



The Intersection of Multiculturalism and Transformative Constitutionalism

Section 29(2) of the Constitution and the Meaning of “Reasonably Practicable” within School Governance

Warren Johannes* 

LLB LLM

University of Johannesburg 
Johannesburg, South Africa

Received: 2 May 2025

Revised: 27 May 2025 & 4 June 2025

Approved: 26 June 2025

Summary

This article contributes to debates on language rights by evaluating the application of the “reasonably practicable” standard in section 29(2) of the Constitution. It focuses on the language policies of public schools in South Africa, particularly Afrikaans-medium institutions, and examines the constitutional and legal implications of state intervention under the Basic Education Laws Amendment Act 32 of 2024. By situating case law and policy within the broader frameworks of multiculturalism and transformative constitutionalism, the article highlights tensions between cultural preservation, racial integration, and equitable access to basic education.

Keywords: Multiculturalism; Transformative Constitutionalism; Language Rights; Reasonably Practicable; School Governance; Mother-Tongue Education

* LLM Candidate, Faculty of Law, University of Johannesburg. This article is based on the author’s LLM dissertation titled *The Intersection of Multiculturalism and Transformative Constitutionalism: Section 29(2) of the Constitution and the Meaning of “Reasonably Practicable” within School Governance* (dissertation UJ 2025).

1. Introduction

The Constitution of the Republic of South Africa, 1996, requires the transformation of the educational system to uphold the values of human dignity, equality, and freedom while addressing historical injustices. Within this context, the debate on “language in education” remains central to the broader project of transformation in South Africa. Language is intimately tied to culture, identity, social relationships, and symbolic meaning.¹ The historical politicisation of language has made the question of medium of instruction deeply contentious, linked to colonialism, apartheid, and ongoing structural inequalities.

The preservation and promotion of languages, particularly in a multicultural society like South Africa, is therefore critical for affirming cultural dignity and promoting inclusion.² However, Afrikaans, which carries both a history of anti-colonial resistance and a legacy of apartheid oppression, occupies a complex space within these debates.³ The transformation of Afrikaans-medium schools into dual-medium schools has sparked disputes regarding cultural preservation, integration, and the right to education in one’s language of choice.

The racial integration of South African schools is central to the project of democratisation and transformation in education.⁴ However, attempts to transform single-medium Afrikaans schools have raised concerns about whether such interventions undermine cultural identity or serve as necessary measures to overcome historical exclusions. The Court’s engagement with these tensions in various cases has highlighted the complexity of balancing integration with language rights.⁵

Section 29(1) of the Constitution guarantees the right to basic education, while section 29(2) provides that everyone has the right

1 *Agha Language and Social Relations* (2006) 190–232.

2 Majidi “English as a global language: Threat or opportunity for minority language?” 2013 *MJSS* 34.

3 *Afriforum v University of the Free State* 2018 4 BCLR 387 (CC) par 4.

4 South African Schools Act 84 of 1996.

5 *Rivonia Primary School v MEC for Education, Gauteng* 2013 12 BCLR 1365 (CC).

to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. This provision introduces a balance between linguistic rights and practical feasibility. However, the interpretation and application of “reasonably practicable” have become the subject of constitutional litigation, primarily concerning Afrikaans-medium public schools.

2. *Understanding multiculturalism*

The concept of multiculturalism occupies a central place in debates about education, identity, and inclusion in post-apartheid South Africa. Multiculturalism refers broadly to the coexistence of diverse cultural, linguistic, ethnic, and religious communities within a shared political space.⁶ However, it is not merely descriptive, it is also normative, raising questions about how states should recognise and accommodate cultural differences in ways that promote justice, equality, and social cohesion.⁷

From a political theory perspective, Charles Taylor introduced the idea of multiculturalism as a “politics of recognition”, where acknowledging the cultural identity of minority groups is seen as fundamental to dignity and self-respect.⁸ Similarly, Will Kymlicka’s liberal multiculturalism framework advocates for minority rights as essential for ensuring substantive equality in pluralistic societies.⁹ Kymlicka distinguishes between immigrant minorities, who may seek cultural integration, and national minorities, who may demand autonomy to preserve their distinctive cultural identities.¹⁰

6 Netshivhambe *Multiculturalism and cultural tolerance*, available at <https://www.intechopen.com/online-first/1195937#> (30-10-2024).

7 Van der Merwe “Multiculturalism and the humanities” 2004 *SAJHE* 150-162.

8 Bignall “Dismantling the face: Pluralism and the politics of recognition” 2012 *Deleuze Studies* 389-410.

9 Johansson “In defence of multiculturalism – theoretical challenges” 2024 *International Review of Sociology* 81.

10 Johansson (n 9) 81.

Sociological approaches to multiculturalism often reference the “melting pot” versus “salad bowl” metaphors.¹¹ The melting pot model promotes assimilation into a dominant cultural identity, potentially erasing minority cultures.¹² In contrast, the salad bowl model recognises the distinctiveness of each cultural group while promoting coexistence and mutual respect.¹³ In the South African context, the vision of the “rainbow nation” reflects an aspiration towards the salad bowl ideal, where diversity is celebrated as a strength of the national identity.¹⁴

The historical and structural inequalities that continue to define South African society complicate efforts to promote genuine multicultural inclusion. Race, class, and language remain deeply intertwined, often reinforcing patterns of marginalisation. For example, Afrikaans-speaking communities may view the preservation of Afrikaans-medium schools as vital to cultural survival, while others may perceive such institutions as remnants of apartheid exclusion.

