture is almost indistinguishable from the language that makes possible its genesis, growth, banking, articulation and indeed its transmission from one generation to the next".[1]*

The Constitution of South Africa is founded on, amongst others, the values of equality, human dignity, the advancement of human rights, and non-racialism.[2] At the core of these constitutional values is the desire for a South African society united in its cultural and linguistic diversity.[3] A redress of the past in which race and ethnicity formed the basis of discriminatory laws and practices.[4] Acknowledging cultural diversity and the need to bring up unity and equality in that diversity, the Constitution recognises the use of eleven languages as official languages in South Africa.[5] Nine out of eleven of the official languages are African languages.[6]

The constitutional protection and official status of African languages is a redress of the past, where these languages were undermined and discriminated against.[7] This was a result of the racial discrimination suffered by the black majority and mother tongue speakers of these languages at the hands of colonial-apartheid governments.[8]

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[1] N Wa Thiong'o *Decolonising the Mind: The Politics of Language in African Literature* (1986) 15.
[2] Section (1) of the Constitution of the Republic of South Africa, 1996.
[3] Preamble to the Constitution of the Republic of South Africa, 1996.
[4] *Ibid.*
[5] Section 6(1) of the Constitution of the Republic of South Africa, 1996.
[6] *Ibid.* These African languages are IsiZulu, IsiNdebele, IsiXhosa, SiSwati, Sepedi, Sesotho, Setswana, Tshivenda and Xitsonga. Although Afrikaans is considered an African language as it is only spoken in mostly Namibia and South Africa, this study however is concerned with the nine African languages indigenous to Africa.
[7] I Currie "Official Languages and Language Rights" in S Woolman (ed) *Constitutional Law of South Africa* 2 ed (2013) Vol 4: 2.
[8] *Ibid.*

The Constitution places a duty on the state to ensure that all official languages enjoy "parity of esteem and must be treated equitably".[9] However, due to past discrimination of African languages in favour of English and Afrikaans as the only official languages.[10] The Constitution places a much greater obligation on the state to take positive measures to elevate and promote the use of African languages.[11] The Constitution also provides further protection of those who speak African languages by providing that the state may not discriminate against anyone based on the language they speak.[12] This means that African language speakers can enjoy the full constitutional protection of their languages unlike in the past Constitutions.[13]

The discrimination against African languages was not only limited to them not being used as official languages in the country in general, but this discrimination and exclusion was also extended to education particularly.[14] English and Afrikaans as official languages, enjoyed the status of languages of instruction at higher grades, and proficiency in them determined the progress of a learner in higher education.[15]

Currie postulates that this forced dominance of English and Dutch, later replaced by Afrikaans in higher education contributed to the white population's dominance in politics and economics of the country.[16] This was because proficiency in these languages also determined who was employable in powerful and decisive positions. [17] Since white people were more than proficient in these languages(because they were mother tongue speakers of such languages), they were afforded these positions.[18]

African languages on the other hand were only used as languages of instruction in the first four years of primary school. However their use was not for the benefit of those who spoke these languages (black population), but rather as weapons against

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[9] Section 6(4) of the Constitution of the Republic of South Africa, 1996.
[10] Currie (note 7 above; 2). Afrikaans and English were declared official languages in the 1961 and 1983 Constitutions of South Africa.
[11] Section 6(2) of the Constitution of the Republic of South Africa.
[12] Section 9(3) of the Constitution of the Republic of South Africa, 1996.
[13] Currie (note 7 above; 2). The Constitutions of South Africa prior to the interim Constitution did not recognise or provide for the official use of African indigenous languages.
[14] *Ibid.*
[15] *Ibid.*
[16] *Ibid*
[17] *Ibid.*
[18] *Ibid.*

progress and an establishment of ethnic divisions amongst black people.[19] As a result of this underhanded agenda, African languages became undervalued, even to the black populace who spoke these languages due to the fact that they played no part in their economic or social success.[20] However, the reality for English and somewhat Afrikaans was the direct opposite.[21] This reality reflected the political and social power relations in the country and reproduced the social and economic inequalities between the white and black populations as desired.[22]

In addressing language inequality at schools and to counter the hegemony of English and Afrikaans, the present Constitution makes provision for the use of African languages as languages of teaching and learning (LoTL) in public schools.[23] The Constitution does this by providing that everyone has a right to choose any of the official language or languages as languages of instruction.[24] Since African languages are recognised as forming part of the eleven official languages in South Africa, this means that they can also be chosen as language of instruction throughout public school.[25]This right is just one of the linguistic rights provided for by the Constitution to establish linguistic equality and ultimately equality in general in South Africa.[26]

1.2.   Research Problem.

Section 29 (2) of the Constitution of the Republic of South Africa provides that "everyone has the right to receive education in the official language or languages of choice in public educational institutions where this education is reasonably practicable".[27] Further, section 29(2) places a positive duty on the state to ensure that this right is implemented and effectively accessible.[28] It goes on to provide that in ensuring the effective access and implementation of this right, the state's method or

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[19] P Msaule 'The right to receive education in one's Language of choice: A fundamental but contentious right' (2010) 21 (2) *Stellenbosch Law Review* 240.
[20] Currie (note 7 above; 2).
[21] *Ibid.*
[22] Msaule (note 19 above; 241).
[23] Section 29(2) of the Constitution of the Republic of South Africa, 1996.
[24] *Ibid.*
[25] Section 6 (1) of the Constitution of the Republic of South Africa, 1996.
[26] Currie (note 7 above; 3). Section 30 and Section 31 of the Constitution of the Republic of South Africa, 1996 provides for other linguistic rights under the Bill of Rights.
[27] Section 29(2) of the Constitution of the Republic of South Africa, 1996.
[28] *Ibid.*

alternatives, should take into account most importantly equity and the need to redress the results of past racially discriminatory laws and practices.[29]

Since section 29(2) is dependent on the state for its implementation and access, it is said to be a weak positive right.[30] This means that it can only be asserted or enforced if the state has made available reasonable programmes or policies that make assertion of such a right possible.[31] The Department of Basic Education seems to have risen to their constitutional obligation by publishing the adoption of the Language-in-Education Policy of 1997 (LiEP) and the Norms and Standards Regarding Language Policy in terms of the South African Schools Act, 84 of 1996 (Norms and Standards).[32] Both these policy documents recognise and make it a point to promote the right to choose a LoTL or instruction as provided by section 29(2) of the Constitution.[33]

The LiEP provides that it operates within the paradigm of the promotion and development of *all official* languages simultaneously promoting a multilingual education.[34] Whilst the Norms and Standards aim to promote communication amongst citizens by promoting multilingualism.[35] A multilingual education entails the use of more than one language in teaching and learning.[36]

Further, the policy provides that in order to achieve multilingual education the policy adopts "additive bilingualism", which in practice for a learner means they maintain the use of their first or home language as LoTL at school, whilst gaining competence in additional languages as subjects.[37] For example, a learner whose home or first language is IsiZulu will maintain the use of IsiZulu as LoTL, whilst they acquire other languages as additional languages (such as English or other African languages) throughout their basic level schooling.

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[29] *Ibid.*
[30] Msaule (note 19 above; 242).
[31] *Ibid.*
[32] GN 665 of GG 18887 15/05/1998.
[33] See preamble to the LiEP at provision 6; also see Norms and Standards at provision 3.
[34] See preamble to LiEP.
[35] See aims to the Norms and Standards.
[36] *Ibid.*
[37] *Ibid*; also see K Luckett 'National additive bilingualism: Towards a language plan for Southern African education' in K Heugh, A Siergruhn& P Pluddermann (Ed) *Multilingual Education for South Africa* (1995) at 75.

Multilingualism is a great premise to achieve the equal treatment of all official languages as required by the Constitution.[38] Further to this the multilingual paradigm in which LiEP exists under, is appreciable in that it has the potential to redress the results of past racially discriminatory laws and practices which saw the diminished use and status of African language.[39]

However, the failure of policy is to be found in the additive bilingual approach that the policy adopts to achieve the desired multilingual education. The additive approach as adopted by the policy seems to be unappreciative to the fact that languages in South Africa are not equal to begin with, and the existence of very deep language ideologies.[40]

English and somewhat Afrikaans are still languages that are considered powerful LoTL because of having been developed more whilst African language use was suppressed at schools.[41] Further, beyond education, English is considered a very powerful language of economics and politics.[42] African languages because of their history in education are considered as backwards and not effective LoTL. [43] Further to this, the maintenance of African home language instruction proves difficult as there is no teaching material in African languages beyond the third grade, available to ensure such a maintenance. This inevitably results in African home languages being replaced by English and/or Afrikaans beyond these grades. These reasons alone influence the choice of LoTL towards English and Afrikaans.[44]

Therefore, this study finds that the problem is that policy, through its additive bilingual approach to multilingualism, does no justice for the use of African languages as LoTL. In Addition to this the results are that policy undermines the right to choose a LoTL for those learners who wish to choose an African language as LoTL, ultimately making section 29(2) inaccessible to some.

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[38] Section 6(4) of the Constitution of the Republic of South Africa, 1996.
[39] Section 29(2); and also see section 6(2) of the Constitution of the Republic of South Africa, 1996.
[40] See section (2) of the Constitution of the Republic of South Africa,1996 which points out that due to history African languages have diminished in use and in status; also see C McKinney *Language and Power in Post-Colonial Schooling: Ideologies in Practice* (2017) 2.
[41] Currie (note 7 above).
[42] C De Wet 'Factors influencing the choice of English as a language of learning and teaching (LoLT) a South African perspective' (2002) 22 (2) *South African Journal of Education* 120.
[43] *Ibid.*
[44] *Ibid.*

1.3.   Research Aim.

This study argues that ideologies about language influence the manner in which people exercise their language rights, therefore making language right access questionable. In education more especially, this is where these language ideologies take form. In the South African context, the ideologies are that English and Afrikaans fair better as LoTL and African languages are backwards and offer no value in education let alone as LoTL. These ideologies are such that even in a time where these African languages are recognised as official languages and therefore can be chosen as LoTL, there is still reluctance to do so.

This then leads to ineffective access to the right to choose a language of instruction as learners do not exercise this right voluntarily, however, they are restricted into making this choice because African languages, next to English or Afrikaans, are not seen as viable options. This is made worse if laws and policies are complacent and do not take part in shifting these ideologies through clear provisions that support African languages as LoTL.

Therefore, the aim of this study is to analyse how the language in education policy document(s) and legislative measure by the state promote the use of African languages to ensure they are viable choices when choosing a language of instruction, therefore ensuring effective access to the right to choose a language of instruction as provided by section 29(2) of the Constitution.

1.4.   Research Objectives.

The objectives of this study are:

1. To set out the power of language policies, more particularly in education and its abilities to change the current language ideologies pertaining to African languages.
2. Set out the history of the language in education policies and laws and how these were used to shape the desired social and political outcomes.

3. Critically analyse additive bilingualism as an appropriate approach to multilingualism under the current legislation and language policies.
4. Recommend alternative solutions and approaches to address the lack of promotion of African languages in language in education laws and policies.

1.5. Research Questions.

The purpose of this dissertation is to explore whether the additive bilingualism approach to multilingualism of the LiEP and legislation, promote African languages to such an extent that they can be chosen as languages of instruction as per section 29(2) of the Constitution. This dissertation will answer this question by particularly answering the following questions:

a) What power does language have more particularly in language policies, in shaping language ideologies?

b) How has the discriminatory history of language in education policies and laws influenced language ideologies pertaining to African languages in basic education?

c) How does additive bilingualism as an approach to multilingualism in the LiEP elevate the status of African languages in line with sections 6 and 29(2) of the Constitution?

d) What are the solutions and alternative approaches to language in education that can be used to promote the use of African languages as languages of teaching and learning?

1.6. Research Methodology.

This study is a desktop study. It consists of the use of primary and secondary sources such as case Law, Legislation, the Constitution, Policy documents publicly available, Academic Journals, and Books. The use of various electronic resources will also be

employed. This study finds this method useful because the study seeks to analyse policy provisions in relation to constitutional provisions.

1.7 Preliminary Literature Review.

The lack of use of African languages in education as LoTL has often been attributed to failure in implementing policy. This conclusion suggests that enough efforts have been made to promote and develop these languages, therefore it is lack of implementation of such efforts that is missing in action.[45] Often the narrative of the challenges around African languages as LoTL is reduced to the lack of inspiration and resources afforded to schools in promoting African languages in the exercise of language rights.[46]

Scholars such as Mcwango, go as far as to suggest that punitive measures by the law must be taken to punish schools that do not implement "progressive policies on multilingualism"[47] This suggests that there is nothing wrong with the current LiEP, rather to look elsewhere for challenges.

As it stands the LiEP has its roots in the promotion of multilingualism; a stance that is consistent with the Constitution's recognition of eleven languages as official languages.[48] This is also consistent with the Constitution's recognition of cultural diversity in schools.[49] Further, the LiEP recognises and provides for the right to choose a LoTL, however such a right must be exercised within the multilingualism context.[50] The multilingual approach to language is based on the equal treatment of languages as per the Constitution.[51]Therefore, even if a learner chooses a LoTL, provision must be made for them to acquire another language because being multilingual should be

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[45] BP Tshotsho 'Mother tongue debate and language policy in South Africa' (2013) 3 (13) *International Journal of Humanities and Social Sciences* 50.
[46] E Mcwango 'Language and the current challenges in the South African school system' (2009) 1 (1) *Journal for Human and Social Sciences* 54.
[47] *Ibid* 53.
[48]See Preamble to LiEP in terms of Section 3(4) (m) of The National Education Policy Act, 27 of 1996: See also Section 6 (1) of the Constitution of the Republic of South Africa.
[49] *Ibid.*
[50] *Ibid* 6.
[51] See Section 6(4) of the Constitution of the Republic of South Africa, 1996.

the norm.[52] This is referred to as the additive bilingualism approach to multilingualism an approach adopted by the LiEP to achieve multilingualism in schools.[53]

When it comes to African languages, these languages are included in the official languages that can be chosen as a LoTL but nothing is *specifically* mentioned about their role as LoTL. As far as it may be interpreted the LiEP advocates for the "maintenance of home languages" whilst acquiring additional languages, which could be interpreted as a promotion of any African language if for a learner the home language is an African language.[54]

Multilingualism is indeed a great premise in the context of the history of South Africa where there existed language hierarchies that saw African languages at the bottom. Alexandra suggests that through multilingualism we can achieve true national unity.[55] He postulates that basic education is an important phase to plant the seed of multilingualism as this is the phase where future South African citizens are produced.[56]He purports if multilingualism is present in basic education, you will produce a nation not divided by issues of language, as was the case in the past.[57]

Agnihotri, in his seminal essay advises of the benefits of multilingualism in the classroom agrees with Alexandra.[58] He adds that languages should be used as tools and multilingualism as an asset not an obstacle in teaching.[59] He emphasises how "multilingualism rather than monoligualism is the norm. There is strong evidence of a positive relationship between multilingualism competence and cognitive flexibility."[60] He further states that the teacher should be responsible for the task of promotion of multiple language resources in the classroom.[61]

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[52]See Preamble to Language-in-Education Policy in terms of Section 3(4) (m) of The National Education Policy Act, 27 of 1996.

[53] See Preamble to Language-in-Education Policy in terms of Section 3(4) (m) of The National Education Policy Act, 27 of 1996.

[54] *Ibid.*

[55] N Alexander 'Multilingualism for empowerment' in K Heugh, A Siergruhn & P Pluddermann (eds) *Multilingual Education for South Africa* (1995) 37.

[56] *Ibid* 39.

[57] *Ibid.*

[58] RK Agnihotri 'Multilingualism as a class resource' in K Heugh, A Siergruhn& P Pluddermann (eds) *Multilingual Education for South Africa* (1995) 3.

[59] *Ibid.*

[60] *Ibid* at 7.

[61] *Ibid.*

As much as multilingualism as an approach to language in education is a noble approach in ensuring equal use of languages, however it seems to be neglectful of the hegemony of English and somewhat Afrikaans that persist presently. Its premise is on the "equitable treatment" of all official languages as envisaged in the Constitution.[62] However, Currie asserts that equitable treatment does not directly translate to equal treatment.[63] Currie states that equitable treatment means "treatment that is just and fair in the circumstances".[64] Therefore, for equitable use of languages, it could be that African indigenous languages remain underutilised due to the circumstances not allowing for their fair and just use.[65]

This is very much a possibility in the education sphere due to their historic circumstances surrounding African languages. They might not enjoy the equality with English and Afrikaans as LoTL, as these languages have a history of development and privilege as languages of instruction.[66]

Therefore, as asserted by Albertyn and Goldblatt, "equality is influenced by historical, Socio-political and legal conditions of the society concerned".[67] The history of African indigenous languages is the history of the people to whom these languages belong. It is a history of inequality, "extensive and systematic exclusion and subordination of black people in all aspects of political, social and economic life".[68]

Mgqwashu in agreement with Albertyn and Goldblatt further sates that in order to reach a position where African languages are offered the same esteem as English and Afrikaans, policy must be conscious to the factors that influence their lack of esteem to begin with .[69] Alexandra made this a task in language policy planning. He advises that for language policy to be practical in South Africa "we shall have to create the economic and political conditions that will make it possible for the promotion of multilingualism".[70]

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[62] See Section 6(4) of The Constitution of the Republic of South Africa 1996.
[63] Currie (note 7 above; 6).
[64] *Ibid.*
[65] *Ibid.*
[66] *Ibid.*
[67] C Albertyn & B Goldblatt 'Equality' in S Woolman and M Bishop (eds) Constitutional Law of South Africa 2 ed (2013) Vol 3: 7.
[68] *Ibid* at 3.
[69] E. Mgqwashu 'Language and the postcolonial condition' (2006) 13 (1) *Alternation* 301.
[70] Alexander (note 55 above; 40).

McKinney suggests that in an attempt to realise language rights in South Africa is to first deal with language ideologies.[71] McKinney defines language ideologies as "people's beliefs about what language is, as well as what particular uses of language point to or index".[72] She suggests that ideologies inform how to approach languages in schools, also informs which languages are used as languages of instruction and how these languages are used.[73]

In South Africa's context, language attitudes are shaped by the history of racial inequality and McKinney suggests that if there is a correction of these language attitudes and language at schools, inequality will be disrupted.[74] For South Africa like many African countries, language has a history in the web of political and economic power. Those who are in power in the past have made language decisions mostly in education based on the need to continue their benefits from power.[75]

Tollefson explains the pragmatic reproduction of inequalities in Africa through language by stating, "Language is one criterion for determining which people will complete different levels of education. In this way, language is a means for rationing access to jobs with high salaries. Whenever people must learn a new language to have access to education or to understand classroom instruction, language is a factor in creating and sustaining social and economic divisions".[76] Economic power translates to political access as well.[77]

McKinney concurs with Tollefson and asserts that schools are a place where inequalities are produced and language is one of the measures that are used to determine who is on the benefiting side of the inequality and who is not in the future.[78] This brings about a consciousness of the power of language in that the language that determines benefit inequality will be the language of power.[79]

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[71] C McKinney *Language and Power in Post-Colonial Schooling: Ideologies in Practice* (2017) 2.
[72] *Ibid.*
[73] *Ibid.*
[74] *Ibid.*
[75] Alexander (note 55 above; 39).
[76] J Tollefson *Planning Language, Planning Inequality: Language Policy in The Community* (1991) 8.
[77] *Ibid.*
[78] McKinney (note 71 above; 2).
[79] *Ibid.*

In the discussion of language and power, Wa Thiong'o illustrates how language was used by colonialism to gain and maintain power.[80] He explains this ability to produce power relations by languages because language is not neutral but it carries with it the culture of those that speak it.[81] Culture is what determines people's ideas and perceptions of the world.[82] Ideologies play a role in the manufacturing of consent to power.[83] The imposition of the language of the dominant group means the imposition of the culture or ideologies which results in the dominance being unchallenged, as the oppressed group sees no wrong in the dominance. Hence, the continued reproduction of inequalities.

Hartshorne postulates that education also does not exist in a vacuum of some sort, it is also influenced by the desire to achieve certain societal desires.[84] These desires are driven by "philosophies of life, views of man, religious beliefs, ideas about the state and society, in particular the place of an individual, political ideologies and the working of economic forces."[85] He suggests that even the language in education operates the same in schools. It could be concluded that language in education specifically has a way of reproducing the desires of a certain group of people. In countries where class relations, racial prejudice, and inequalities amongst people exist, language is mostly used to reproduce power structures, political dominance by a group over another, and economic interests.[86]

From the various literature, discussing the power of language it is submitted that policy implementation is not the only issue that research needs to be concerned with. In fact, language policy is the problem to begin with. Tollefson states that due to its position concerning power, language policy research must,

> "evaluate policies with reference to their role in the exercise of power and their effect upon the lives individuals. What role does language policy play in the function of the state? How does the state employ language policy to further their aims? What is the consequence of language policy in the lives of individuals? These should be fundamental questions that

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[80] Wa Thiong'o (note 1 above; 16).
[81] *Ibid* at 15.
[82] *Ibid.*
[83] N. Fairclough *Language and Power* 2 ed (2001) at 2.
[84] K. Hartshorne *Crisis and Challenge: Black Education 1910-1990* (1992) 186.
[85] *Ibid* 186.
[86] *Ibid* 187.

guide the effort to understand the relationship between language policy, social organization, and political power". [87]

Tollefson suggests that if research aims at discussing language policy in light of power, it is easy to see how policy can prohibit or advance access to language rights.[88] Therefore, with this in mind, the multilingual approach to the LiEP, more in particular in relation to African languages must be analysed in light of which power relations it serves. Further, how this service to these power relations has an effect on the accessibility and implementation of the language right as provided by section 29(2).

1.8 A Note on Approach.

This study subscribes to a critical lens in its analysis of language policies and law that bring about language use in schools. Critical theory is a perspective or approach that challenges traditional understandings or perspectives of the workings of society.[89] Whilst traditional perspectives, whether in humanities or sciences, only concern themselves with society as it stands; critical perspectives go beyond this by investigating and exposing what influences such traditional perspectives and for what gain.[90]

Thompson offers a profound discussion as to what makes critical theory different from traditional approaches.[91] He purports that:

'It is a distinctive form of theory in that it posits a more comprehensive means to grasp social reality and diagnose social pathologies. It is marked not by *a prior* ethical or political value that it seeks to assert in the world, but by its capacity to grasp the totality of individual and social life as well as the social processes that constitute them.'[92]

From Thompson's above articulation of how critical theory differs from traditional approaches, it is undestood that critical theory does not seek to provide meaning from a premise of the state of society as it stands; but it seeks to question the very

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[87] Tollefson (note 76 above; 202).
[88] *Ibid.*
[89] A Crossman 'Understanding Critical Theory '(15 October 2019 available at https://www.thoughtco.com/critical-theory-3026623, accessed on 27 February 2020.
[90] *Ibid.*
[91] MJ Thompson 'Introduction: What is Critical Theory?'' in MJ Thompson (ed) *The Palgrave Handbook of Critical Theory* (2017) 1.
[92] *Ibid.*

processes that not only dictate the nature of society, but also the behaviour of humans that simultaneously influence the nature of that society.

Using the object (being the world) and subject (being the human) relationship. Thompson adds that:

'The concept of critical theory of society maintains that any valid, true form of knowledge about society and its products is one that is aware not only of the object of consciousness and its various dynamics but also of the subjective factors of cognition that determine the knowledge of that object'[93]

Therefore, critical theory reveals and critics the very source of knowledge and the social factors that influence the knowledge humans have of the world they live in.[94] This revelation however is intentional in that it is aimed at transforming how humans as subjects, view themselves in the world as an object. This is because as Thompson asserts, '… the way we comprehend the objective world is related to the ways we conceive of ourselves.'[95]

Thus, the criticality of critical theory is intentional in that its intent is in transforming knowledge of society in turn transforming society itself.[96] It does so by exposing various forms of oppression by uncovering '… systems of exploitation, particularly those hidden by ideology, and to find ways to overcome that exploitation'.[97]

From the initial generation of critical thinkers such as Marx in his critique of the material-economic world about the system of capitalist production and those who produced,[98] to what Gevers posits to be modern forms of critical perspectives such as feminist theory, critical race theory, critical legal studies, or post-colonial perspectives.[99] Critical theory "provides the descriptive and normative bases for social inquiry aimed at decreasing domination and increasing freedom in all their forms".[100]

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[93] *Ibid* 2.
[94] *Ibid.*
[95] *Ibid.*
[96] *Ibid.*
[97] J Tollefson 'Critical Theory in Language Policy' in T. Ricento (ed) *An Introduction to Language Policy: Theory and Method* (2006) 44.
[98] Thompson (note 91above; 2).
[99] C Gevers *Research & Legal Theory: An Introduction* (unpublished lecture notes, university of KwaZulu-Natal, 2018).
[100] J Bohman 'Critical Theory' (2019) 9 *The Stanford Encyclopaedia of Philosophy* available at https://plato.stanford.edu/entries/critical-theory/#Oth accessed on 27 February 2020.

In so doing, it emancipates humans from the imposed traditional understandings of the workings of society, which seek to subject them to domination and exploitation.[101]

To expose hidden exploitative systems, critical projects undertake an inquiry into power and the interrogation of the production of power through the production of inequalities.[102] This inquiry into power and inequalities reveals and exposes various ideologically hidden processes that produce inequality and make inequality a natural state of society.[103]

Tollefson explains that since social groups are constantly fighting to gain and maintain power, this struggle has become natural, a defining state of society and informs social systems.[104] The production of inequalities results in a production of dominance and power by one group over the other.[105] This changes over time depending on which group can control the production process and transform social systems for their interests.[106]

Therefore, critical theory is concerned with the production process of these inequalities.[107]As a result exposing ideological, social, and systematic controls that make it a norm for inequality to exist without question.[108] For critical theory, ideologies make it natural for those who have and exercise power to do so without resistance from their subjects.[109]

1.8.1 Why a critical perspective?

The main claim of this study is that the law through language policy constrains the full effective realisation of a constitutional right.[110] This right being section 29(2) of the Constitution, the right to choose a language of instruction. The study finds that the failure of the law (through language policies) to explicitly provide for the use of African

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[101] *Ibid.*
[102] R Kubota and ER Miller 'Re-Examining and Re-Envisioning Criticality in Language Studies: Theories and Praxis' (2017) 1 (27) *Critical Inquiry in Language Studies* 4.
[103] Tollefson (Note 97 above; 44).
[104] *Ibid.*
[105] *Ibid* 11.
[106] *Ibid* 13.
[107] *Ibid.*
[108] *Ibid.*
[109] Fairclough (note 83 above; 2).
[110] For the purposes of this study regards the LiEP document of 1997 as legislative policy, therefore as law. This is due to the fact that it is obligated by section 3(1) of the National Policy Act 27 of 1996. The Norms and Standards regarding Language Policy, forming part of the LiEP document are also considered as law as they are obligated by section 6(1) of The South African Schools Act 84 of 1996.

languages, as languages of instruction leads to a lack of promotion of the said languages. Which results in the neglect of these languages.

Given the history of African languages has given rise to ideologies and beliefs around the ineffectiveness of African languages as LoTL.[111] Also, keeping in mind the factors that are present that make choosing English and/or Afrikaans as LoTL.[112] The study believes that language policy should take into account such ideological realities. In so doing should place great emphasis on the use of African languages as LoTL by explicitly and purposefully providing for such a use. To shift ideology that renders these languages as ineffective LoTL.

The study purports that ambiguity in policy allows the legitimisation of the prejudicial language ideologies against African languages. Ambiguous policy directives will result in uncertain interpretations, which will likely reinforce old language practices. Such an environment charged with ideologies that aim to discredit the value of African languages as LoTL will make it impossible for learners to consciously make choices about the language of instruction and therefore affects their effective access to the right to choose a language of instruction at schools.

Critical perspectives support this hypothesis in two ways. First, critical theory recognises and places great emphasis on the role that ideologies play in the struggle for power in any sphere.[113] It is said that ideologies are used to hide the reality of exploitative and oppressive systems that render one social group more powerful than the other.[114] Ideology does this by offering distorted believes or knowledge about society for the benefit of the dominant group.[115]

Ideology then leads society to behave and make decisions in accordance with this distorted knowledge, for the benefit of those in power.[116] For critical theorist's ideology hinders conscious and free choice by society.[117] One cannot possibly be said to have made a free decision on any matter when one has been influenced by false preconceptions of said matter. Therefore, ideologies in essence may be

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[111] For more on language ideologies and attitudes in South Africa see McKinney (note 75 above).
[112] For a detailed discussion on factors that influence English as language of instruction please see De Wet (note 47 above).
[113] Tollefson (note 97 above; 44).
[114] *Ibid.*
[115] Thompson (Note 91 above; 7).
[116] *Ibid* 8.
[117] *Ibid*

conceptualised as a hindrance to true freedom and democracy.[118] This hypothesis suggests that ideologies should be a concern when it comes to issues of effective exercise of rights in a democratic dispensation such as in South Africa.

In the context of this study, language attitudes and ideologies (which are mostly negative towards African languages), determine language hierarchies and how languages are used in societies and schools.[119] In that, they set out which languages matter and which do not.[120] This indirectly will affects language choices and use.[121]

Secondly, the critical perspective through its more modern form, critical legal scholarship, can locate the ideological nature of the law.[122] According to critical legal scholars, the law is not "objective, neutral and apolitical".[123] However, the law is believed to be "ideologically charged and political nature" and it is "an instrument of protecting and maintaining existing power relations and social arrangements".[124] Law is viewed as a systematic institute that can practically bring about certain change or maintain a certain vision of social order.[125]

This hypothesis of law can only lead to the conclusion that if control of ideology is how you shape societal order, the law is instrumental in transmitting said ideology to ensure that such an order stays in place. The study has taken such a hypothesis to mean that if the law can be a systemic instrument of legitimacy, then it can also be systematically used to dismantle ideologies that breed unequal and exploitative social orders.

In the context of this study and having understood the critical perspective of law, it would suggest that the law through policy must be held in light of what it does to eliminate or reinforce ideologies on language. It is not enough that policy makes provision for the right to choose a language of choice but it should also be able to shift the narrative about African languages. This giving them a fair chance at being chosen as languages of instruction. It is, for this reason, the study's insistence on the law being

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[118] Bohman (note 100 above).
[119] McKinney (note 71 above; 2).
[120] *Ibid.*
[121] *Ibid.*
[122] Gevers (note 99 above)
[123] JM Modiri 'The colour of law, power and knowledge: Introducing critical race theory in (post) apartheid South Africa' (2012) 28 *South African Journal for Human Rights* 408.
[124] *Ibid.*
[125] *Ibid.*

held to account on the effective access to the right to choose a language of instruction is guided by such a critical hypothesis of the role of the law.

The study also found a critical perspective useful because it enables researchers to indulge in a multidisciplinary exercise. Since critical projects are mostly concerned with transforming society by way of exposing systems of power.[126] Critical scholarship understands that constraints to human freedoms, exploitations, and domination take place in various forms.[127] Therefore to transform a society means to not limit the critical project to one discipline.[128]

Critical perspectives on law also insist that "Law is not any one particular thing, and cannot be understood, analysed or described or whatever, in terms of one particular discipline or methodology". [129] Law should be understood as "a product of interdisciplinary effects on history, language, politics, culture, and society".[130] It is for this reason that the study found this lens useful because of its interdisciplinary nature(combining Education, Linguistics and Law), by making use of literature from various disciplines that influence this study.

1.9 Overview of Study.

Chapter one is the introduction and background to the study, the research problem was undertaken by the study, the research questions the study aims to answer as well as some literature that has influenced the study. The chapter overview is also contained in this chapter.

Chapter two will present the theoretical framework for the study. This presentation will serve the purpose of understanding the context in which the study makes its claims. In this chapter the researcher will also present how and why language policies are so important in changing language ideologies about African languages.

Chapter three will discuss the history of language in education in the South African context. The history of language in education policies will be discussed concerning what political outcomes these policies served. This chapter aims to highlight how in

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[126] Bohman (note 100 above).
[127] *Ibid.*
[128] Modiri (note 123 above; 420).
[129] See Preface to I. Ward *An introduction to critical legal theory* (1998).
[130] Modiri (note 123 above; 420).

each epoch of the administration of governance in South Africa, language policies, specifically in education were used to reach certain political and social outcomes or desires.

Chapter four will be the analysis of section 29(2) and the language laws and policies in relation to how promote African languages as languages of instruction.

Chapter five is a presentation of the concluding remarks and recommendations.

CHAPTER TWO: A THEORETICAL FRAMEWORK: THE POWER OF LANGUAGE IN EDUCATION POLICY AND LANGUAGE IDEOLOGIES.

"We conceptualize and make sense of the world around us through language, and we negotiate our relationships with others through language. Who we are considered to be, and

who we can become, are language matters. And who we can become is all about access to things that matter: political power, economic resources like jobs, education, social status or cultural resources like stories, songs, and art".[131]

2.1 Introduction.

"There is no politically neutral theory of language planning, in spite of the fact that power elites tend only to examine language policy under conditions of crisis"[132] Alexander in stating this, presents a reality of language policy and planning that is deeply invested in serving political outcomes.[133] In fact, he goes further to assert that language planning and policy making is never and can never be politically neutral because it is a function that rests primarily with the government of a country.[134]

Alexander purports that although it is never stated explicitly in the policy, language policy is very much charged with political ideologies.[135] It is a very subtle weapon of power that can either change the course of any social and political era, or maintain the status quo.[136] Which therefore can be interpreted to mean that each and every language policy represents, or should represent current political desires in a country.

The current government's ideology is to be found in the Constitution which is founded on the values such as human dignity, the achievement of equality and the advancement of human rights and freedoms.[137] Part of these human rights and freedoms include the equal treatment of all official languages, the elevation of the status and use of African languages and the effective access to the choice of LoTL at public institutions.[138] According to Alexander's hypothesis about language policy and its representation of social and political ideology, it must be assumed then that current

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[131] M Heller, S Pietikainen & J Pujolar *Critical Sociolinguistic Research Methods: Studying Language Issues that Matter (*2018) 1.
[132] N Alexander 'The politics of language planning in post-apartheid South Africa' (2004) 28 (2) *Language Problems and Planning* 113.
[133] *Ibid.*
[134] *Ibid* 114.
[135] *Ibid* 113.
[136] *Ibid*
[137] For a discussion on the Constitution as an ideologically charged document see S Sibanda *"Not Yet Uhuru" – The usurpation of the liberation aspirations of South Africa's masses by a commitment to liberal constitutional democracy* (Unpublished LLD thesis, University of Witwatersrand, 2018); also see section (1)(a) of the Constitution of the Republic of South Africa,1996.
[138] See section 6(4); also see section 6(2); and also see section 29(2) of the Constitution of the Republic of South Africa, 1996.

language policy, even in education lives up to and represents such a constitutional democratic ideology.

However, this study argues that the current language in education policies fail to live up to or represent such a constitutional democratic ideology. This is because of the policies lack of advocacy or promotion of the use of African languages as LoTL. This lacking by policy the study concludes, results in undermining the constitutional right to choose a language of instruction at public schools. However, for this argument to hold truth, language policy must be viewed as having the ability to effect the necessary change for African languages. It would be unfair to place such a burden on language policy if to begin with, language policy has no power to do so.

It is this chapter's purpose to critically set out how language policy, particularly in education, possesses the necessary power to change the status of ideologies pertaining to African languages in education. In addition to this discuss how language ideologies influence language choices.

2.2 The power of language, language in education and language policies (in education).

2.2.1 The power of language.

Language policies whether national or specific to education, do not only find their power in the fact that they are the product of language planning by government official or agencies that are in these positions of power.[139] However, language policies are powerful due to the fact that language alone, besides where it finds context is a very ideologically potent social resource.[140] Fairclough argues that language should be a concern for everyone because of just how much ideology it carries.[141]

Ideologies are "a set of beliefs and behaviours that are thought of as natural" they become "common sense" to those that hold them, and they set out how one perceives the world and themselves in it.[142] Fairclough presents a practical example of common sense assumptions present in everyday life by making an example of a patient consult

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[139] Alexander (note 132 above).
[140] Fairclough (note 83 above; 3)
[141] *Ibid.*
[142] A Mooney & B Evans Language, Society & Power an Introduction 4 ed (2015) 6.

with a doctor.[143] The patient approaches the consult with the doctor having made the conclusion that the doctor is more knowledgeable as to how a certain health problem must be solved.[144] Based on this assumption the patient does not question the doctor's authority or advice.[145]

From the example given by Fairclough, it is can be inferred that ideologies not only lead to a state of affairs where there is never a question of authority or knowledge, however they also influence the manner in which people view themselves in that particular setting. In Fairclough's doctor-patient relationship, it is the patient that concludes that they do not have knowledge of medicine, therefore they will not question the doctor.[146] It is the patient that has viewed and concluded this about themselves without the doctor having to say or do anything, therefore voluntarily giving up any control that they might have in the consult. It is in this giving up of control by the patient to the doctor that the relationship between doctor and patient becomes an unequal one.[147]

Fairclough refers to this as the manufacturing of consent.[148] He explains that in order to gain control of a particular person, it is not enough to exercise physical dominance over them through violence. It is also important to have them take part in their own subjugation by having them consent to it and give up their power. He states that "Ideology is the prime means of manufacturing consent."[149]

Having understood how ideologies come into existence and how powerful they are, the only question left to answer is then how is language ideological? Perhaps the first place to find such an answer is in an elaborate unpacking of what language is in general and what it is to those who speak it. Wa Thiong'o discussion on language is a great colloquy for purposes of this study because it speaks on the African condition on language and what language means to Africans.[150]

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[143] Fairclough (note 83 above; 2).
[144] *Ibid.*
[145] *Ibid.*
[146] *Ibid.*
[147] *Ibid.*
[148] *Ibid.*
[149] *Ibid 4*
[150] N Wa Thiong'o *Decolonising the Mind: The Politics of Language in African Literature* (1986). Wa Thiongó discusses language in Africa and how language was used as a tool during colonial conquest in Africa.