Minority rights are entrenched in section 31 of the Constitution; however, minority groups continue to struggle to protect and preserve their cultural, linguistic, and religious identities within transformative constitutionalism and pluralism.¹⁵ The decentralisation of education has sometimes worsened inequalities rather than reduced them. Widespread inequality within the education system, along with the lasting effects of exclusion and marginalisation amongst racial groups, have made the concept of multiculturalism appear more theoretical than practical.¹⁶

11 Berray “A critical literary review of the melting pot and salad bowl assimilation and integration theories” 2019 *J ECS* 142–151.

12 Berray (n 11) 142–151.

13 Berray (n 11) 142–151.

14 Netshivhambe (n 6).

15 Van Der Walt and Steyn “Recognition of minority groups, their general and educational ideals: Is there another way out?” 2014 *Tydskrif vir Geesteswetenskappe* 825.

16 Sayed and Soudien “Decentralisation and the construction of inclusion education policy in South Africa” 2005 *Compare* 115–125.

South African schools are influenced by the rich cultural, ethnic, and religious identities within their communities.¹⁷ These communities play a key role in shaping the cultural identities and values of both the school and its learners.¹⁸ However, despite this diversity, these communities remain segregated and divided along racial and class lines.¹⁹ In the *Laerskool Potgietersrus* case, the school argued that its language policy aimed to maintain its “exclusively Christian Afrikaans culture and ethos” and that admitting English-speaking learners would “detrimentally affect or destroy” that culture and ethos.²⁰ “Communitarianism”, the antithesis of multiculturalism, is premised on the proposition that a strong sense of community allegiance and responsibility shapes political identity.²¹ This explains why minority groups, such as Afrikaners, rationalise the need to preserve their culture and heritage.

The critique of multiculturalism is that it can lead to forced assimilation.²² This suggests that minority groups may feel pressured to relinquish their history, culture, and identity in favour of adopting the dominant culture.²³ This is often undertaken in an effort to create a unified national identity and promote social cohesion.²⁴ The South African “rainbow nation” ideal remains a powerful symbol of post-apartheid aspirations, but its realisation depends on translating symbolic commitments into practical policies that foster inclusion, equality, and mutual respect.

17 Meier and Hartell “Handling cultural diversity in education in South Africa” 2009 *SA-Educ Journal* 180–192.

18 Meier and Hartell (n 17) 180–192.

19 Jacobs “Youth identity in desegregated schools of Johannesburg” 2017 *Contemporary Social Science* 205.

20 *Matukane v Laerskool Potgietersrus* 1996 3 SA 223 (T).

21 Divjak “Communitarianism, multiculturalism and liberalism” 2018 *Balkan Journal of Philosophy* 150.

22 Grootboom “Teacher attitudes and beliefs in language of instruction in a desegregated school environment in South Africa” 2014 *MJSS* 1066.

23 Berry “Aligning interculturalism with international human rights law: ‘Living together’ without assimilation” 2023 *Sussex Research Open (SRO)* 3.

24 Mason “The critique of multiculturalism in Britain: integration, separation and shared identification” 2018 *Critical Review of International Social and Political Philosophy* 25.

3. Understanding multiculturalism within the context of school governance

Understanding multiculturalism within the specific context of school governance is crucial for evaluating how language policies and education frameworks either promote or undermine inclusion. Schools are not merely institutions of learning, they are also social institutions where cultural values, identities, and power dynamics are negotiated and reproduced.

In South Africa, school governing bodies (SGBs) play a significant role in shaping the culture and ethos of schools.²⁵ These powers give SGBs considerable influence over how multiculturalism is understood and operationalised at the school level.²⁶ However, the risk remains that SGBs may use this authority to entrench particular cultural identities at the expense of diversity and inclusion.

The *Laerskool Potgietersrus* case serves as a powerful example of how language policies can be employed as gatekeeping mechanisms. In that case, the school argued that admitting English-speaking black learners would “negatively impact or destroy” its Christian Afrikaans culture and ethos.²⁷ The Court rejected this justification, holding that cultural preservation could not override the constitutional imperative to promote equality and non-discrimination.²⁸

The complex relationship between multiculturalism and school governance is further illustrated by the evolution of Afrikaner identity within post-apartheid South Africa.²⁹ Historically, Afrikaner nationalism positioned Afrikaans as both a cultural symbol and a political tool for exclusion.³⁰ However, contemporary Afrikaner communities argue for the preservation of Afrikaans-medium

25 Meier and Hartell “Handling cultural diversity in education in South Africa” 2009 *SA-Educ Journal* 180–192.

26 Meier and Hartell (n 25) 180–192.

27 *Laerskool Potgietersrus* case (n 20).