Language is defined generally as "a system of conventional spoken, manual (signed), or written symbols by means of which human beings, as members of a social group and participants in its culture, express themselves"[151] From a general perspective language is a mere resource used for expression and communication purposes. However, Wa Thiong'o presents a much deeper explanation as to what language means. He explains that language is not just a mere means of communication, although the existence of language comes as a need for such.[152]Language also operates as a mechanism used to carry people's culture.[153] This dual characteristic of language can exist juxtapose each other for an individual.[154]

Wa Thiong'o illustrates his assertion on the duality of languages by using the English language in Europe and Swahili in Africa as an example and he states,

" It is spoken in Britain and Sweden and Denmark. Nevertheless, for Swedish and Danish people English is only a means of communication with non-Scandinavians. It is not a carrier of their culture. For the British, and particularly the English, it is additionally and inseparably from its use as a tool of communication, a carrier of their culture and history. Alternatively, take Swahili in East and Central Africa. It is widely used as a means of communication across many nationalities. However, it is not the carrier of a culture and history of many of those nationalities. However in parts of Kenya and Tanzania, and particularly in Zanzibar, Swahili is inseparably both a means of communication and a carrier of the culture of those people whom it is a mother-tongue"[155]

Prah defines culture as "the sum total of time-tested habits, attitudes, tastes, manners, shared values, traditions, norms, customs, arts, history, institutions and beliefs of a group of people that define for them their general behaviour and way of life."[156] Wa Thiong'o agrees with Prah's definition of culture but further states that this way of life becomes what distinguishes one group of people from another.[157] Further, this way of life becomes "a set of spiritual eyeglasses, through which they come to view

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[151] RH Robins and D Crystal 'Language' *Encyclopedia Britannica* available at
https://www.britannica.com/topic/language, accessed on 23 January 2021.
[152] Wa Thiong'o (note 149 above; 13)*.*
[153] *Ibid.*
[154] *Ibid.*
[155] *Ibid.*
[156] K Prah 'Challenges to the promotion of the promotion of indigenous languages in South Africa'
(2009) available at *http://www.casas.co.za/Papers.aspx?NID=13* , accessed on 23 January 2021 at 3.
[157] Wa Thiong'o (note 149 above; 14).

themselves and their place in the universe."[158] Culture becomes a defining mechanism for people, they use it to determine the limits of their behaviours.[159]

How culture become so burdened with this function is found in how it develops. Wa Thiong'o explains that human beings first interact and form relationships when they have to produce means of sustenance.[160]In their struggle for existence and sustenance, they form labour groups divided following production needs.[161] These groups need to communicate to be able to succeed in their common goal, which is production.[162] The use of language becomes imminent and language becomes their sole means of communication to bring about co-operation in the production process.[163]

It is in these interactions, in communicating and co-operation that Wa Thiong'o asserts that culture develops.[164] When people interact in the production process of wealth, Wa Thiong'o explains that they do " similar kinds of things and actions over and over again under similar circumstances, similar even in their mutability, certain patterns, moves, rhythms, habits, attitudes, experiences and knowledge emerge."[165] For Wa Thiong'o that then translates to a people's way of life, a culture that distinguishes them from other groups.[166] The knowledge, experiences, and attitudes become what they believe in and determine how they preserve and solve challenges in the world.[167]

Wa Thiong'o concludes that culture is thus a product of history because it is past experiences that inform the behaviours and attitudes of people.[168] It is in history that we find a people's culture, and through culture, that history is reflected. Wa Thiong'o suggests that culture is a mirror that is held up in front of people for them to see themselves.[169]

In relation to language, Wa Thiong'o describes language as a carrier of culture, as "a collective memory bank of a people's experience in history."[170] Therefore, language is

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[158] Ibid.
[159] Prah (note 156 above).
[160] Wa Thiong'o (note 149 above; 14).
[161] *Ibid* 13.
[162] *Ibid.*
[163] I*bid*
[164] *Ibid* 14.
[165] *Ibid.*
[166] *Ibid.*
[167] *Ibid.*
[168] *Ibid* 15.
[169] *Ibid.*
[170] *Ibid.*

how culture is passed on from one generation to another, informing that generation of the previous generations' way of life through a reflection of history. This then informs the receiving generation's behaviours and attitudes to situations present in their lives.[171]

According to Wa Thiongó language carries culture is in three ways.[172] First, he states that language is reflective of culture.[173] As was discussed above culture originates from people communicating and interacting with each other. Therefore, language reflects such interactions.[174]However, language reflects culture through creating images in the mind of a person.[175] This speaks to the second manner language carries culture it is "an image- forming agent".[176] The images created by culture are that of people's interactions with each other and the world.[177]

These images inform one of how in his or her community, people confronted certain realities in turn, informing them of how to confront his or her present reality.[178] If ones language is somehow distorted, this will result in distorted images being formed that do not reflect reality in its true form.[179] When this is the case, it means that one ends up having a false perception of themselves in the world and makes decisions based on such distortion.[180] Wa Thiong'o explains that it is the burden of language to ensure that there is harmony between cultures and human, he states that language to a human being is "mediating between me and my self; between my own self and other selves; between me and nature. Language is mediating in my very being."[181]

Lastly, language is charged with the transmission of those images created into speech and written words. Wa Thiong'o articulates this aspect by explaining that speaking and using language is common for every person.[182] It is what sets us apart from animals, and what we have in common with other people.[183] He states that this is a result of the

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171 *Ibid.*
172 *Ibid.*
173 *Ibid.*
174 *Ibid.*
175 *Ibid.*
176 *Ibid.*
177 *Ibid.*
178 *Ibid.*
179 *Ibid.*
180 *Ibid.*
181 *Ibid.*
182 *Ibid.*
183 *Ibid.*

fact that we all exist in the world in which we are all trying to survive and enter into relationships with others to produce means of life or survival. Therefore, we all are communicating and making history. The use of language is thus "universal". However, the differences amongst languages are to be found in the "particularity of sounds, the words, the word order into phrases and sentences, and the specific manner, or laws, of ordering, is what distinguishes one language from another."[184]

This discussion of language by Wa Thiong'o leads to an understanding of how language and culture are in a sense two sides of the same coin. One cannot exist without the other. Language development exists juxtapose the development of culture. Culture needs language as much as language needs culture and Wa Thiong'o makes this clear when he states "Culture is almost indistinguishable from language that makes possible its genesis, growth, banking, articulation and indeed its transmission from one generation to the next".[185]

Hartshorne in his articulation of language also holds the existence of language as never neutral, but concedes with Wa Thiong'o and postulates that language "is a repository and means of articulation of values, beliefs, prejudices, traditions, and past achievements. It is that distinguishing characteristic of human being, it is at the heart of a culture of a people, it is what makes people see themselves as different, and it is related to issues of identity, position, and power."[186]

From the articulation of what culture means and what it is to people, it can be inferred that culture and ideology are similar concepts. If ideology leads people to perceptions of themselves that determine how they react in situations, whilst culture does exactly the same as articulated by Wa Thiong'o, the ideological nature of language as postulated by Fairclough is valid.[187] Therefore, language as a carrier of culture is also concluded to be a carrier of ideologies.

As stated by Fairclough, ideologies are very important to the acquisition of power.[188] He states that ideologies manufacture consent to power in that they make those who are subjects to power not question any exercise of power.[189] This is because

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[184] *Ibid.*
[185] *Ibid.*
[186] Hartshorne (note 84 above; 186).
[187] Fairclough (note 83 above; 2).
[188] *Ibid.*
[189] Ibid.

ideologies influence the manner in which one perceives themselves in a situation, if ideology dictates that one is disempowered in relation to someone else, then such will become their reality as was presented in the doctor-patient example by Fairclough above.[190] Wa Thiong'o also agrees with Fairclough, in his discussion of what language is in relation to culture. He states that any distortion of interference with a people's language is a disturbance ultimately of peoples culture and the manner in which they perceive themselves.[191]

Therefore, it can be inferred that a disempowerment of people can be achieved through language. According to Fairclough, this is exercise of ideological power, which he defines as "the power to project one's practices as universal and 'common sense',"[192] In fact, one of colonialism's strategy in their conquest of Africa was an imposition of their languages in order to impose their ideological practices on their conquests.[193] Wa Thiong'o postulates that;

"But the biggest weapon wielded and actually daily unleashed by imperialism against that collective defiance is the cultural bomb. The effect of a cultural bomb is to annihilate a people's belief in their names, *in their language*, in their environment, in their heritage of struggle in their unity, in their capacities, and ultimately in themselves. It makes them see their past as one wasteland of non-achievement and it makes them want to distance themselves from that wasteland. It makes them want to identify with that which is furthest from themselves; for instance, with other people's *languages* rather than their own. It makes them identify with that which is decadent and reactionary, all those forces that would stop their own spring of life. It even plants serious doubts about the moral rightness of struggle. Possibilities of triumph or victory are seen as remote, ridiculous dreams. The intended results are despair, despondency, and a collective death wish. Amidst this wasteland, which it has created, imperialism presents itself as a cure and demands that the dependant sing hymns of praise…."[194]

He further adds that the colonialism's imposition of a foreign language was meant to achieve a subjugation that cannot be achieved through violent means, which is the "spiritual subjugation" or a control of the mind, which even Biko, believed to be "potent weapon of the oppressor".[195] Wa Thiong'o's hypothesis on language as a weapon of spiritual subjugation concedes with Fairclough's theory on manufacturing consent in power acquisition.

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[190] Ibid.
[191] Wa Thiong'o (note 149 above; 15).
[192] Fairclough (note 83 above; 33).
[193] Ibid 3
[194] Wa Thiong'o (note 1 above; 3).
[195] Ibid 9; also see S Biko *I write What I like 40th Anniversary Ed* (2017) 74.

2.2.2 The power of language in education.

Tollefson defines the exercise of power as "the ability to achieve one's goals and control events through intentional action".[196] However, he further explains that action can only be considered powerful if the social convention or structure in which it is exercised allows it to be powerful.[197] In other words, not every action can be considered powerful action, it is in the context of a social structure that action is deemed powerful.[198]

To illustrate this point, take Fairclough's doctor-patient scenario as discussed above. If the doctor had been in any other social setting, perhaps a trial in a court room, his advice on the accused guilt or lack thereof, would not hold any power over the accused nor the situation. Unless the doctor is giving medical evidence to the court on the condition of the accused, his actions holds no power in the said social structure.

This is because in that specific setting social structure dictates that he is not knowledgeable about the workings of law, therefore cannot comment on the processes or any substantive issue pertaining to the law. However, for an attorney, advocate, or Judge in the same social structure, their actions hold power depending on what position that social structure has appointed them.[199]

Based on Tollefson's hypothesis on the exercise of power and what social structures means for power the following section will discuss the power of language in education. The study finds it useful for this discussion to first begin by discussing education as a separate concept first before it explores how language in education is powerful. This is so there is an establishment of education as a social structure which allows actions pertaining language to be powerful.

Luthuli postulates that the word education is of Latin origins and means to "bring up" or "train".[200] Luthuli states that no matter what approach you use to define education,

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[196] Tollefson (see note 80 above; 9).
[197] *Ibid.*
[198] *Ibid.*
[199] See Fairclough (note 83 above; 37-38) on how ideological power is tied to social structures.
[200] PC Luthuli *The Philosophical foundations of Black Education in South Africa* (1981) 9*.*

the definitions embody common ideas of education, "(a) they all point towards a child who needs help and guidance on the basis of a society's needs, beliefs, aspirations and convictions; and (b) the child is helped and guided or influenced towards adulthood in terms of a particular culture."[201]

It is clear that at the centre of what education is, there is the existence of preconceived beliefs, thoughts, and convictions of a society, that underline the bases of education. Therefore education is never just given, however as Hartshorne explains, "behind it rests fundamental issues such as philosophies of life, views of man, religious beliefs, ideas about the state and society, in particular the place of the individual, political ideologies and the working of economic forces."[202]

Luthuli in examining the state of black education in Africa, states that education becomes meaningless if it is not based on certain ideologies and convictions of life.[203] It is in Luthuli's definition or hypothesis of education that the role of education is understood as that of indoctrination or influencer to a child into a certain culture or ideology of life to fulfil specific societal needs.[204] This is because children are not born with certain ideologies that influence his perceptions.[205] However these are taught to a child through informal education which is through imitation, song, dance, play, and storytelling.[206] This is the total opposite of formal education, which is institutionalised and organised learning and teaching.[207]

Whatever the form, education is aimed at the production of an adult who will carry the culture or ideologies of that community or institution that educates them.[208] Luthuli states that education, in any form, is very important for the survival of a community's culture or ideology, in turn, important for that community's continued existence.[209]

From Luthuli's philosophical discussion of what education is, themes that are consistent such as ideology and culture seem to present. It can be concluded that education and ideology or culture are interrelated in that the latter works in informing

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[201] *Ibid.*
[202] Hartshorne (note 84 above; 186).
[203] Luthuli (note 199 above; 5).
[204] *Ibid* 3.
[205] *Ibid.*
[206] *Ibid.*
[207] *Ibid.*
[208] *Ibid.*
[209] *Ibid.*

the former, whilst the former works to ensure that the latter is preserved through its passage from one generation to the next.[210] This leads to an inference that like language, education is very much ideological in nature.

If both language and education are ideological, this means that they both hold ideological power. Therefore, any use or decision on language in education may be concluded as a doubled exercise of ideological power. It is concluded language in education decisions are therefore crucial because they have a doubled effect of shaping ideologies in society.

This effect of the power of language in education is practically illustrated in the history of South Africa's language policies and practices in education. A discussion that follows in the subsequent chapter, which will show that language policies and practices in education had the effect of determining which languages mattered in other to make progress in school, ultimately determining who has access to jobs and powerful political positions.[211] This resulting in language ideologies on which languages were deemed more valuable (English and Afrikaans) than others (African languages).

It is argued that this has resulted in the current language policy problems because current language policy seems to not have erased discriminatory language practices. Language in admission policies at schools are used to deny admission to certain schools for certain groups of people who are not efficient in required LoTL of that school.[212] Lafon presents empirical evidence shows that on the ground in South Africa even after the introduction of the new language policies, schools are using language entrance tests, even though it is not constitutional to do so, to select which learners can be admitted by the school.[213]

In addition to this, in schools that are said to use African languages as LoTL, only use these languages for a period of four years whilst a learner is in the lower classes (from grade 1 to grade 4), thereafter English takes over as LoTL.[214] This has the potential of hindering the progress of a non-English speaking learner's progress at school. This is

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[210] *Ibid* 30.
[211] Currie (note 7 above).
[212] M Lafon 'The impact of language on educational access in South Africa' (2009) *Create Pathways to Access Research Monograph No.24* available at *http://www.create-rpc.org/pdf_documents/PTA24.pdf*, accessed on 16 June 2020 7.
[213] *Ibid*
[214] *Ibid.*

because in order to pass and progress to another grade, policy requires a learner to pass languages. So if a non-English speaking child fails English, they would have failed a grade.[215]

Considering such realities, it is concluded that language in education is still a powerful tool that influence social orders and therefore as Alexandra purports, must not only be attended to once there is a problem.[216]

2.2.3. The power of language policy.

In its claim the study is burdening language policy with the responsibility to change negative attitudes towards African languages as LoTL, by promoting the use of such languages therefore making them viable choices for LoTL. However, in order to give this responsibility to language policy, policy must be able to achieve this responsibility. This section discusses language policy and its power to change language attitudes in a society.

Language policies, whether national or specific to ministries such as education, are the result of language planning by governments.[217] Kaplan and Baldauf define language planning as "a body of ideas, laws, and regulations (language policy), change of rules, beliefs, and practices intended to achieve a planned change (or to stop change from happening) in the language use in one or more communities".[218] Language planning is intended to solve linguistic problems in a given society or community.[219]

Language planning does this by involving three planning processes, which are; [220]

(a) Corpus Planning.

Corpus planning involves the restructuring of a language in order to standardise, codify, and elaborate the language.[221] It speaks to the development of "new terms or expressions, modifying the old ones, or selecting among alternative forms".[222] The

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[215] See Language in Education Policy provision 6 'Languages as subjects'.
[216] Alexandra (note 132 above).
[217] Ibid.
[218] RB Kaplan and RB Baldauf *Language planning: From practice to theory (1997) 3.*
[219] *Ibid.*
[220] D Mabule '*Language attitudes and language choice within the Correctional Services with reference to Pretoria Central Prison*' (Unpublished LLD, University of South Africa, 2011) 34.
[221] *Ibid* 37.
[222] *Ibid.*

result of this is that the language is consistently developed to meet the needs whether scientific, technical or educational placed on that particular language.[223] Further to meeting these needs the language is able to survive constant changes in language use and is able to carry communication through generations.[224] It is also able to be restructured in such a way that it is consistent with political ideology of the time.[225]

The development of Afrikaans is a great illustration of strong corpus planning. Afrikaans as a language originated from various languages.[226] Kamwangamalu states that the origins of Afrikaans are to be found in "several sources, among them the Dutch dialects, which constitutes 90% of the structure of Afrikaans; and several foreign influence (e.g. Khoi (also Khoe) and Southern Bantu languages, French, German, Portuguese, Malay, and English).[227]

Besides the development of Afrikaans from various languages, through numerous movements, Afrikaans was developed into a fully-fledged language that could stand its own in the arena of politic, education and literacy.[228] Additional to that, Afrikaans represented and was attached to a nationalist political ideology and served as a language that represented political beliefs of the people that spoke it.[229]

(b) Formal status planning.

Formal status planning in language planning involves selecting which languages will have a legal and public function in society.[230] For example, which language (s) will be used for official purposes, for religious purposes, as a provincial language or for educational purposes.[231] This is formalised by government through constitutional provisions, legislative and policy measures.[232] The constitutional provision for official

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[223] Ibid 38.
[224] Ibid.
[225] Ibid.
[226] NM Kamwangamalu 'The language planning situation in South Africa' (2001) 2(4) *Current Issues in Language Planning* 368.
[227] *Ibid.*
[228] *Ibid.* See Kamwangamalu on a more detailed discussion on the various actions that were taken in developing Afrikaans in South Africa.

[229] *Ibid.* This study does not go into the political history of Afrikaans as an attempt to do so will lead to an unnecessary discussion which does not serve the aims of this particular chapter or the study. Reference to Afrikaans is merely providing a practical example of how corpus planning takes place.
[230] J Lo Bianco 'Language policy and planning' in NH Hornberger and SL McKay (eds) *Sociolinguistics and Language Education* (2010) 145.
[231] Mabule (note 220 above; 36).
[232] Lo Bianco (note 230 above).

languages in the South African Constitution is an example of the results of status planning.[233]

In addition to this, status planning is said to be deliberately intended to elevate and allocate a prestigious position for certain languages in society.[234] In other words, it can be concluded that for languages that lack prestige, formal status planning can change such a reality for them if that is the intention of government.

(c) Acquisition and usage planning.

The goal of acquisition planning is to influence as many people as possible to use a certain language.[235] Lo Bianco explains that the promotion of usage of a language(s) is motivated by the need to weaken dominant language(s) and regenerate the diminished use of other language (s).[236] He explains that this usually takes place when political change takes place.[237]

This is where education comes in because acquisition planning involves the promotion and spread of a language, one pf the ways in which this is done is through language policy in education.[238] In acquisition planning there is also development of various programmes, initiatives and institutions in order to promote the use of certain language(s). The establishment of the Pan South African Language Board is one example of an institution charged with the promotion of the development of all official languages and promote multilingualism.[239]

The above processes in language planning which ultimately brings about the existence of language policies, is evidence of the ability of language in education policy's ability to change the ideologies about languages, and their use in education. In relation to African languages, effective corpus planning can ensure that African languages are developed and constantly modified to meet modern standards in education. Whilst status planning can ensure that the use of African languages can be elevated to LoTL levels. Acquisition and usage planning will ensure that more people are influenced to

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[233] Section 6(1) of the Constitution of the Republic of South Africa, 1996.
[234] Mabule (note 230 above; 36).
[235] *Ibid* 38.
[236] Lo Bianco (note 230 above; 145).
[237] *Ibid.*
[238] *Ibid* 38.
[239] See section 6(5) of the Constitution of the Republic of South Africa, 1996.

use African languages as LoTL in education thus shifting negative language attitudes pertaining to African languages.

2.3. Language ideologies and how they influence language choice.

In the study's claim that the current LiEP's failure in promoting the use of African languages as LoTL, the study attributes this failure to the fact that in its approach, LiEP does not take into account the fact that language inequalities in South Africa. These are mostly fuelled by language ideologies which give birth to language attitudes that do not see African languages as effective languages for LoTL.

This study claims that this has an effect of (whether intended or not is not a subject for study) undermining the right to choose a language of instruction as provided for by section 29(2) of the Constitution. As these language ideologies impact the choice of language of instruction towards English (somewhat Afrikaans) which ideologies deem to serve better as LoTL. The question that would then arise would be how do language ideologies influence language choice?

The first place to start in understanding how language ideologies and attitudes influence language choices is to first understand what language ideologies are. Makoe and McKinney define language ideologies as a "set of beliefs, values and cultural frames that continually circulate in society, informing the ways in which language is conceptualised and represented as well as how it is used".[240] In other words, language ideologies are what people think about certain languages which in turn influences how they use these languages.

They further provide that language ideologies come as a result of power relations in a society, meaning who ever has power, is the one that dictates which languages matter and how.[241] The rise and hegemony of English during colonial era in South Africa serves as one example of how those in power are the ones who make the decision as to what language matters and how.[242]

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[240] P Makoe and C McKinney 'Linguistic ideologies in multilingual South African suburban schools' (2014) 35 (7) *Journal of Multilingual and Multicultural Development* 659.
[241] *Ibid* 659.
[242] Please see Chapter three on detailed discussion.

Makoe and McKinney further provide that ideologies influence language use at micro-levels.[243] In schools for instance language ideologies through language policy have effect of reducing complex language variants and language practices that learners may possess before coming to school, into uniform imposed linguistic norms based on which language ideology deems as important or more useful.[244]

Therefore, learners are convinced into holding the belief that the imposed linguistic norms and practices are more valuable than their own, which leads to them legitimising the value of whichever language is imposed by these norms.[245] It is argued that there can be no real free choice in that instance. If learners due to imposed linguistic norms choose to abandon their own linguistic practices, therefore their languages to accommodate languages adopted by school policies. There is not much choice given to them in the first place, they are merely complying with policy and not making an informed conscious choice.[246]

2.4. Conclusion.

The purpose of this chapter was to set out the theoretical framework of the study. In doing this the chapter discussed language power and it was established that language holds ideological power which can be used to disempower people. What was also revealed by this discussion is that both education and language hold ideological influences. Therefore, decisions around language in education need to be made with this in mind.

This chapter also discussed language planning in an attempt to display why language policy has power to shift the reality of negative attitude about African languages as LoTL. Language policy was said to be a result of language planning by governments in which they plan which languages will be elevated to what status, how these languages will be used and also the development of languages to meet modern language needs in society. The discussion also involved how language ideologies

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[243] *Ibid.*
[244] *Ibid.*
[245] *Ibid.*
[246] Tollefson (note 80 above at 202).

affect language choices in education, thus undermining the right to choose a language of instruction as provided for by section 29(2) of the Constitution.

In conclusion in serving its aim, this chapter presented why language policy is an important start in ensuring that African languages are promoted and developed enough to be used as LoTL. Not only this but also how language policy can either hinder or provide effective access to the right to choose a language of instruction.

CHAPTER THREE: A HISTORY OF SOUTH AFRICAN LANGUAGE-IN-EDUCATION LAWS AND POLICIES AND THE IDEOLOGIES THEY REPRESENT.

3.1 Introduction.

This chapter aims to profile the history of language in education policies and practices over the period starting from 1795 under colonial missionary education till 1994 under the Apartheid government administration. The discussion will show how at each point

of the power struggle in South Africa, law through language policy particularly in education, reflected and maintained the power relations of each political dispensation. This discussion is also aimed at showing how negative ideologies about African languages came about as a result of said language laws and policies.

3.2 British Colonial Rule (1795-1910): Missionary Education in South Africa.

(a) Introduction.

Missionary education can be traced back to South African educational history to the eighteenth and nineteenth centuries.[247] However, missionaries had already been present in the seventeenth century.[248] Lubbe purports that the first missionary school was established by the London Missionary Society in 1798.[249] Which was a few years after the British settled in the Cape in 1795.[250] Other evidence of missionary activity being present before the eighteenth century is of the Moravian Brethren in 1730 under George Schmidt.[251]

Before the introduction of formal missionary schools, it is purported that education used to take place in the African community through the home. The native black community practiced what is termed "informal education" or "traditional education".[252] This meant that children learned their traditions and cultures through dedicated evening storytelling, as described by Wa Thiong'o in his recollection of his time before attending formal colonial school.[253]

These stories reflected each community's history, and in turn teaching children of that community's behaviours and attitudes.[254] These stories imparted culture and informed the child of the expected behaviour by the community to which they belonged. This

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[247] A Lewis 'Perceptions of mission education in South Africa from a historical-educational Perspective' (2007) *Tydskrif Vir Christelike Wetenskop* 181.
[248] *Ibid.*
[249] ANP Lubbe *Bantu Education in the Republic of South Africa 1969/70* 1 ed (1969) 1.
[250] A Lewis & J Steyn 'A critique of mission education in South Africa according to Bosch's Mission Paradigm Theory' (2003) 23 (2) *South African Journal of Education* 103.
[251] Lewis (note 247 above).
[252] PC Luthuli. *The Philosophical foundations of Black Education in South Africa* (1981) at 22; also see ANP Lubbe *Bantu Education in the Republic of South Africa 1969/70* 1 ed (1969) 1.
[253] Wa Thiong'o (note 1 above; 10).
[254] *Ibid.*

was done per the needs of that certain community so that the child grows to contribute to the fulfilment of such needs.[255]

However, when missionaries arrived in Africa, armed with the superiority of their own religious beliefs they were concerned with spreading the gospel.[256] They believed that the cultural believes and practices of the black communities were" heathen".[257] Therefore, they took it upon themselves to "civilise" black people and they believed civilisation was through a western way of living.[258] To impart this western way of life, the missionaries took over the education of natives. They replaced the informal indigenous education of the black child with western institutionalised formal education.[259]

The missionary education debate, as Van Der Walt describes, is often examined from two different schools of thought.[260] The one is a liberal premise where missionaries are viewed as saviours of black natives and their agenda noble and Christ-like.[261] This school of thought views missionaries as being "friends of the native", concerned about the black native's welfare.[262] The other view is that of the "revisionists" whose views are said to be radical [263] The Revisionist's school of thought suggests that missionary education was not a noble act from missionaries. However, it was part of the colonial capitalistic strategies.[264] Revisionists insist that the involvement of labour in the missionary education system for example, was not as other scholars suggest a noble act of teaching black natives to be self-sufficient.[265]However, revisionists conclude it was a strategy by the missionaries to prepare the native to labour in the colonial capitalist system.[266]

As much as there have been scholars who have put forward the argument that missionaries never shared the same ideology and intentions as those of the colonialist

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[255] Lubbe (note 249 above).
[256] Lewis & Steyn (note 250 above).
[257] *Ibid.*
[258] *Ibid.*
[259] *Ibid.*
[260] JL Van der Walt 'The culturo-historical and personal circumstances of some 19th century missionaries teaching in South Africa' (1992) 57(1) *KOERS* 75.
[261] Lewis (note 249 above; 186).
[262] *Ibid.*
[263] *Ibid.*
[264] *Ibid* 190.
[265] *Ibid* 191.
[266] Van Der Walt (note 260 above).

government.[267] It is important to point out that the same scholars in their arguments agree that the missionary endeavours accompanied and culminated as the colonial expansion endeavour rose in Africa.[268] These colonial endeavours were based on" political and economic ideologies and interests".[269]

It is also an impossible task to not judge missionaries outside of the colonial political strategies. This is because the same scholars, who urge against this judgment, concede to the fact that missionaries were influenced by "historic backgrounds, culture, understanding of reality, personalities, social positions, ecclesiastical tradition, personal context, motivation, and ideologies".[270] Which would mean missionaries were not immune to influence, including political influence. Therefore, political motivations cannot be entirely separated from the missionary endeavour.

These scholars also admit to the fact that missionaries were, "educated in western pedagogies and they sought to convey the same educational philosophy to their charges, thereby negating the educational needs of those they wished to convert".[271] This suggests a "superiority" that is also evident in colonial thinking. The belief that the western ways are of superior being than any other and thus the west being responsible for the welfare of the "other".[272]

Moreover, it is common course that in the mid-nineteenth century there was a partnership between the missionaries and the colonial government, through government funding of missionary schools.[273] This collusion plays an evidential role in solidifying the belief that missionary education was not politically neutral as suggested.

(b) Language in Education Laws and Policies under Missionary Education.

In keeping with the theme of language in education as a reflective result of the general political power struggle, one needs to understand the political climate in which

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[267] A Lewis 'Perceptions of mission education in South Africa from a historical-educational perspective' (2007) *Tydskrif Vir Christelike Wetenskop* 181-198; also see JL Van der Walt 'The culturo-historical and personal circumstances of some 19th century missionaries teaching in South Africa" (1992) 57(1) *KOERS* 75-86; also see A Lewis & J Steyn 'A critique of mission education in South Africa according to Bosch's Mission Paradigm Theory' (2003) 23 (2) *South African Journal of Education* 101-106.
[268] Lewis and Steyn (note 250 above; 103).
[269] *Ibid.*
[270] *Ibid* 101.
[271] *Ibid* 103.
[272] *Ibid.*
[273] *Ibid.*

missionary schools existed. Understanding such will also lead to an understanding of how English is such a dominant language in South Africa even today.

As was stated above missionary schools existed at the height of European colonial conquest.[274] In South Africa, colonial conquest can be traced back to 1652 when Dutch settlers occupied the Cape.[275] However, it is the British in 1795, and again in 1805 when they ceased the Cape and claimed it as a British colony that South Africa saw the intensity of colonial conquest.[276] Part of their conquest included the intense implementation of the policy of Anglicisation, which would see the colony assimilate to the British way of life.[277] Kamwangamalu states that the British wanted to establish "a colony that was British in character as well as in name".[278]

One of the areas that the British Colonial Government planned to implement its strategy was through the imposition of the English language.[279] So in the 1820s began the legal establishment of the hegemony of English.[280] In 1822 English was proclaimed to be the official language of the colony effective from 1825.[281] All official documents were written in English.[282] In 1827 court proceedings were to be held in English and by 1853, English had been made the exclusive language of parliament.[283] Even crucial official positions were only occupied by English speakers.[284] English dominated the gold and diamond mining industry which was popular at the time. English had been established as a language of trade in these mines and therefore quickly found favour as a language for improving one's social and economic status.[285]

The dominance of English was particularly important in education. Reagan recollects that one general in the colony was said to have advised "Import English teachers and the next generation will be Englishmen".[286] Reagan further explains that in 1814 the

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[274] Lewis & Steyn (note 250).
[275] NM Kamwangamalu 'The language planning situation in South Africa' (2001) 2(4) *Current Issues in Language Planning* 365.
[276] *Ibid.*
[277] *Ibid*
[278] *Ibid.*
[279] *Ibid* 66.
[280] *Ibid.*
[281] *Ibid.*
[282] *Ibid.*
[283] Hartshorne (note 88 above; 190).
[284] Kamwangamalu (note 275 above; 365).
[285] L Barnes 'Additive bilingualism in the South African language-in-education policy: Is there proof to the pudding?' (2004) 11 (2) *Alternation* at 45.
[286] T Reagan 'The ''language struggle'' in South Africa: Emergence and development in educational policy. World Education Monograph Series Number One: 1987-1988' (1988) *Educational Resources*

British colonial government had already made progress in importing teachers and also paying those teachers who were prepared to teach in English more as opposed to those who taught in other languages.[287] In addition to this, the government opened no fee-paying English medium schools.[288]

Apart from opening new schools the government also through the Education Act of 1865 provided that any missionary school would be offered financial assistance by the Government only if the language of instruction is English.[289] For the most part, before the Education Act, missionaries although not to the benefit of anyone but their agenda, instructed using African languages.[290] They found value in using these languages to further their teachings and therefore took an interest in developing African languages by way of codifying and translating English into African languages.[291] However, since the government was funding these schools they made it a legal requirement for English to be taught at any state-funded school.[292]That meant that those missionary schools that taught in African languages or Dutch (this was the language of Dutch settlers that had lost control of the Cape to the British) were legally obliged to teach in English if they were receiving government assistance.[293] This resulted in both the marginalisation of Dutch and African languages, a reflection of the political marginalisation of those who spoke these languages.[294]

3.3 The Union of South Africa (1910-1948): Towards Bilingualism.

This section will discuss the formation of the Union of South Africa in 1910 and what this meant for language policy in education at the time. This discussion will however be cursory, as a detailed discussion of the politics around the formation would not be resourceful for this study. The main purpose of the discussion is to still highlight the

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Information Centre (ERIC) available at *https://files.eric.ed.gov/fulltext/ED303028.pdf* accessed on 15 November 2020.
[287] *Ibid* 6.
[288] *Ibid.*
[289] Lewis &Steyn (note 250 above; 104).
[290] M Lafon 'The impact of language on educational access in South Africa' (2009) *Create Pathways to Access Research Monograph No.24* available at *http://www.create-rpc.org/pdf_documents/PTA24.pdf*, accessed on 16 June 2020 4.
[291] *Ibid.*
[292]Lewis & Steyn (note 250 above).
[293] Kamwangamalu (note 275 above; 365).
[294] *Ibid* 388.

plight of indigenous African languages in history but to also show the culmination of Afrikaans as a dominant language in history.

The Union of South Africa was formed eight years after the Dutch colonials and the British colonials had signed the Treaty of Vereeniging, declaring peace amongst them.[295] The Dutch colonials had occupied the Cape in 1652 and had lost control of it in 1805.[296] So by the time the Union was formed, the British colonial government had been in control of the Cape Colony for almost a century.[297]

However, during the time the British ruled over the Cape Colony their policy of Anglicisation was never well received by the Dutch.[298] So in that period, there were tensions between the two, based on politics and ideologies that resulted in the Dutch moving out of the Cape Colony to remove themselves from British rule.[299] The Dutch formed their independent homelands or colonies such as the Orange Free-State, Transvaal, and Natal.[300] After years of wars between the British and the Dutch, they eventually put their differences aside and united the separate colonies to form The Union of South Africa.[301]

What followed from the formation of the Union of South Africa was a bilingual language policy in which both, English and Dutch were declared equal official languages of the newly formed Union of South Africa.[302] This declaration was indicative of the political power relations of the Union which was that the Dutch and British had formed a united rule.[303] The constitutional declaration of English and Dutch as official languages meant that the government was legally mandated to use the two languages for government documentation and business.[304]

In education, this translated to Dutch-speaking children being instructed in Dutch and no longer forced to be taught in English, while English-speaking children would be

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[295] 'The Union of South Africa 1910' available at *https://www.sahistory.org.za/article/union-south-africa-1910,* accessed on 19 June 2020.
[296] Kamwangamalu (note 275 above; 265).
[297] *Ibid.*
[298] Reagan (note 286 above; 9).
[299] Kamwangamalu (note 275 above; 366).
[300] 'Great Trek (1835-1846)' available at *https://www.sahistory.org.za/article/great-trek-1835-1846,* accessed on 19 June 2020.
[301] *Ibid.*
[302] Kamwangamalu (note 275 above; 388).
[303] *Ibid.*
[304] Reagan (Note 286 above; 11).

instructed in English.[305] In 1914 however, Afrikaans took over as the unofficial language of instruction from Dutch.[306] Afrikaans a language derived from mostly Dutch and some local languages at the time, had been developed by its speakers to such an extent that it was unofficially recognised as a language in 1914.[307] However, in 1925 Afrikaans was declared an official language, replacing Dutch.[308]

For children who were speakers of African languages however, their languages continued to hold no value as languages of instruction nor as subjects.[309] Therefore, they would be instructed in either English or Dutch/Afrikaans.[310] However, in the 1930s Hartshorne states that missionaries requested the use again of African languages, as languages of instruction for black learners.[311] By 1935 black learners were instructed in African languages in the early years of schools.[312] The number of years would differ for each province. For example, in Natal, the first six years of schooling for a black learner would be in his/her mother tongue, an African language.[313] In the Transvaal, it would be the first two years and in the Cape and the Free State, it would be the first four years.[314]

After those early years of being instructed in their home languages, they would have to switch to being instructed in one of the two of the official languages from secondary school.[315] English was mostly the language that would be used at secondary school and forward because at the time it had already developed into a hegemonic language.[316]

3.4 The Apartheid Era (1948-1994): Language and the Segregationists Agenda.

(a)   Introduction.

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[305] Kamwangamalu (note 275 above; 388).

[306] *Ibid.*

[307] *Ibid.*

[308] *Ibid* 370.

[309] *Ibid* 388.

[310] *Ibid.*

[311] Hartshorne (note 88 above; 193).

[312] *Ibid.*

[313] K Eriksson 'Does the language of instruction in primary school affect later labour market outcomes? Evidence from South Africa' (2014) 29 (2) *Economic History of Developing Regions* 316.

[314] *Ibid.*

[315] *Ibid.*

[316] Kamwangamalu (note 275 above; 388).

This section will discuss the apartheid era and how language laws and policies were structured to serve the political ideologies of the apartheid government. This discussion like the previous will not go into great detail because to do so would not be beneficial for this study.

Apartheid, which means apartness in Afrikaans, was a policy birthed by the National Party when it took governance of the Union of South Africa in 1948.[317] The ideological basis of apartheid was centred on Christian nationalism.[318] Christian nationalism was "a philosophy which propagated notions of separate identity and development of each *volk* (people) and of the God-given responsibility of the Afrikaner *volk* to spread the gospel to the native inhabitants of Africa and to act as their guardians".[319]

The Afrikaner populace represented by the National Party believed that it was God intended that races must live separate from each other.[320] They believed each race had a "unique destiny, history, religion, culture and values" and therefore should exist separate and independent of each other.[321] However, they simultaneously believed that they were the superior race and that God intended that they take control and guard the black race.[322] More explains that this was because Afrikaners falsely believed that black people were "alien savages, biologically and mentally inferior, underdeveloped, lazy, and irresponsible". [323]

Like their predecessors, the National Party used the law to serve and practically implement its racial segregation ideology. They moved to institutionalise apartheid by introducing various laws that were meant to fulfil the segregation agenda. More summarises some of the laws as including but not limited to:

"the Group Areas Act, mandating residential segregation; the Reservation of Separate Amenities Act, requiring segregated public facilities; the Immorality Act, forbidding sexual liaisons across colour divide; the Prohibition of Mixed Marriages Act, forbidding interracial matrimony; the Population Registration Act, the pillar of apartheid legislation which classified people according to their race and ordering; the Bantu Education Act, enacting separate and unequal education for different racial groups; the

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[317] MP More *Biko: Philosophy, Identity and Liberation* (2017) 130.
[318] N Kamwangamalu 'A new language policy, old language practices: status planning for African languages in a multilingual South Africa' (2000) 20 (1) *South African Journal of African Languages* 52.
[319] *Ibid.*
[320] More (note 317 above; 130).
[321] *Ibid.*
[322] Kamwangamalu (note 318 above).
[323] More (note 317 above; 133).

Prevention of illegal Squatting Act ,preventing unemployed African work seekers from living in white cities or towns…".[324]

More explains that all these laws coupled with regulations not only ensured separation of the white and black races but also legally reinforced white supremacy.[325] Through legislation like the Native Land Act 27 of 1913 which divided land and gave white people 87% of land and leaving only 13% to black people.[326] Along with the Bantu Homelands Act 26 of 1970 which saw the removal of black people from urban areas, which were to be reserved for whites, to underdeveloped "homelands".[327] The Bantu Homelands Act also had the effect of denationalising black South Africans.[328] This meant that they ceased to be citizens of South Africa, but were citizens of whichever independent homeland they belonged to.[329] This meant that they were excluded from the political and economic arena in Southern Africa.[330]

Language played a crucial role in the division of black South Africans into various homelands. Rycroft explains that black homelands were grouped according to language use.[331] He further explains that a person was identified as belonging to a homeland based on the language they spoke or even if they had a relationship with a person who spoke said language.[332] So, for the Zulu speaking the homeland of KwaZulu was established, for the Xhosa speaking Ciskei and Transkei were their homelands, whilst the Tshwane, Venda, Pedi, Swati, Sotho, Tsonga and Ndebele. Their respective homelands were Bophuthatswana, Venda, Lebowa, KaNgwane, QwaQwa, Gazankulu, and KwaNdebele.[333]

It is said that not only was the homelands established to disenfranchise black South Africans but it was also a strategy by the apartheid government to "divide and conquer".[334] By ethnically dividing the large black population, the government was able to better control them as opposed to when they are unified.[335] From this, it is evident

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[324] *Ibid* 131
[325] *Ibid.*
[326] *Ibid.*
[327] *Ibid.*
[328] AJ Rycroft 'Citizenship and rights' in A Rycroft (ed) *Race and The Law in South Africa* (1987) 218.
[329] *Ibid.*
[330] More (note 317 above; 133).
[331] Rycroft (note 328 above).
[332] *Ibid.*
[333] 'The Homelands' available at *https://www.sahistory.org.za/article/homelands* accessed on 19 June 2020.
[334] Msaule (note 19 above).
[335] *Ibid.*

that the daily existence of each race and ethnic group was determined by the apartheid government's desire to segregate.

(b)   *Language in Education under Apartheid: The Bantu Education Act 47 of 1953.*

The control of the apartheid government also found its reach in education.[336] Like other spheres of life, the education system was separated according to race and ethnicity.[337] The Coloured Education Act 47 of 1963 controlled the education of coloured people.[338] The Indian Education Act 47 of 1965 controlled the education of Indian people.[339] The Bantu Education Act 47 of 1953 controlled the education of the black population.[340]

Kamwangamalu further explains that there were different Departments of Education for each race and ethnic group.[341] He states that there was "one national and four provincial departments for White education, one department for Indian education, one for Coloured education, and 12 for Black education, including one department each for the various ethnic groups that were then divide into so-called 'ethnic homelands'."[342]

Before 1948, missionaries had charged themselves with the control of black people's education.[343] However, when the apartheid government came into political power, they deemed it essential for them to control the education of black children.[344] So through the Bantu Education Act, the apartheid government sought to provide black learners with an inferior education system.[345]

Before the introduction of the Bantu Education Act, the language policy at black schools under missionary education was inclusive of African languages through mother-tongue instruction in the first early years of primary.[346] This was a maximum

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[336] K Govender & T Woker 'Race and Social Right 'in A Rycroft (ed) *Race and the Law in South Africa* (1987) at 236.
[337] *Ibid.*
[338] *Ibid.*
[339] *Ibid.*
[340] *Ibid.*
[341] Kamwangamalu (note 275 above; 389).
[342] *Ibid.*
[343] Eriksson (note 313 above; 317).
[344] *Ibid.*
[345] *Ibid.*
[346] Hartshorne (note 88 above; 193).

of six years as was practiced in Natal, then a switch to English or Afrikaans (mostly English).[347]

However, once the Bantu Education Act was introduced this changed to eight years' mother tongue instruction.[348] So for eight years, black learners would be instructed in an African language, considered a mother tongue language in that particular homeland, thereafter there was a switch to instruction in English or Afrikaans.[349] Again the use of African languages after the eight years of them being used as mediums of instruction would cease to exist.[350] These languages would be taught only as subjects.[351]

The increase in the number of years learners were to be taught in their mother tongue coincided with the publication of the United Nations Educational, Scientific and Cultural Organization (UNESCO) report on the benefits of mother tongue education.[352] The report provided international support for the use of mother tongue as a medium of instruction in the first years of schooling.[353] The apartheid government used the UNESCO report to support their extended mother-tongue medium education policy at primary schools.[354]

However, the real reasons behind this language policy coupled with an inferior education system for black learners had to do more with fulfilling the political aims of apartheid, which was to keep black South Africans inferior.[355] The apartheid government believed that there was no place for black people in white South Africa except for serving, therefore the education of black people should reflect this reality.[356] So, in each race, the child must be educated following what role they will play in" white" South Africa.[357] For the white child, this was the role of employer or master, whilst for the black child, it was the position of a worker or servant.[358]

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[347] *Ibid.*
[348] K Heugh 'From unequal education to the real thing" in K Heugh (ed) *Multilingual Education for South Africa* (1995) 42.
[349] *Ibid.*
[350] Lafon (note 290 above; at 5).
[351] *Ibid.*
[352] Heugh (note 348 above; 42).
[353] *Ibid* 43.
[354] *Ibid*
[355] Kamwangamalu (note 275 above; 392).
[356] Govender & Woker (note 336 above).
[357] *Ibid.*
[358] *Ibid.*

Therefore, along with labour laws that discriminated against black people such as the Bantu Labour Act 48 of 1953, which prohibited the registration and legal recognition of black trade unions,[359] and the reservation of certain jobs for white people.[360] The language policy under the Bantu Education Act was meant to decrease black people's exposure to English and Afrikaans which were languages of economic and social power at the time.[361] This decrease in exposure to languages at the primary level meant that black learners would not be well versed in these languages enough to do well in secondary school because these languages were used for examination purposes.[362] This would result in a black population that was not skilled enough to qualify for semi or high-skilled jobs, thus leaving these jobs for white people only.[363]

Besides the false belief in white supremacy and black inferiority, it is also asserted that the language policy under the Bantu Education Act was also a mechanism used to strengthen the use of Afrikaans.[364] By forcing the use of Afrikaans by the black majority it would mean that there would be a growth in the use of Afrikaans and a decrease in the dominance of English.[365]

It is these political reasons that saw the resistance of the Bantu Education Act in 1976.[366] Coupled with the inferior treatment of black schools and the imposition of the Afrikaans language as a language of instruction, learners took to the streets in Soweto to protest against the Act.[367] However, the resistance against Afrikaans as a medium of instruction did not mean anything for the status of African languages.[368] Kamwangamalu clarifies that this resistance instead saw the rise in status of the already powerful English language.[369] This is because hostile attitudes had already been present against African languages.

Kamwangamalu states that:

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[359] CN Patel 'Race and labour law' in Rycroft (ed) *Race and the Law in South Africa* (1987) at 166.
[360] Eriksson (note 313 above; 316).
[361] Kamwangamalu (note 275 above; at 393).
[362] *Ibid.*
[363] *Ibid.*
[364] *Ibid* 392.
[365] *Ibid.*
[366] *Ibid.*
[367] *Ibid.*
[368] *Ibid* 394.
[369] *Ibid.*

"The black pupils saw education in their mother tongue as a dead-end, a barrier to more advanced learning, a lure to self-destruction and a trap designed by the apartheid Government to ensure that the black pupils did not acquire sufficient command of high-status languages (English and Afrikaans), for such education would enable them to compete with their white counterparts for well-paying jobs and prestigious career options".[370]

As a result of such hostility towards African languages, parents and learners demanded to be taught in Afrikaans and English as early as possible at schools.[371] In 1979 when the Bantu Education Act was amended to provide again for mother-tongue medium of instruction, for four years of primary school, thereafter a parent could choose the medium of instruction between the two official languages (English and Afrikaans).[372] Parents still chose English and not Afrikaans as it was seen as the language of the oppressors.[373]

It can be concluded that the apartheid era and its Bantu Education Act is guilty of not only lifting the status of English even higher than it had been during colonial missionary education, but it is also guilty of causing negative attitudes towards African languages. Attitudes which still till this day persist in the minds of those who speak these languages.

3.5 Conclusion.

In conclusion, both colonialism and apartheid, had a clear desire to political and economic exclusion of black people which was achieved and maintained by the exclusion of their languages. African languages played no meaningful role in education as a result their value was decreased to such an extent that even the people that spoke these languages found no value in them till this day.

It is clear that each administration made use of the law, more particularly language policies in education to further their aims and political desires. During colonialism, law made English a powerful language as desired by the government of the time. Later the apartheid government also did the same, they set on a path to decrease the status of English and elevate that of Afrikaans. Although the former did not become a reality,

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[370] *Ibid.*
[371] *Ibid* 395.
[372] *Ibid.*
[373] *Ibid.*

the latter was a success because they had managed to elevate Afrikaans to such a level that it continues to play a huge part in education presently.

From this historical profile, it can be concluded that law and policy, more so in relation to language in education, play an important role in creating the desired social order. If South Africa presently wants to build a constitutional democracy based on equal access to rights, more especially language rights in education, it needs to find intention through law and policy. This means the establishment of laws and policies that are effective in redressing the diminished status and use of African languages, therefore granting they equal footing as English and making them viable option as LoTL.

CHAPTER FOUR: SECTION 29(2) OF THE CONSTITUTION AND THE LANGUAGE IN EDUCATION POLICIES AND THE PROMOTION OF AFRICAN LANGUAGES.

4.1. Introduction

This chapter aims to analyse in section 29(2) read together with section 6 of the Constitution, the LiEP in terms of Section 3(4) (m) of the National Education Policy Act, 37 of 1996 along with Norms and Standards Regarding Language Policy (hereafter referred to as norms and standards) in Terms of Section 6(1) of the South

African Schools Act 84, 1997, in relation to the promotion of African languages as LoTL.

4.2. Section 29(2) of the Constitution: Development and Interpretation.

(a). The Constitutional Contextual Development of Section 29(2).

As discussed above, the language in education policy has always reflected the language policy of South Africa as a whole. In both general and specifically in education, language practices and policies have reflected and maintained white minority power.[374] Based on this history and the racially discriminatory laws and language policies that benefited white minorities at the expense of the black majority and their languages.[375] Post-apartheid South Africa is concerned with redressing the result of such a history, through the adoption of the 1996 final Constitution as the supreme law of the land.[376]

The desires of the present government in South Africa are to be found in the underlying values of the Constitution as adopted as supreme law.[377] The Constitutional values as provided for in Section 1 of the Constitution include but are not limited to, human dignity, the achievement of equality, and the advancement of human rights and freedoms.[378] These values are consistently mentioned in the Constitution as a whole and are even provided for in detail as part of the rights in the Bill of Rights.[379]

Each constitutional value is important and depends on the other to be successfully achieved.[380] Equality cannot be if freedom and human dignity are excluded.[381] As Malherbe explains, for freedom of one to be realised, one must be afforded dignity, which in turn means a recognition of that person's "equal worth" concerning others.[382]

The Constitution realising the particular divisive role of language in the past and its role in the reproduction of inequalities ensured the explicit protection of eleven

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[374] Currie (note 7 above; 2).
[375] *Ibid.*
[376] See Preamble and section 2 of the Constitution of the Republic of South Africa, 1996.
[377] *Ibid.*
[378] See section 1 of the Constitution of the Republic of South Africa, 1996.
[379] See section 7(1), section 9 on Equality, section 10 on Human Dignity, section 12 Freedom and Security of the person and section 39(1) (a) on the Interpretation of Bill of Rights.
[380] R Malherbe 'The constitutional framework for pursuing equal opportunities in education' (2004) 22 (3) *Perspectives in Education* 12.
[381] *Ibid.*
[382] *Ibid.*

languages by recognising them as official languages of South Africa.[383] Nine of the languages are African languages, which in the past did not enjoy constitutional protection.[384] These languages are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, isiNdebele, isiXhosa, and isiZulu.[385]

Alexandra stresses that the recognition of eleven official languages is at the core of building a united, free, and equal nation.[386] That is because nation-building involves ensuring that "all our people to become conscious of the fact that they belong to one South African/Azanian nation".[387] To achieve this consciousness of belonging amongst people, the protection and recognition of that which makes people unique is necessary.[388] Malherbe in agreement with Alexander postulates that respecting a person's uniqueness is crucial to the achievement of equality, human dignity, and freedoms.[389]

As opposed to the past where differences in race and ethnicity were highlighted to achieve segregation and divide in society, the new democratic Constitution is concerned with redressing such and creating unity in that diversity.[390] The constitutional protection of an individual's culture, language, and religious beliefs is evidence of the desire to create equality through unity in diversity, as these are the main differences amongst people.[391] It is in this context that linguistic educational rights exist too.[392] The provision for the choice of language of instruction is a part of the quest to give every citizen freedom, dignity, and equality in education and the opportunities that come with such an education.[393]

(b). Section 29(2) Analysis and Judicial Interpretation.

(i) Content.

Section 29(2) provides:

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[383] See section 6(1) of the Constitution of the Republic of South Africa, 1996.
[384] Currie (note 7 above; 2). The two languages that enjoyed official language status were English and Afrikaans.
[385] See section 6(1) of the Constitution of the Republic of South Africa, 1996.
[386] N Alexander *Language and National Unity in South Africa/Azania* (1) (1989) 5.
[387] *Ibid.*
[388] *Ibid.*
[389] Malherbe (note 380 above).
[390] See Preamble to the Constitution of the Republic of South Africa, 1996.
[391] Malherbe (note 380 above at 12).
[392] *Ibid.*
[393] *Ibid.*

"Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. 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, taking into account (a) equity (b) practicability: and (c) the need to redress the result of past racially discriminatory laws and practices".[394]

(ii) Scope and Limitations.

- *Official Language or Languages*

The right to receive education in a language or languages of choice is limited to only official languages.[395] These languages are the eleven listed in the Constitution under section 6(1).[396]

- *Public Educational Institutions*

Although section 29(2) affords everyone the choice to the language/s in which to receive education, it however in the case of minors, is left to the parent to exercise this right on behalf of their minor child.[397] Section 29(2) also explicitly provides that even though this right is afforded to all institutions of learning, meaning both basic and higher education institutions.[398] It is however only applicable *to public* institutions of learning.[399]

- *Reasonably Practicable*

The right is also not absolute; it can be limited by a law of general application, having met the requirements that justify the limitation, as provided for by the limitation clause in the Constitution.[400] Besides the limitation through section 36(1) of the Constitution the right itself also prompts limitation. As much as section 29(2) allows for education

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[394] See section 29(2) of the Constitution of the Republic of South Africa, 1996.
[395] See section 29(2) of the Constitution of the Republic of South Africa, 1996.
[396] See section 6(1) of the Constitution of the Republic of South Africa, 1996.
[397] Msaule (note19 above; 242); also see Norms and Standards Regarding Language Policy Published in Terms of section 6(1) of the South African Schools Act, 1996 at 4(1).
[398] Malherbe (note 380 above; 21).
[399] *Ibid. Emphasis added.*
[400] See section 36(1) of the Constitution of the Republic of South Africa, 1996.

in a chosen official language, it does however provide that this can only be afforded if the education in that chosen official language is reasonably practicable.[401]

Meaning that one can only exercise this right and evoke this obligation against the state on the condition that it would be "reasonable to expect the state to provide such education".[402] In determining reasonable practicability, certain factors can be taken into account such as availability of resources such as teachers, budget, and other schools that are nearest that can provide for the learning and teaching in the requested language.[403]

It is submitted that even though the Constitution has not made provision for when it is reasonably practicable for education in a chosen official language, guidance could be found in the Norms and Standards.[404] The Norms and Standards provide that "It is reasonably practicable to provide education in a particular language of learning and teaching if at least 40 in Grades 1 to 6 or 35 in Grades 7 to 12 learners in a particular grade request it in a particular school".[405]

Although the Norms and Standards provide for when it is reasonably practicable to afford education in a chosen official language. The Supreme Court in *Minister of Education Western Cape v Mikro Primary School* (hereafter referred to as *Mikro* Case)[406], held that these numbers are mere guidelines. The court explained that;

"In terms of S 29(2) everyone has a right to be educated in an official language of his or her choice at a public educational institution to be provided by the State if reasonably practicable, but not the right to be so instructed at *each and every* public institution subject to it being reasonably practicable to do so".[407]

The court explained that if section 29(2) were to be interpreted as meaning that everyone has the right to be educated in a chosen official language at "*each and every*" public school, this would cause numerous problems. Making an example of the

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[401] See section 29 (2) of the Constitution of the Republic of South Africa, 1996.
[402] Malherbe (note 380 above; 20).
[403] *Ibid* 21.
[404] See Norms and Standards Regarding Language Policy Published in Terms of Section 6(1) of The South African Schools Act, 1996 published in GN 383ofGG 17997 14/07/1997; 3.
[405] *Ibid.*
[406] *Minister of Education Western Cape v Mikro Primary School* 2005 (3) SA 436 (SCA).
[407] *Ibid* at para 31. *Own emphasis added.*

problems that could arise from this interpretation. The court illustrated its point by making an example of an instance were,

"Afrikaans learners would be entitled to claim to be taught in Afrikaans at an English medium school immediately adjacent to an Afrikaans medium school which has vacant capacity provided they can prove that it would be reasonably practicable to provide education in Afrikaans at that school".[408]

From this, it could be concluded that even though the right to receive education in a chosen official language is afforded to everyone, it cannot be exercised at *every* public institution based on just being reasonably practicable to do so. Stracher JA held that because the Constitution places an obligation to the state to "ensure the effective access to, and implementation of, this right".[409] It leaves it to the state to "consider all reasonable educational alternatives, including single medium institutions".[410]

The court held that the Norms and Standards "would seem to be no more than a guideline formulated by the Minister of Education as to when the State would *consider* the constitutional right to receive education in a particular official language at a public educational institution to have been established".[411] The establishment of such, however, does not mean "children who wish to be educated in that language are automatically eligible for admission to that school for instruction in that language".[412]

The quotas as provided for by the Norms and Standards are not to be held against the school to fulfil the right in section 29(2). This judgment by the Supreme Court of Appeal also suggests that reasonable practicability cannot stand alone; the state still needs to play an active role in developing reasonable educational alternatives after it has established practicability to make this right accessible and implementable.[413]

Msaule explains that this subjection to reasonable practicability is what makes section 29(2) a "weak positive right" in that its realisation is subject to qualification.[414] He explains that unlike strong positive rights, which need no qualification to be realised.[415] Weak positive rights need to be qualified first for their realisation.[416] The right can only

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[408] *Ibid at* para 30.
[409] *Ibid* at para 31.
[410] *Ibid.*
[411] *Ibid* at para 34. *Emphasis added.*
[412] *Ibid.*
[413] S Woolman & M Bishop 'Education' in S Woolman (ed) *Constitutional Law of South Africa* 2 ed (2013) Vol 4: 61.
[414] *Ibid.*
[415] *Ibid.*
[416] *Ibid*

be qualified if the state has "established and adopt reasonable programs for their realisation over a period of time and it is the reasonableness of government programs coupled with the availability of resources that are of importance for the successful assertion of these rights".[417]

- *Reasonable Educational Alternatives.*

As was held in the *Mikro case*, this right is a right that is held by the learner against the state.[418] The state is burdened with ensuring that where it is reasonably practicable, it then must ensure that this right is implemented and is accessed by the learner.[419] The state needs to do so by considering all reasonable educational alternatives.[420] The court in *Mikro* acknowledged that the court may be in a position to recognise many educational alternatives that the state can employ to achieve implementation and effective access to this right.[421] However, the court held that the state must be given discretion in determining which alternative is best suitable.[422]

"(a) Equity; (b) practicability; and (c) the need to redress the results of past racially discriminatory laws and practices" are what the state needs to take into consideration in determining which educational alternative is effective at ensuring access and implementation of the right as provided for in section 29(2).[423] Malherbe states that it is worth noting that these factors cannot be used to deny the right in its entirety.[424] These factors may be used to measure the effectiveness of the alternative adopted by the state.[425]

What Malherbe may be concluded as stating, is that the right in section 29(2) is only conditioned by "reasonable practicable".[426] Once there has been an establishment that it is reasonably practicable to offer education in a chosen language at a particular

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[417] *Ibid.*
[418] *Mikro* supra note 406 at para 31.
[419] *Ibid.*
[420] *Ibid.*
[421] *Ibid.*
[422] *Ibid.*
[423] Section 29(2) of the Constitution of the Republic of South Africa, 1996.
[424] Malherbe (note 380 above; 22).
[425] *Ibid.*
[426] *Ibid.*

school, only then do reasonable educational alternatives get measured against the considerations as provided.[427]

When it comes to determining the reasonableness the court is tasked with such a determination.[428] The Constitutional Court has previously determined reasonableness in various cases concerning the interpretation of rights as contained in the Bill of Rights.[429] However, it is in *Government of The Republic of South Africa and Others v Grootboom and others* (hereafter *Grootboom*) that the Constitutional court set much elaborate precedence on how reasonableness is determined in cases pertaining to rights.[430]

The Court in *Grootboom* held that the factors to consider in determining reasonableness included firstly, "measures must be determined because the Constitution creates different spheres of government".[431] These different spheres of government each have different powers and functions; however, they all play an important part in fulfilling a certain constitutional obligation.[432] With this in mind a reasonable measure or program, the court held, would be one that clearly states each sphere's task.[433] However, it should also make resources available to each sphere so that these tasks can be carried out.[434]

Programs must be "comprehensive "in that they include every key government sphere and holds each accountable for their part in the implementation of the program, ultimately the realisation of a right. Also, the program framework must be able to provide for the ability for each of the spheres to perform their function and ensure that with this ability, these functions are performed.[435]

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[427] Woolman & Bishop (note 413 above; 60).
[428] Msaule (note 19 above; 242).
[429] *Mazibuko v City of Johannesburg* 2010 (4) SA 1(CC); *Government of The Republic of South Africa and Others v Grootboom and others* 2001 (1) SA 46(CC); also *see Minister of Health V Treatment Action Campaign* 2002 (5) SA 721 (CC).
[430] *Government of The Republic of South Africa and Others v Grootboom and others* 2001 (1) SA 46(CC); also see N Mlilo *To Be Reasonable or Not? A Critique of the South African Constitutional Court's Approach to Socio-economic Rights* (unpublished LLM thesis, University of Johannesburg, 2016) 15.
[431] *Grootboom* supra at para 39.
[432] *Ibid.*
[433] *Ibid.*
[434] *Ibid.*
[435] *Ibid* at para 40

Another factor considered by the court in determining reasonableness is coherence.[436] The court held that programs must be "coherent" and "directed towards a progressive realisation of the right".[437] The court left it in the hands of the executive and the legislature to determine programs and emphasised on this being their responsibility, however, the programs must show that it is "capable of facilitating the realisation of the right".[438]

The court made it clear that in the analysis of reasonableness, it cannot concern itself with whether other measures could have been better. However, the court's only role is to evaluate the reasonableness of the measure that is subject to the dispute.[439]In addition it is not enough to provide legislation or programs, but this needs to be followed by action to yield results.[440] It highlighted the need for legislation to be "supported by appropriate, well-directed policies and programs implemented by the executive".[441] Therefore, it was held that" policies and programs must be reasonable both in conception and implementation", if not "a reasonable program that is not implemented reasonably will not constitute compliance with the state's obligations".[442]

The court further added that the program or measure must take into account the right in its "social, economic and historical context and to consider the capacity of institutions responsible for implementing the program". [443] This speaks to the "balance and flexible" nature of a program that will in turn keep in mind the ever so changing social climate and will be open to "continuous review".[444] The court also made it clear that a measure that "excludes a significant segment of society cannot be said to be reasonable".[445]

Further, the court held that even if a measure proves that it will be successful at realising a right, it must however do so within the context of the Bill of Rights.[446] At the

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[436] *Ibid* at para 41.
[437] *Ibid.*
[438] *Ibid.*
[439] *Ibid.*
[440] *Ibid* at 42.
[441] *Ibid.*
[442] *Ibid.*
[443] *Ibid* at para 43.
[444] *Ibid.*
[445] *Ibid.*
[446] *Ibid* at para 44.

centre of the measure must be respect and promotion of human dignity, equality, and freedom.[447] Yacoob J added:

"A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom, and equality. To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those, whose needs are the most urgent and whose ability to enjoy all rights, therefore, is most in peril, must not be ignored by the measures aimed at achieving the realisation of the right."[448]

From this, it is clear that the state is given autonomy to decide which alternative they will adopt to ensure access to this right.[449] However, autonomy is limited in that it needs to meet the standards of reasonableness that the court has established over the years. Reasonableness is to be determined on a case-by-case basis.[450] Meaning that in each case reasonableness is dependent on the facts of each case.

(c). Section 29(2) and the promotion of African languages as languages instruction.

The ability for one to choose a language of instruction is an extension of the Constitution's priority to equality, human dignity, and freedom in education. At the centre of it also are desires to ensure that learners enjoy equal and quality education.[451] This equality in education yields a society where every individual can fully participate in his or her economic, political, and social development. Education is at the forefront of the production of such a society.[452] Heugh asserts that equality of access to and usefulness of education is reliant on the ability for learners to equally be able to engage with the curriculum.[453] The ability to engage with the curriculum rests fundamentally on language.[454]

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[447] *Ibid.*
[448] *Ibid.*
[449] Msaule (note 19 above; 243).
[450] *Grootboom* supra note 430 at para 20.
[451] Malherbe (note 380 above; 10).
[452] *Ibid.*
[453] K Heugh 'The case against bilingual and multilingual education in South Africa: Laying bare the myths' (2002) 20 (1) *Perspectives in Education* 173.
[454] *Ibid.*

Section 29(2) is consistent with the Constitution's protection of eleven languages as official languages.[455] It is also part of the constitutional project of making sure that all official languages enjoy parity of esteem and equitable treatment.[456] This is in direct contrast to the hierarchy of languages that were present in the past, especially in education under Bantu Education.[457] A result of this linguistic hierarchy resulted in the diminished use and status of African languages, which is why the Constitution places an acute obligation on the state to advance the status and use of these languages.[458]

In exploring how Section 29(2) of the Constitution contributes to the promotion of African languages, it does so through its "flexible approach to language use" as stated by Balfour and Mkhize.[459] The flexibility is in the provision that everyone can choose *any* official language or languages as a language of instruction.[460] This choice limited to official languages allows African languages to be possible languages of instruction because they form part of the official languages listed in the Constitution.[461]

However, although this provision includes mother tongue education, which is defined by Msaule as "education through the language which the learners have acquired in the early years and which normally has become their natural vehicle of thought and communication".[462] It does not however *guarantee* mother tongue education if that language is not an official language.[463] Therefore, it could be concluded that those African languages that are also mother tongue languages to some, not recognised as official languages cannot be chosen as languages of instruction.[464]

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[455] See section 6(1) of the Constitution of the Republic of South Africa, 1996.
[456] See section 6(4) (2) of the Constitution of the Republic of South Africa, 1996.
[457] See discussion in chapter three above.
[458] See section 6(2) of the Constitution of the Republic of South Africa, 1996.
[459] D Mkhize & R Balfour 'Language rights in education in South Africa' (2017) 31 (6) *South African Journal of Higher Education* 135.
[460] *Ibid. Emphasis Added.*
[461] See section 6(1) of the Constitution of the Republic of South Africa, 1996.
[462] Msaule (note 19 above; 242).
[463] M Seloene' The right to education: lessons from Grootboom 'available at *http://www.saflii.org/za/journals/LDD/2003/7.pd*f accessed on 20 September 2019.These languages that are not recognised by the Constitution as official languages are languages such as KheLobedu, Sepulana, IsiHlubi. These languages rather than be declared as official languages in the Constitution are merely reduced to being respected by the Constitution in section 6 (5) (b).
[464] *Ibid.*

This also means that an IsiZulu mother tongue speaking learner can choose IsiNdebele as a language of instruction as it is part of the official languages. In addition, an English-speaking learner could choose one of the African languages listed as an official language, as a language of instruction. For both these learners, the language of instruction is not necessarily a mother tongue language, but it is an African language nonetheless.

Although this flexibility contributes to the multilingual project in a multicultural country such as South Africa, and the recognition of African languages as languages of instruction, this study argues that recognition does not translate to promotion. This is mostly true for African languages if one considers their history in neglect and the continuous hegemonic nature of English and somewhat Afrikaans that still makes them more favourable languages of instruction.[465] These realities make the flexibility of this language right in education symbolic rather than pragmatic in relation to the promotion of African languages as languages of instruction.[466]

The body of case law that has been instrumental in the jurisprudence of section 29(2) is evidence of how African languages still play second-best in the arena of teaching and learning to English and/or Afrikaans.[467] What has been most revealed by the case law is that even those who speak African languages have no interest in them as languages of teaching and learning.

As Moseneke DCJ lamented in one of these cases, that;

"Learners whose mother tongue is not English but rather one of our indigenous languages, together with their parents, have made a choice to be taught in a language other than their mother tongue. This occurs even though it is now well settled that, especially in the early years of formal teaching, mother tongue instruction is the foremost and the most effective medium of imparting education."[468]

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[465] For detailed discussion on factors influencing the choice of English as LoLT see De Wet (note 47 above).

[466] Mgqwashu (note 69 above; 299).

[467] See *Minister of Education Western Cape v Mikro Primary School* 2005 (3) SA 436 (SCA); *Matukane & Others v Laerskool Potgietersrus* 1996 (3) SA 223 (T); *Seodin Primary School v MEC Education, Nothern Cape* 2006 (4) BCLR 542 (NC); *Head of Department: Mpumalanga Department of Education v Hoerskool Ermelo* 2010 (2) SA 415 (CC); *Laerskool Middelburg v Deparementshoof, Mpumalanga Department Van Onderwys* 2003 (4) SA 160 (T).

[468] *Head of Department: Mpumalanga Department of Education and Another v Hoerskool Ermelo and Another* 2010 (2) SA 415 (CC) at para 50.

In each of these cases, the court has had to deal with the contestation between English and Afrikaans languages as languages of teaching and learning. Indigenous languages have had no feature in this contest. It is submitted that this contestation is reminiscent of the past were English and Afrikaans took centre stage in South Africa in general and in education particularly. The right to choose a language of instruction still seems to tilt the scale in favour of mostly English.

Provisions such as "reasonably practicable" make it even more difficult for African languages to even have a seat at the table of teaching and learning.[469] This is because resources, although not the only factor, play a huge role in whether or not "reasonably practicable" is achievable.[470] African languages are at a disadvantage in this regard because they have been neglected for so long, that resources such as books are not easily accessible like material in English for example.[471] This makes it easy for institutions and learners to fall back into old language practices where English or Afrikaans is chosen as a language of instruction, due to lack of practicability.[472]

It is also submitted that if "reasonable practicable" is interpreted as having been established by reaching the quotas as prescribed in the Norms and Standards, then indigenous languages are at a disadvantage as they might never be able to reach those quotas.[473] This is because hostile attitudes towards African languages are intense. These attitudes are reflective in present case law where parents, of black mother-tongue speakers of indigenous languages, would rather fight for the right for their children to be taught in English rather than in an indigenous language.[474]

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[469] Mkhize and Balfour (note 459 above; 136).
[470] Malherbe (note 380 above; 21).
[471] Lafon (note 290 above).
[472] Mkhize and Balfour (note 459 above; 136).
[473] Norms and Standards Regarding Language Policy provide that where there is "at least 40 in grades 1 to 6 or 35 in grades7 to 12 learners in a particular grade" who request to be taught in a particular language, then it is reasonably practicable to provide education in that particular language.
[474] See *Minister of Education Western Cape v Mikro Primary School* 2005 (3) SA 436 (SCA); *Matukane & Others v Laerskool Potgietersrus* 1996 (3) SA 223 (T); *Seodin Primary School v MEC Education, Nothern Cape* 2006 (4) BCLR 542 (NC); *Head of Department: Mpumalanga Department of Education v Hoerskool Ermelo* 2010 (2) SA 415 (CC); *Laerskool Middelburg v Deparementshoof, Mpumalanga Department Van Onderwys* 2003 (4) SA 160 (T).

It may be argued, that the language right in Section 29(2) of the Constitution does not contributes to the promotion of African languages as languages of instruction. It is important to keep in mind that the Constitution merely sets a framework for a constitutional democratic country like South Africa to operate.[475] The rights in the Bill of Rights (BoR) are, however, the responsibility of the state to respect, protect, promote, and fulfil.[476] Therefore, the state has the burden of ensuring that these rights through legislative and regulatory measures are accessible. The Constitution through the courts is tasked with ensuring that these legislative measures are developed and interpreted in such a manner that is consistent with the spirit, purport, and object of the BoR.[477]

Section 6(2) even places the duty of elevation of African language use and status on the state.[478] The state is again obligated by the same section only this time in 6(4) to ensure that in their regulation and monitoring of official language use they keep in mind section 6(2).[479] This means that in their treatment of all official languages equitably and with parity of esteem, the state must keep in mind that amongst official languages exist languages that are historically diminished in status and use.[480] That although official languages should be treated equitably does not necessarily mean they are equal as they stand, hence the emphasis on the elevation of status and use of African languages.[481]

Furthermore, section 29(2) itself expressly places the duty on the state to ensure access and implementation of the right to receive education in an official language of

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[475] See the Preamble to the Constitution of the Republic of South Africa, 1996 "……*adopt this Constitution as supreme law of the republic so as to - ……………..Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law…".*

[476] See section 7(2) of the Constitution of the Republic of South Africa, 1996.

[477] See section 39 (2) of the Constitution of the Republic of South Africa, 1996.

[478] See section 6(2) of the Constitution of the Republic of South Africa, 1996.

[479] See Section 6(4) of the Constitution of the Republic of South Africa, 1996.

[480] *Ibid.*

[481] Currie (note 7 above; 6). Currie postulates that the final Constitution does not use the word equal treatment or must be treated equally. This is because "equal treatment" is not the same as "equitable treatment". For Currie, equitable treatment is "treatment that is just and fair in the circumstances". Those circumstances Currie explains are inclusive of "history of denigration and neglect of indigenous languages". Therefore, equitable treatment may justify the lack of support for English and Afrikaans that do not form part of indigenous languages or justify extensive support of indigenous languages by the state.

choice.[482] As the Supreme Court held in the *Mikro* case, this right is a right against the state and the state is constitutionally obligated to provide reasonable educational alternatives to ensure that this right is accessible and implemented.[483]

It follows from this that a discussion of the legislative and policy interventions by the Department of Basic Education in relation to language rights in education follows. More so, this discussion will seek to explore, if and how these legislative and policy measures, promote the use of African languages as languages of instruction.

4.3. Statutory and Policy Provisions for Language Rights in Basic Education.

(a). The South African Schools Act.[484]

The South African Schools Act 84 of 1996 (hereafter referred to as the Schools Act) in its introduction provides that it is there to provide a "uniform system for the organisation, governance, and funding of schools; and to provide for matters connected therewith".[485] The Schools Act also amongst other things, is concerned with "…advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance…protect and advance our diverse cultures and languages…".[486] It is clear from the preamble to the Schools Act that the act provides for a legislative framework that all schools in South Africa must operate under. The Schools Act is also committed to the advancement of the rights in the Constitution and has adopted the constitutional tolerance of diversity of culture and languages.[487]

In relation to language in education, the Schools Act provides the framework in which language in public schools should be approached. Section 6(1) provides that the Minister be charged with the determination of the norms and standards for language policy in public schools.[488] Section 6(2) however, places the duty of determining the

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[482] See section 29(2) of the Constitution of the Republic of South Africa, 1996.
[483] *Mikro* supra note 406 at 31.
[484] 84 of 1996.
[485] See Preamble to the South African Schools Act 84 of 1996.
[486] *Ibid.*
[487] *Ibid.*
[488] See section 6(1) of the South African Schools Act 84 of 1996.

language policy of a particular school in the hands of the School Governing Bodies (SGBs).[489] However, the governing body in determining the language policy of a school is subject to the Constitution, the Schools Act, and any applicable provincial law under which that school exists.[490]

The body of case law around issues of language, specifically language of teaching and learning in public schools, reveals that there has been a power battle between the Department of Basic Education and SGB's concerning language policies.[491]   Case law reveals the reluctance from SGBs to accommodate inclusivity and thus resulting in the undermining of linguistic rights in education.[492] As their defence these SGB's have relied on constitutional provisions to defend their hostility and their maintenance of discriminatory language policies by pleading their constitutional right to single-medium schools.[493]

African languages have mostly suffered from the hostile language attitude by the SGB. Woolman and Fleisch in illustrating how African languages have suffered at the hands of SGB policies draw attention to the attitudes towards the Curriculum and Assessment Policy Statements (CAPS) by the Department of Basic Education in 2012, which required schools to adopt a First Additional Language (FAL) in the first year of the foundation phase.[494]

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[489] See section 6(2) of the South African Schools Act 84 of 1996.

[490] *Ibid.*

[491] See *Head of Department: Mpumalanga Department of Education and Another v Hoerskool Ermelo and Another* 2010 (2) SA 415 (CC); also see *Minister of Education Western Cape v Mikro Primary School* 2005 (3) SA 436 (SCA). In both these cases the court had to determine who has the last authority when it comes to the language policy of the school. Each case the School Governing Bodies had laid claim that the HOD had no right to amend the language policy, as this was a function that solely was to be performed by the School Governing Bodies.

[492] See *Matukane & others v Laerskool Potgietersrus* 1996(3) SA 223(T); also see *Laerskool Middelburg en 'n ander v Departement van Onderwys, en andre* 2003(4) SA 160 (T); also see *Seodin Primary School v MEC Education, Northern Cape* 2006(1) SA 154 (NC). These cases each concern Afrikaans medium schools whose governing bodies were reluctant to change their language policies to accommodate registration of learner's who wanted to be taught in English.

[493] S Woolman and B Fleisch 'The problem with the 'other' language' (2014) 5 *Constitutional Court Review* 153. Section 29(2) of the Constitution provides that in order to ensure that the right is accessed and implemented it must consider all reasonable educational alternatives, including single medium institutions. There has been a huge debate around whether this means that single medium institutions are constitutionally protected by the Constitution. For various commentary on this see R Malherbe 'The constitutional framework for pursuing equal opportunities in education' (2004) 22 (3) *Perspectives in Education* 9-28; also see, S Woolman 'Defending discrimination: On the constitutionality of independent schools that promote a particular, If not comprehensive, vision of good Life' (2007) 31 (8) *Stellenbosch Law Review* 31-52.

[494] *Ibid* 47. The Curriculum Assessment Policy on First Additional Language required that rather than introducing English at the end of the foundation phase for learners who are non-mother tongue speakers of English, English would be introduced as a First Additional Language at first year of foundation phase.

According to Woolman and Fleisch, the adoption of FAL was so that non-mother tongue speakers of English could become sufficiently proficient in English early in the foundation phase, as English is a language that most of these learners receive further education in.[495] On the other hand encouraging English speaking learners to make use of African languages as FAL, therefore promoting equal language use at schools.[496] However, the unintended result was that for the schools that use English as a language of teaching and learning (English medium schools); the SGBs of these schools chose Afrikaans as a FAL and neglected African languages.[497]

Woolman and Fleisch provide some unreported disputes involving SGBs of schools, whom even though being able to choose amongst ten other official languages, and having a substantial amount of learners who are mother-tongue speakers of the nine African languages, have opted for Afrikaans as a FAL[498]. According to the SGB's of these schools, it made practical sense for Afrikaans to be FAL.[499] Forming part of the SGBs justifications was the fact that Afrikaans was an easier language to learn, that there were no teachers available to teach these languages, and if they were not enough resources to teach these languages.[500]

This meant that these schools offered education in English as a Home Language and Afrikaans as a First Additional Language to the exclusion of African languages. A position, which it is alleged to be reminiscent of the language practices of the past where African language-speaking children were subjected to subtractive bilingualism, a result of having to transition into English as a language of teaching and learning.[501] Whilst for English or Afrikaans speaking learner were subjected to additive

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Accordingly, each school was obligated to spend between two to three hours per week in Grade 1 to 2 on the First Additional Language teaching and learning,]. In grade 3 this would increase to three to four hours. The policies main focus was on listening, speaking, reading and writing.

[495] *Ibid* 146. Mostly teaching would take place in a home language or mother- tongue in the first three years of schooling or preferably the foundation phase. In Grade 4 learners transitioned to English.

[496] *Ibid.*

[497] *Ibid* 148.

[498] *Ibid* 148-151.

[499] *Ibid* 149.

[500] *Ibid.*

[501] Heugh (note 453 above; 44).

bilingualism, which was limited to Afrikaans or English, dependant on what the home language of the learner was.[502]

This study notes that these problems between the SGBs and the Department of Basic Education were inevitable. This is because the members that form the SGBs are humans; they are parents, teachers, and learners.[503] Each holds language ideologies, which McKinney describes as the beliefs that one holds as to what is language, which language is important, and how language should be used, and by who and when.[504] These language ideologies ultimately inform the decisions around language policies in schools.[505]

However the court in *Head of Department: Mpumalanga Department of Education and Another v Hoerskool Ermelo and Another (Ermelo)* shed some light on the issue of interpretation of the Schools Act, in relation to the much-contested question as to which body has the last say in the determination of the language policy of public schools.[506] In this case, the Constitutional Court had to answer, amongst other procedural questions, whether or not the "the HOD has the power under section 22 to revoke the language policy the governing body adopted in terms of section 6(1) of the Schools Act?'.[507]

This arises after the Mpumalanga Head of Department (HoD), urgently withdrew the functions of the Ermelo governing body to determine the language policy of the school.[508] The HoD claimed that this was done as per sections 22(1) and (3) of the Schools Act.[509] The HoD then in the same letter withdrawing the functions of the governing body, appointed an interim committee to perform the functions of the

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[502] *Ibid.*
[503] See Section 22(3) of the South African Schools Act 84 of 1996.
[504] McKinney (note 71 above; 19).
[505] *Ibid.*
[506] 2010 (2) SA 415 (CC).
[507] *Ibid* at para 41.
[508] *Ibid.*
[509] *Ibid* at para 21. Section 22(1) of the Schools Act provides "The *Head of Department* may, on reasonable grounds withdraw a function of a *governing body*". Whilst section 22(3) provides that "In case of urgency the *Head of Department* may act in accordance with subsection (1) without prior communication to such *governing body*, if the *Head of Department* thereafter- (a) furnishes the *governing body* with reasons for his or her actions; (b) gives the *governing body* a reasonable opportunity to make representation relating such actions; (c). Duly considers any such representations received."

governing body and adopt a new language policy for the school that would include English medium instruction.[510] The appointment of the committee was allegedly done in accordance with section 25(1) of the Schools Act.[511] This was done as an urgent matter as there were learners who needed to be admitted to the school, but could not be admitted on the count that the strict Afrikaans only medium language policy did not allow admission of these learners.[512]

The governing body then applied to the High Court to have the decision of the HoD to withdraw the functions of the governing body to determine the language policy of the school, urgently set aside.[513] At the time of urgent application to the high court, the committee had adopted the new language policy and it had declared the school a parallel medium instruction school, with English and Afrikaans being languages of instruction.[514] As a result, the school and its governing body also sought in their relief an order to have the appointment of the interim committee set aside alternatively the language policy that had been adopted by the committee.[515]

The High Court however dismissed the application on the basis that in terms of section 22(1) of the Schools Act, the HoD did have the power to "revoke, and, in appropriate circumstances on an urgent basis, any function of a school governing body".[516] The court held that this includes the function to determine the language policy of the school.[517] The court also further held that once these functions have been revoked, section 25 of the Schools Act must apply and the HoD appoints an interim committee to perform such revoked functions from the governing body.[518]

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[510] *Ibid* at para 21.
[511] *Ibid* at para 21. Section 25(1) of the Schools Act provides, "If the Head of Department determines on reasonable grounds that a *governing body* has ceased to perform functions allocated to it in terms of *this Act* or has failed to perform one or more of such functions, he or she must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months."
[512] *Ibid* at para 21.
[513] *Ibid* at para 28.
[514] *Ibid* at para 25.
[515] *Ibid* at para 28.
[516] *Ibid* at para 30.
[517] *Ibid* at para 30.
[518] *Ibid* at para 30.

The High Court relied on the reasoning and interpretation of the Supreme Court of appeal in the *Mikro* to reach its decision.[519] The court then dismissed the application based on the fact that the HoD had the right to revoke the functions of the governing body, including the determination of the language policy, and grant that right to an interim committee, as per sections 22 and 25 respectively.[520]

The Supreme Court of Appeal on appeal of this matter took a different stance.[521] The court on appeal held that the functions that were available to be revoked by the HoD from the governing body, in accordance to section 22(1) of the Schools Act, did not include the function to determine the language policy of a school.[522] That function was exclusively allocated to the governing body by section 6(2) of the Schools Act.[523] The court held that the only functions that could be revoked by the HoD are those allocated by the HoD to the governing body in accordance with section 21(1) of the Schools Act.[524]

Based on that reasoning the court found that the HoD had no powers to revoke the function of determining the language policy of the school from the governing body. The appeal court upheld the appeal and amongst other orders, ordered that the decision by the HoD to revoke the functions of the governing body to determine the language

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[519] *Mikro* supra at note 406 above. The substantial facts of these cases were silently similar in the sense that in both cases the Head of Department had amended the language policies of the unrelenting schools involved in the disputes. In both cases, this was done so that it could be possible to admit a number of learners that required English as a language to receive education. However, in *Mikro* the Head of Department had not followed the necessary procedures that the court held were available to him if he wanted relief when a school refuses to comply with his decision on language policy. The court held that the Head of department could have relied on section 22 of the Schools Act and revoked the functions of the governing body and therefore been able to amend the schools' language policy based on that. This the interpretation the High Court in *Ermelo* adopted to reach its decision.
[520] *Ermelo* supra at note 491 para 31.
[521] *Hoerskool Ermelo v Head of Department: Mpumalanga Department of Education* 2009 3 SA 422 (SCA).
[522] *Ibid* at para 33.
[523] *Ibid*.
[524] *Ibid*. Section 21(1) of the Schools Act provides "Subject to *this Act*, a *governing body* may apply to the *Head of Department* in writing to be allocated any of the following functions:(*a*) To maintain and improve the *school's* property, and buildings and grounds occupied by the *school*, including *school* hostels, if applicable;(*b*) to determine the extra-mural curriculum of the *school* and the choice of subject options in terms of provincial curriculum policy ;(*c*) to purchase textbooks, educational materials or equipment for the *school*;(*d*) to pay for services to the *school*;(*d*A) to provide an adult basic education and training class or centre subject to any applicable law; or (*e*) other functions consistent with *this Act* and any applicable provincial law".

policy, and the appointment and subsequent adoption of a new language policy by the interim committee be set aside.[525]

The Constitutional Court however disagreed with the decision of the Supreme Court. Moseneke DCJ held that the Schools Act involves three important bodies in the operation of a public school.[526] The first body would be the national government, which is represented by the Minister for Education. Its function is to create "uniformed norms and standards for public schools".[527] The second body would be a body that is charged with the establishment and provision of public schools in a province in which it has jurisdiction, this would be the MEC for education representing the provincial government.[528] The third body, which comprises learners, parents, and members of the community where the school is situated, is the governing body, which Moseneke held "exercise *defined autonomy* over *some* affairs of the school".[529]

The court held that since the governing body does not exercise its function in isolation from the partnership that has been established by the Schools Act in the governance of the school.[530] In establishing the language policy of the school, including the language of instruction or teaching and learning, a function is allocated to the governing body by section 6(2) of the Schools Act.[531] The governing body must however perform such function in the spirit of such a partnership with government and the democracy under constitutional provisions.[532]

Moseneke DCJ held that even though the governing body *may* determine the language policy and language of instruction of a public school, this function is not absolute and exclusive.[533] The Schools Act provides a modifier and a qualifier to this function in that it provides that this must be done "subject to the Constitution, this Act,

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[525] *Ibid* at para 33.
[526] *Head of Department: Mpumalanga Department of Education and Another v Hoerskool Ermelo and Another* 2010 (2) SA 415 (CC); para 56.
[527] *Ibid.*
[528] *Ibid.*
[529] *Ibid.*
[530] *Ibid* at para 57.
[531] *Ibid* Section 6(2) of the Schools Act provides "The *governing body* of a public school may determine the language policy of the school subject to the *Constitution*, this *Act* and any applicable provincial law".
[532] *Ibid.*
[533] *Ibid* at para 59.

and any applicable provincial law".[534] Therefore, the court held that while the function to determine the language policy of the school does is in the first instance to be performed by the governing body.[535] It must however be subject to and must "fit into the broader ethos of the Constitution and cognate legislation".[536]

The Constitutional Court in its judgment also made it clear that the governing body must play its part in the advancement of section 29(2).[537] This is clear in Moseneke's assertion that the governing body in determining the language policy must do so within the "broader Constitutional scheme to make education progressively available to everyone, taking into consideration what is fair, practicable and enhances historical redress".[538] This is consistent with the factors that need to be taken into account by the state in considering the suitable educational alternative in implementing and providing access to the right to receive education in a language of choice.[539]

Even though the Constitutional Court in this case dealt with various legislative provisions and had to provide clarity on procedural and constitutional issues.[540] This judgment made it clear that the language policy of a public school cannot only be an absolute function of the governing body but is reviewable by the Constitution and the provisions of the Schools Act itself.[541] It is for this reason that Constitutional Court held that part of the legislative modifiers to the language determination function by the governing body includes taking into account the Norms and Standards Regarding Language policy in Public Schools.[542]

The Constitutional Courts judgment makes it clear that language policies by SGB's must be guided and their review subjected to legislative and policy measures. The Educational Laws Amendment Act 31 of 2007, made it mandatory for language policies of schools to be compliant with the norms and standards set up by the Minister

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[534] *Ibid.*
[535] *Ibid* at para 61.
[536] *Ibid.*
[537] *Ibid.*
[538] *Ibid.*
[539] Section 29(2) of the Constitution of the Republic of South Africa, 1996.
[540] *Ermelo* supra note 515 at para 38&39.
[541] *Ibid* at para 58 and 61.
[542] *Ibid* at para 59.

in terms of section 6(1) of the Schools Act.[543] Those school language policies that existed before the coming into effect of the Educational Laws Amendment Act were to be reviewed to comply with the norms and standards for language policy by the Minister.[544]

It therefore becomes the duty of policy to provide SGB's with guidance when they are developing a school's language policy, it is for this reason that a discussion into policy measures follows to explore what policy provisions state about the use of languages at schools, particularly African languages.

(b) Language Policy Provisions.

Both the Norms and Standards and LiEP were published as part of the language in education document of 1997.[545] The document suggests that even though these two policies have different objectives, they do however need to be read together for a much more harmonious understanding of the Department's position on language in education.[546] On the one hand, there is the LiEP promulgated because of the obligation on the Minister to do so in terms of the National Education Policy Act.[547] On the other hand, there are the Norms and Standards Regarding Language Policy promulgated by the Minister in terms of section 6(1) of the Schools Act.[548]

   (i)   *The LiEP in terms of Section 3(4) (m) of the National Education Policy Act, 27 of 1996.*

The LiEP, amongst other things, operates within the ethos of the constitutional protection of cultural diversity, the development, and respect of all official

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[543] Section 5A (3) of the Educational Laws Amendment Act 31 of 2007.
[544] Section 5A (4) of the Educational Laws Amendment Act 31 of 2007.
[545] GN 383 of GG 17997, 9/6/1997.
[546] See provision 2 on Language- in- Education Policy document 1997.
[547] National Education Policy Act 27 of 1996, section 3(4)(m) "Subject to provisions of subsection (1) to (3) the Minister shall determine national policy for the planning, provision, financing, co-ordination, management, governance programmes, monitoring, evaluation and well-being of the education system and, without derogating from the generality of this section, may determine national policy for ……(m) language in education".
[548] 84 of 1996, section 6(1) "Subject to the *Constitution* and *this act*, the *Minister* may, by notice in the Government Gazette, after consultation with the *Council of Education Ministers*, determine norms and standards for language policy in *public schools*".

languages.[549] The policy is aimed at creating an environment based on non-racialism and to "facilitate communication across the barrier of colour, language, and religion, while at the same time creating an environment in which respect for languages other than one's own would be encouraged".[550]

The language policy encourages multilingualism as a norm and "defining characteristic of South Africans".[551] Multilingualism is the use of more than one or two languages in teaching and learning.[552] It is because of this commitment to the constitutional multilingualism ethos, that the language policy provides that, whatever approach is adopted in language policy implementation must support multilingual education.[553]

However, the policy places a much greater emphasises on an approach that maintains home language teaching and learning, and additional languages as a subject.[554] Therefore, the Department places an even greater emphasis on additive bilingualism as an effective approach to achieve multilingual education.[555] As a result, even though the LiEP recognises and promotes the right to choose a LoTL, this must be exercised within the education system's obligation to promote multilingualism.[556]

Additive bilingualism, if applied correctly is a multilingual education model that focuses on the learner's acquisition of additional or second language/s, but with the mother tongue or home language maintained as LoTL.[557] The adoption of additive bilingualism in South Africa shifts from the lack of uniformity in language policy in the past, based on race where white learners went through limited additive bilingualism and black learners as a result of Bantu education went through subtractive bilingualism.[558] LiEP also adopts additive bilingualism due to the fact that it has been proven to be beneficial for a learner to be taught in their home or first language whilst acquiring other

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[549] See Preamble provision 1 to the Language- in- Education Policy.
[550] *Ibid* at provision 3.
[551] *Ibid* at provision 4.
[552] *Ibid* at provision 5.
[553] *Ibid*.
[554] *Ibid*.
[555] *Ibid*. Also see provision 2 of the Aims of the Language- in- Education Policy.
[556] *Ibid* at provision 6.
[557] K Luckett 'National additive bilingualism: Towards a language plan for Southern African education' in K Heugh, A Siergruhn& P Pluddermann (eds) *Multilingual Education for South Africa* (1995) at 75.
[558] *Ibid*.

languages as subjects as oppose to subtractive bilingualism in which a learners home language is replaced by a dominant language like English as LoTL as they progress at school.[559]

To understand the failures that research has attributed to subtractive language models it is perhaps important to understand the origins of these subtractive language models. In so doing, demonstrating the differences between additive bilingualism and subtractive bilingualism.

- *Subtractive Bilingualism.*

Subtractive bilingual models find their origins in Britain and America where the minority language groups, who do not speak English, are assimilated into the majority and dominant culture, through the teaching of English.[560] These methods are implemented through English Second Language teaching.[561]

Heugh explains that research around English Second Language teaching has proved not beneficial to minority groups in any way. In fact, they have highlighted and nourished inequality in education and society.[562] This is because those that are in the minority language groups have found it hard to engage with the English-based curriculum, thus resulting in unequal educational outcomes between English mother-tongue speakers and the minority language non-mother tongue English speakers.[563]

English Second Language methods result in unequal societal and economic relations because those who are not proficient in the dominant language are usually less skilled because of the education they received in school.[564] This then results in them only being able to take up jobs that do not require much skill, jobs that are less paying.[565] This is reminiscent of the situation in South Africa under Apartheid; in fact, this was

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[559] See preamble to LiEP.
[560] *Ibid* 45.
[561] *Ibid.*
[562] *Ibid.*
[563] *Ibid.*
[564] Tollefson (note 76 above; 8).
[565] *Ibid.*

the very agenda of the apartheid government's Bantu education policy for black people.

In Africa, African languages stigmatised as being backward and not equally valid as English or other dominant languages (such as French in Francophone African countries).[566] Subtractive language teaching also reflects a negative self-image on those learners that are not mother-tongue speakers of English or whatever imposed language.[567] This is because these systems do not accommodate or value any knowledge or experiences of those learners that do not speak English. The Western culture and experiences are at the centre of education.[568]

This stigmatisation of African languages also contributes to linguistic hierarchies that influence racial inferiority and supremacy.[569] When some learners are expected to master a dominant language, like English, whilst the speakers of that dominant language are not expected to master any other language.[570] This creates an impression on the dominant language group that they are more important and superior than the non-mother tongue speakers of the dominant language.[571]

This becomes the same reality for the non-mother tongue speakers of the dominant language. They feel inferior because of this linguistic inequality. The same learners live out these linguistic discriminatory attitudes when they eventually go outside the schooling system, into the real world.[572] These become language ideologies that as McKinney asserts, influence language policies and practices in schools.[573]

Subtractive bilingualism as an approach is inconsistent with the Constitution which provides for multilingualism through the equal treatment of all official languages.[574] It

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[566] Heugh (see note 462 above; 46).
[567] *Ibid.*
[568] *Ibid.* Also see Wa Thiong'o (note 1 above; 17).
[569] *Ibid* 47.
[570] *Ibid.*
[571] *Ibid.*
[572] *Ibid.*
[573] McKinney (note 75 above; 19).
[574] Section 6(4) of the Constitution of the Republic of South Africa, 1996.

makes sense then that the LiEP of the new constitutional dispensation would be aimed at promoting multilingualism through additive bilingualism programs.[575]

- *Additive Bilingualism as a multilingualism approach.*

As was mentioned above, additive bilingualism in multilingual education if implemented properly entails acquiring a second language/s in school whilst maintaining the home language.[576] This means in an ideal additive bilingualism program, learners have access to use their home language or mother tongue as LoTL, without being forced to choose or transition to another language (usually a dominant language like English) as LoTL.[577] However, they can add any additional languages once competence in their home language has been achieved.[578] The idea behind additive bilingualism is that all languages equally play a role and are valuable in the learners' learning experience.[579]

Additive bilingualism as a strategy to achieve multilingual education, if implemented correctly does not only mean that every language plays a valuable role in education, but researchers that are in support of this model have suggested cognitive and social benefits for learners.[580]Learners that are taught in their home language or mother tongue until they have reached their cognitive/academic language proficiency level can gain great competence in both their home language and additional languages.[581]

Luckett explains this level is the level where a learner can "use a language in a decontextualized and cognitively-demanding situation".[582] The second language is learned alongside the home language, as a subject. This method is said to yield the results of competence in both the home and additional language for the learner, however, the competence of the additional language is dependent on the competence of the home language.[583] Therefore, the home language gives learners cognitive skills

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[575] See aims of LiEP.
[576] Luckett (note 557 above; 75).
[577] *Ibid* 76.
[578] *Ibid.*
[579] *Ibid.*
[580] *Ibid* at 75.
[581] *Ibid.*
[582] *Ibid.*
[583] *Ibid.*

that they can transfer to the additional language.[584] This results in a learner who is multilingual, not only well versed in their own home or mother tongue language but also other languages.

The LiEP in South Africa claims to have adopted additive bilingualism to achieve multilingualism in that a learner in Grade 1 and 2 must learn one approved language.[585] From Grade 3, learners must learn two languages, one that is a language of teaching and learning and the other as a subject.[586] In Grade 10 to 12, learners need to pass two languages, one at a first language level and the other at a second language level.[587]

- *Additive Bilingualism and the promotion of African languages as languages of teaching and learning.*

At the centre of the LiEP's adoption of additive bilingualism is the mother tongue or home language-based education that is aimed at advancing the use of official African languages in education.[588] Home language or mother refers to the language that a learner uses at home in everyday communication. Therefore, for the African learner, the role of their African languages would be that of a home language that assists cognitive competence of the additional languages.[589]

In an ideal additive bilingual program, African languages would play the role of LoTL for mother-tongue speakers of those languages. Whilst other languages like English are available to the learner as additional languages and taught as subjects. For mother-tongue speakers of English, official African languages would be taught as subjects, and English as a home language is LoTL.[590]   According to the preamble to the LiEP, this phenomenon would result in communication across colour, language, and religion and result in the respect of each language and its speakers.[591]

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584 *Ibid.*
585 See section 6 of LiEP.
586 *Ibid.*
587 See section 6.5.3 of LiEP.
588 Luckett (note 557 above; 77).
589 *Ibid.*
590 *Ibid.*
591 See Preamble provision 3 of the LiEP.

Through the adoption of additive bilingualism, it could be concluded that it is the Department's way of placing much-needed and constitutionally mandated value on African languages and gives them the elevation they so desperately need.[592] Ultimately, on face value redressing the result of past racially discriminatory practices in education, which were a product of subtractive bilingualism through language hierarchies.[593]

Additive bilingualism is, however, only effectively possible in a multilingual society in which all languages are treated equally and valued.[594] In South Africa however, mother tongue education, more specifically in African languages is unwelcome.[595] This is because African languages are undervalued and are associated with inferiority because of their association with the inferior Bantu Education.[596] Whilst English is associated with educational and economic advancement.[597]

Considering this historic context any approach to achieve multilingualism needs to keep in mind and prioritise the development of African languages and promote their role as languages of teaching and learning.[598] Current LiEP does make provision for languages of teaching and learning being any of the official languages.[599] This is consistent with section 29(2), which stipulates a choice in the language of teaching and learning amongst official languages.[600] Nine of which are African languages.[601] Therefore, a learner could choose one of the African languages as a language of teaching and learning.

However, the policy does not live up to true additive bilingualism. As defined above, additive bilingualism is the maintenance of a learners' home language as a language of teaching and learning whilst they acquire the use of other languages as they

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[592] See section 6(2) of the Constitution of the republic of South Africa, 1996.
[593] See section 29(2) (c) of the Constitution of the Republic of South Africa, 1996.
[594] Luckett (note 557 above; 75).
[595] *Ibid* 74.
[596] *Ibid.*
[597] *Ibid.*
[598] *Ibid* 77.
[599] See policy provision 8 of the Language in Education Policy.
[600] Section 29(2) of the Constitution of the Republic of South Africa, 1996.
[601] Section 6(1) of the Constitution of the Republic of South Africa, 1996.

progress in school. [602] The LiEP is vague as to how languages when it comes to languages of teaching and learning.[603] The policy merely provides that in Grade 1 and 2 the learner must be offered one language and by Grade 3 two languages must be offered to the learner, one being a language of teaching and learning and another an additional language.[604] It does not exclusively state that a home language should be offered as a language of teaching and learning.

Although the vagueness could be viewed as being consistent with the Constitution's flexible approach to linguistic rights in education by allowing choice in the language of teaching and learning.[605] It is argued that this vagueness takes for granted language ideologies and ignores how these affect language practices and influence or hinder the very same constitutional choice.[606] This is because when the policy is vague, it leaves room for manipulation or misinterpretation to suit certain language groups and their interests.[607]

Misinterpretation or manipulation is possible as the governing body makes language policy decisions at public schools, which need to be guided and consistent with these departmental legislative policies.[608] It should be noted that the governing body consists of members of the community where the school is situated and the fact is these members are not well equipped to develop effective language policies. All that would seem to guide them are linguistic ideologies and vague language policy. A combination that would not reap any benefit for African languages in general, let alone as languages of teaching and learning given their history.

The vagueness of the LiEP this study asserts, allows these language ideologies that influence decisions around language, to manifest themselves in language policies of public schools. Ultimately, the result is the discrimination against African languages in favour of English as languages of teaching and learning. This then influences the

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[602] Luckett (note 557 above; at 75).
[603] P Plüddemann 'Unlocking the grid: language-in-education policy realisation in post- apartheid South Africa' (2015) 29 (3) *Language and Education* 190.
[604] See provision 6 of the Language- in- Education Policy.
[605] Section 29(2) of the Constitution of the Republic of South Africa, 1996.
[606] Plüddemann (note 603 above; 188).
[607] *Ibid.*
[608] See section 6(2) of the Schools Act.

choice of language of teaching and learning, mostly in favour of English. Therefore, the failure of policy to be mindful of society's language ideologies evident in the vagueness of the policy results in the policy not being implemented as intended.[609]

It is also submitted that the policies' principal of "maintenance" of home languages next to the "acquisition" of additional languages does not work in favour of African languages as home languages.[610] Taking into account the history of African languages under subtractive bilingualism in Bantu Education. It is submitted that there is not much published learning material in African languages past the third year of schooling. This makes maintenance of African home languages as languages of teaching and learning past year three impossible since these languages are standing alongside a hegemonic and fully developed language like English.

It is argued that the combination of lack of clarity by policy and unavailable teaching material in African languages influences the right to choose any of the official African languages as a language to receive education. This is because those who would want to choose one of the African languages as a language of teaching and learning find difficulty as policy already does not seem to give support to these languages. Therefore, the choice seizes to exist and learners or their parents are left with only English as a viable language of teaching and learning past Grade 3. Unfortunately, with the hegemony of English, it replaces the home language in African languages rather easily.

The Department of Basic Education's 2010 report, based on quantitative research done on the status of languages of learning and teaching in public schools.[611]   Is perhaps the best indicator of the LiEP's failures to promote African home languages as LoTL. Based on research done in public schools, the report revealed that in the period between 1997/8 to 2007, the trends in language use in public schools revealed that even though learning and teaching in African home languages in the foundation

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[609] Plüddemann (note 603 above).
[610] See Preamble provision 5 of the LiEP.
[611] 'The Status of the Language of Learning and Teaching (LOLT) in South African Public Schools' *https://www.education.gov.za/Portals/0/Documents/Reports/Status%20of%20LOLT.pdf?ver=2011-03-30-231358-000* accessed on 11 October 2019.

phase had increased.[612] There was still a substantial amount of learners using English as a language of learning and teaching in public schools; even though large amounts of these learners are mother-tongue speakers of official African languages.[613]

This could be attributed to the fact that, as the research revealed; the number of non-mother tongue speakers of English (80%) that receive instruction in their African home language during the foundation phase. A large number of the same group of learner's transition to English medium by Grade 4.[614] The report also indicates the increase in English medium schools since 1998, which saw an increase from 3000 English medium schools in 1998 to more than 4000 in 2007.[615]

The increase in English medium schools is alarming when viewed against the modest increase (in some cases) of African language medium schools. The report shows that over the ten years (between 1997 and 2007), the increase in African language mediums is at most, poor and insignificant.[616] Whilst some of the African languages have had the advantage of increased use through single medium education, like IsiZulu, Sepedi, Setswana, and Xitsonga.[617] Some however have suffered the most under the continued negligence. For example, Sesotho single mediums have decreased from 20 from 1998 (not that this number must be celebrated) to none in 2007.[618]

If anything, it is submitted that this report exposes the lack in the policy's ability to effect change and the Department of Basic Education's lack of prioritisation of African languages in education, more so as LoLT.

(ii) Curriculum and Assessment Policy Statement (CAPS).

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[612] *Ibid* 21. Home language education in the foundation phase had increased from 55% in 1997 to 80% in 2007.

[613] *Ibid*. The majority of the learners are mother tongue speakers of IsiZulu (25%), followed by IsiXhosa at (20%), Afrikaans at (10%) and English at (7%). Nevertheless, research shows that 65% of the total number of learners learn in the medium of English.

[614] *Ibid* 19. Only 27% of the 80% that used an indigenous language as a language of learning and teaching in their foundation phase continued with this in the intermediate phase.

[615] *Ibid* 24.

[616] *Ibid.*

[617] *Ibid.*

[618] *Ibid.*

Perhaps what serves as an indicator of just how much the Department's neglect of African languages in general, never mind as LoTL? One only needs to look at the Curriculum and Assessment Policy Statement (CAPS), which came into effect in 2012.[619] Through this policy, the Department of Education firstly addressed the vagueness of LiEP of 1997, in that it eventually labelled languages and their position in the classroom.[620] The policy also introduced a shift from the LiEP of 1997 by introducing that two languages should be offered from Grade 1, one as a home language (ideally the learner's mother tongue) and the other as an additional language.[621] This is a shift from the LiEP 1997, which as discussed above provided for one language offered to learners at Grade 1 and only two introduced from Grade 3.[622]

At face value, the early introduction of an additional language is in line with the additive bilingualism approach and it is therefore warranted. However, the specific CAPS on the English Additional Language policy document is a document that exposes the Department's impassive stance with African language development.[623] Through this document, the Department of Basic Education seems to have taken a passive stance that the transition to English as an additional language and the subsequent transitioning into English medium, is a norm that needs to be supported at the detriment of other official languages.[624]

The English Additional Language policy document makes provision for English to be an additional language from the first year of schooling. The rationale behind this early introduction is that learners will eventually transition to English medium in Grade 4.[625] Therefore, the early introduction of English as an additional language will help non-

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[619] *https://www.education.gov.za/Curriculum/CurriculumAssessmentPolicyStatements(CAPS)/CAPSFoundation.aspx* accessed on 11 October 2019.
[620] McKinney (note 775 above; 45). Used terminology such as First Additional Language and Home Language.
[621] Curriculum and Assessment Policy Statement (note 627 above; 8).
[622] See Provision 6 of Language in Education Policy.
[623] 'Curriculum and Assessment Policy Statement: English Additional Language' available at *https://www.education.gov.za/Portals/0/CD/National%20Curriculum%20Statements%20and%20Vocational/CAPS%20ENGLISH%20FAL%20GR%201-3%20FS.pdf?ver=2015-01-27-155321-957* accessed on 14 October 2019.
[624] *Ibid* 8.
[625] *Ibid.*

home language speakers of English to comprehend English quickly so the transition is more pleasant.[626]

It is submitted that the concern with the transitioning into the English medium by the majority of non-home language speakers (from indigenous home language education in the foundation phase) is seemingly misplaced. The concern should *not* be that non-home language speakers of English are transitioning to English as a language of teaching and learning and not maintaining their home languages, as languages of teaching and learning. The concern should be on the policy development, support, and promotion of African languages, in such a manner that these can be used by home language speakers of such languages as languages of teaching and learning beyond the foundation phase.

What is of greater concern is that CAPS: English Additional Language seems to move away from the underlying principle of the LiEP, of "maintenance of home language" in favour of English.[627] English is already a developed and hegemonic language, whose promotion as a language of teaching and learning guarantees its continued hegemony and dominance in education: replacing other languages as potential languages of teaching and learning.

When viewed closely, it could be concluded that the English Additional Language CAPS document, shifts the LiEP from an additive bilingualism approach to subtractive bilingualism. The concern and subsequent support of the effective, competent transition of non-home language speakers to English medium, not only exposes the lack of care taken in the promotion of African languages. It also reveals an assimilationist symptom by the policy that is consistent with the desires of colonial education under missionary schools.[628] This study finds it inconsistent with the constitutional right to choose a language of instruction.

(iii) The Incremental Introduction of African Languages in South African Schools.

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[626] *Ibid.*
[627] See provision 5 of the LiEP.
[628] Plüddemann (note 611 above; 190).

The Increment Introduction of African Languages in South African Schools (IIAL) draft policy,[629] is another draft that as Pluddemann states, "illustrates Government's vacillation on the use of African languages".[630] The draft policy dated September 2013 reflects the government's realisation that there needs to be "strengthening of African language teaching to improve learning outcomes".[631]

Therefore, the draft policy aims to "improve proficiency in and utility of African languages at Home Language level, so that learners can use their home language proficiently 2). Increase access to languages by all learners, beyond English and Afrikaans, by requiring all non-African Home Language speakers to learn an African language; and 3). Promote social cohesion and economic empowerment and expand opportunities for the development of African languages as a significant way of preserving heritage and cultures".[632]

With these aims, the IIAL policy wants to attempt to address the diminishing use of African languages as policy refers to these languages, in education.[633] The policy if implemented will require that a third language be taught at public schools as a third language.[634] Accordingly, this means that schools would offer three languages from Grade 1 to 12, one at the home language level, and the two at least the first additional language level.[635]

It is asserted that the idea behind this draft policy is that learners, who are non-home language speakers of an African language, can be able to choose an African language as an additional language. Whilst home language speakers of African languages, who do not learn any African language because it is not offered at the school their admitted, are also exposed to their African home language at a first additional level.[636]

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[629]'Incremental Introduction of African Languages in South African Schools' available at *https://www.education.gov.za/Portals/0/Documents/Reports/IIAL%20Policy%20September%202013.p df?ver=2014-04-09-162048* accessed on 14 October 2019.
[630] *Ibid* 191.
[631] *Ibid* 5.
[632] *Ibid* 6.
[633] Woolman and Fleisch (note 493 above; 152).
[634] *Ibid* at 141.
[635] See "Incremental Introduction of African Languages in South African Schools" (note 637 above; 9 to 10).
[636] Plüddemann (note 603 above; 191).

This study asserts that this draft policy by the Department of Basic Education may seem to be moving in the right direction in ensuring the promotion of African languages. However, it should be noted that reference is made to these languages as mere additional languages and not languages of teaching and learning. It could be concluded that the focus for the Department is not on these languages playing any role as languages of teaching and learning. It is submitted that this draft policy is further postponing the development of African home language education.

In fact, Pluddemann brings awareness to the fact that the September 2013 document is not the original draft policy by the Department on African languages, but rather the June 2013 draft.[637] Pluddemann explains that in the June 2013 draft document, there was an express provision in the aims of the draft policy, providing for African languages as LoTL.[638] He also purports that the June 2013 draft policy had acknowledged the failures of English medium transitioning in Grade 4 by non-home language speakers of African languages.[639] The draft policy, according to Pluddemann also gave substantive reasons as to why African languages should continue to be used as languages of teaching and learning beyond the foundation phase.[640]

In agreement with Pluddemann, it is submitted that even though the draft policy's insistence on the compulsory use of African languages as subjects should be credited.[641] It does, however, seem to put these languages at a disadvantage and decrease the chances of these languages ever being maintained as languages of teaching and learning or chosen as such.

(iv) Norms and Standards Regarding Language Policy in Terms of Section 6(1) of the South African Schools Act 84 of 1996.[642]

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[637] *Ibid.*
[638] *Ibid.*
[639] *Ibid.*
[640] *Ibid.*
[641] *Ibid.*
[642] GN 383 of GG 17997, 9/6/1997.

The Minister is obligated by the Schools Act to publish the Norms and Standards Regarding Language Policy for all public schools.[643] These Norms and Standards serve as a guide for the rights and duties of all the entities that play a role in the realisation of language rights through language policies at public schools.[644] The Norms and Standards are also aimed at ensuring that the multilingual approach is facilitated at public schools.[645]

Most importantly, the Norms and Standards protect and provide for the individual linguistic rights in education afforded to learners.[646] They provide that on admission the learner or in the case the learner is a minor, the parent must choose the language of teaching and learning in a particular school.[647] This provision also confirms the responsibility of the state to fulfil the choice of language of teaching and learning.[648] This is consistent with section 29(2) obligating the state to implement and ensure access to the right to choose a language to receive education.[649]

Keeping with the spirit of multilingualism through additive bilingual education, the norms and standards provide that language policy, as determined by the governing body;

> "…must stipulate how the school will promote multilingualism through using more than one language of learning and teaching, *and/or* by offering additional languages as fully-fledged subjects *and/or* applying special immersion or language maintenance programmes, *or* through other means approved by the head of provincial education department."[650]

The norms and standards although obligate the governing body to have a language policy that adheres to multilingualism.[651] It is, however, submitted that again there seems to be no clarity in the provisions. The use of words such as *and/or* seem to

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[643] See section 6(1) of the South African Schools Act 84 of 1996.
[644] See Section 1 of the Norms and Standards Regarding Language Policy.
[645] *Ibid.*
[646] See section 5 of the Norms and Standards Regarding Language Policy.
[647] *Ibid.*
[648] *Ibid.*
[649] See section 29(2) of the Constitution of the Republic of South Africa, 1996.
[650] See section 5.6.1 of the Norms and Standards Regarding Language Policy. *Own Emphasis added.*
[651] See section 5A (3) of the Educational Laws Amendment Act 31 of 2007.

display on the part of the ministry of education a lack of certainty.[652] This also leaves room for governing bodies to choose language policies that please and serves their language preferences and ideologies.

It may be concluded that the lack of clarity should be seen as the government's way of providing a flexible approach to language issues in education, unlike in the past where language policy and practices were rigid. In the case of official African languages, this sort of flexibility the study asserts does not serve their promotion as languages of teaching and learning. This is because just like the vagueness of the LiEP discussed above, there is room for potential neglect of African languages.

4.4 Conclusion.

This chapter sought to discuss the right to choose a language of instruction in education as provided for by section 29(2) of the Constitution and what this right means for African languages in education. This discussion included various case laws in which the courts have interpreted the provisions of Section 29(2). The case law has revealed that first that this right has not brought about any positive consequence for indigenous languages. In that English is still a strong choice when it comes to languages of instruction. Not only that, but it has also revealed that the English and Afrikaans are still in a language battle that excludes African languages.

Perhaps one of the most important revelations is that as much as this right can be asserted, it depends on the interventions of the state to ensure that it is effectively accessible. This is why the discussion included various legislative and policy interventions to examine if the state through these, is fulfilling this obligation or not. It was revealed that when it comes to African languages, policies and legislation provides no clear indicator on the use of these languages either than recognising that they form part of the official languages of the country.

In this chapter, it was demonstrated how vagueness of policy coupled with negative attitudes towards African languages often leads to these languages being left out of

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[652] See section 5.6.1 of the Norms and Standards Regarding Language Policy.

language policies at schools. This has an effect of infringing on the right to choose a language of instruction because learners or their parents even if they wish to choose such languages as languages of instruction, see no viability in them as such. Therefore, they are left with no choice but to choose English. This is not a free choice at all but it is led by negative language ideologies and a lack of legislative and policy intervention to counter such ideologies.

CHAPTER FIVE: Findings and Recommendations.

5.1. Introduction.

This chapter will provide a summary of the findings of this study and will also discuss recommendations that can perhaps be of use in ensuring that legal interventions are effective in providing access to section 29(2) of the Constitution.

5.2. Findings and Conclusion.

Chapter four of the study concluded that section 29(2) of the Constitution forms part of the linguistic and cultural rights that are concerned with advancing the founding values of the Constitution. These values are dignity, equality, and freedom.

This study found in the analysis of the right to choose an official language as a language to receive education, as provided for by section 29(2) of the Constitution. That this right is not an absolute right that one could just claim, however, this right needs to meet certain qualifiers. The qualifiers are that it needs to be reasonably

practicable for one to be able to receive this education, in a chosen official language, in a public institution. Therefore, it is up to the state that this right is accessible. Case law provides that the right is a right against the state, and therefore the state can only fulfil this right if it is reasonably practicable to do so.

Central to the measures that the state has employed to ensure that this right is accessible to all, is the Department of Basic Education's legislative policy interventions, and their provision. This study analysed the language in education document of 1997 and its position in terms of LiEP and the fulfilment of the state's obligation for linguistic rights, as per section 29(2). The study found that the premise for language-in-education was consistent with the Constitution's multilingual ethos through the respect and protection of linguistic and cultural rights. It was also consistent with the Constitution's recognition of eleven official languages, nine of which are African languages.

So although the LiEP recognised the right to choose a language of teaching and learning, this right still needs to be consistent with the policy's obligation to the multilingual ethos. How the policy sought to bring about a multilingual education is through the recognition and adoption of the additive bilingualism educational method. Additive bilingualism entails the maintenance of mother tongue or home language education, whilst facilitating the acquisition of an additional language or languages. In other words, mother tongue education is central to additive bilingualism.

This study found that in relation to the promotion of African languages as languages of teaching and learning, the additive bilingual approach was a good premise for ensuring multilingualism. It was also found that if applied effectively, additive bilingualism is indeed a great measure to ensure that learners could choose an official African language as a language of teaching and learning, if they so wished, in the exercise of their right as provided by section 29(2) of the Constitution.

However, the study found that in the South African context, additive bilingualism needed to be applied keeping in mind the historical diminished use and status around African languages and mother tongue education. This is because additive bilingualism can only effectively work in a multilingual environment where all languages are valued.

Unfortunately, because of South Africa's history, African languages are less valued in relation to English and somewhat Afrikaans.

Based on the hegemony of English and somewhat Afrikaans, the study found that LiEP failed to emphasis the use of African languages as languages of teaching and learning. The LiEP was neglectful of the fact that attitudes around African languages. The policy was vague and this vagueness could possibly open doors for misinterpretation and/or manipulation of policy and continue the hegemony of English, as opposed to promotion of African languages.

This was evident in the fact that most learners do not maintain these languages as languages of teaching and learning through schooling. However, almost all the learners who receive education in an African language during their foundation phase opt for English as a language of teaching and learning once they are in the intermediate phase. Instead of correcting this and ensuring the maintenance of indigenous home language education, the Department through an introduction of a curriculum statement, promoted the transition to English medium instruction, by introducing English as an additional language earlier in the foundation phase.

This dissertation found that this early introduction of English in the foundation phase was solidifying the position of English medium instruction at the expense of indigenous languages. Instead of seeking measures of ensuring that, African languages are developed enough to be maintained throughout the schooling years, policy, through curriculum statements, seems to be promoting the transition into English instruction mediums.

In conclusion, the study found that policy intervention appears not concerned with the promotion of African languages LoTL. This is also evident in the Department of Basic Education's, September 2013 draft policy on the Incremental Introduction of African Languages in South African Schools. Which is more concerned with African languages as subjects rather than LoTL.

5.3. Recommendations.

A significant finding of this study is perhaps how much of an afterthought African languages are in the LiEP. This is clear in the vagueness of policy around African language use in schools. It would appear that for the most part, the government does not know how to elevate or promote the use of these languages, especially as languages of instruction. The reality is, the previous governments, such as the colonial-apartheid government were intentional in their method when it comes to the exclusion of African languages in education.

It will thus require the same intention by the current administration to include these languages. This intention must come in the form of the following, which are the recommendations of the study:

1. There must be advocacy of the right to choose any of the official languages as a language of instruction. This education must bring awareness to the fact that African languages also form part of the official languages therefore can be chosen as languages of instruction.

2. The only way African languages can be viable choices for the language of instruction is to develop them to be such. Developing teaching material in African languages alongside teacher training and incentivising the teaching of African languages, can put indigenous languages in a much greater position. This worked during colonial education where the British colonial government paid teachers more for teaching in English.

   Incentives could also be school-based, the more teaching and learning done at a particular school in African language/s, the more incentives. Attaching economic benefit to the use of African languages would make them more valuable, especially to those who are mother-tongue speakers of such languages. This was successful in the development of English into a language of power.

3. Development of clear and concise language policy in education must follow. If there is one method that can be adopted from the previous administrations is that intentional and clear laws and policy will yield the desired result. Therefore,

the policy must not just on face value provide for multilingualism through additive bilingualism, whilst simultaneously not setting out how this must be achieved. It must be made clear that additive bilingualism based on mother tongue instruction is the norm. The policy must not allow for the replacement of mother tongue indigenous language replacement in higher grades as it currently does.

4. African languages must also be used in examinations for the National Senior Certificate. Examinations must be set in indigenous languages as an option for those who so wish to be examined in these languages. This will have an effect of erasing the attitude that choosing these languages as languages of instruction is useless for progress at schools beyond Grade 3. Those who so wish to choose these languages as languages of instruction would do so confidently knowing that this will benefit them in the examination.

5. Perhaps another area is an amendment of the Schools Act. Instead of leaving the decision of language policy to the SGB of a school, and the department of education only having review powers. The function should just be given to the department in the first place. SGB's are not well equipped with issues around language planning and the consequences thereof. This function should be in the hands of language specialists and agencies in the employ of the department of education. In this way, language policies are not just decided upon based on distorted language hierarchies, but based on well-researched language understandings.

The development of single medium schools that use African languages as languages of instruction should also be a serious focus. Over the years as previously discussed, instead of these schools increasing in numbers they have decreased drastically. Perhaps single medium schools should not be treated with hostility (just how Afrikaans single medium schools are currently being treated) but rather used to facilitate the much-needed development and recognition of African languages. This is one alternative that even the

Constitution even makes mention of when the state is looking to ensure effective access to section 29(2).

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