28 *Laerskool Potgietersrus* case (n 20).

29 Ramutsindela “National identity in South Africa: The search for harmony” 1997 *GeoJournal* 99–110.

30 Afrikaans: the language of Black and Coloured dissent”, available at <https://www.sahistory.org.za/article/afrikaans-language-black-and-coloured-dissent#:~:text=Indeed%2C%20Afrikaans%20has%20a%20violent,as%20a%20%27White%27%20language> (24-04-2025).

institutions as a legitimate exercise of cultural rights, often framing these demands within the language of minority protection.³¹ This framing aligns with what Kymlicka describes as “national minorities” asserting claims to cultural autonomy.³² Yet, as the *Laerskool Potgietersrus* and other cases demonstrate, such claims must be carefully scrutinised to ensure that they do not reinforce patterns of racial and linguistic exclusion.

David Miller’s typology of communities provides a useful lens for analysing these dynamics. Miller identifies three broad forms of community: (1) voluntary associations based on shared values, (2) hierarchical communities organised around tradition and authority, and (3) civic communities committed to equality and participation.³³ SGBs, composed of representatives from their respective communities, may reflect any of these models.³⁴ However, in the South African context, historical patterns of exclusion mean that SGBs may be disproportionately influenced by hierarchical and tradition-based views of community identity. Prejudice, stereotyping, and discrimination remain significant risks when governance structures reflect the interests of dominant groups within divided communities.³⁵ Within racially and economically stratified societies like South Africa, school governance can become a mechanism for reproducing inequality unless carefully regulated and aligned with constitutional principles.³⁶

The South African ideal of the “rainbow nation” aspires to transcend these divisions through unity in diversity. However, this ideal must be operationalised in concrete ways at the level of school governance. Sachs J captured this challenge eloquently when he stated that:

31 Teppo “Moral radicals: Afrikaners and their grassroots ecumenism after apartheid” 2018 *Journal of Southern African Studies* 253–267.

32 Kymlicka *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995) 1013.

33 Miller *Citizenship and National Identity* (2000) 97–100.

34 Polletta and Jasper “Collective Identity and social movements” 2001 *Annual Review of Sociology* 285.

35 Fiske *Prejudice, discrimination, and stereotyping*, available at <https://nobaproject.com/20-09-2024>.

36 Soudien and Sayed “A new racial state? Exclusion and inclusion in education policy and practice in South Africa” 2004 *Perspectives in Education* 106.

“The objective should not be to set the principle of equality against that of cultural diversity but to harmonise the two in the interests of both. Democracy in a pluralist society should not mean the end of cultural diversity but rather its guarantee on the secure bases of justice and equity.”³⁷

At the same time, critics of multiculturalism warn that it may foster cultural separatism or lead to the formation of isolated enclaves.³⁸ In the context of South African schools, the risk is that single-medium Afrikaans institutions may function as de facto spaces of exclusion under the guise of cultural protection. However, there are concerns that forced integration may lead to the creation of separate classes for English-speaking black and Afrikaans-speaking white learners, which could be seen as contrary to the transformation goals of the Constitution.³⁹

The South African national identity, with its long and contested history, is an ongoing project that is constantly evolving and adapting to the changing landscape of a fragmented and polarised society.⁴⁰ Nation-building is a complex process that does not guarantee the creation of a shared national identity.⁴¹ It may inadvertently exclude those who refuse to “assimilate,” thereby leading to the creation of “parallel national identities.”⁴² Multiculturalism in South Africa refers to the peaceful coexistence of diverse cultural, linguistic, and religious groups. However, the challenge of “coexisting” and “tolerating” may lead to conflict when the social structure excludes minority cultural, linguistic, or religious identities.⁴³ A false sense

37 *The School Education Bill of 1995 (Gauteng)* 1996 4 BCLR 561 (CC).

38 Berry “Aligning interculturalism with international human rights law: ‘Living together’ without assimilation” 2023 *Sussex Research Open (SRO)* 3.

39 Grootboom “Teacher attitudes and beliefs in language of instruction in a desegregated school environment in South Africa” 2014 *Mediterranean Journal of Social Sciences* 1066.

40 Palmberg *Identities and democracies in Africa* (1999) 321.

41 Talentino “The two faces of nation-building: Developing function and identity” 2004 *Cambridge Review of International Affairs* 559.

42 Mafuta *Imagined Communities: The Role of the Churches During and After Apartheid in Sophiatown* (LLM dissertation, University of Ottawa 2016) 221.

43 Zembylas “Toleration and coexistence in conflicting societies: Some tensions and implications for education” 2011 *Pedagogy Culture and Society* 390.

of “uniformity” can create a “difference-blind” and “melting pot” outlook on society, which, while not entirely ineffective, falls short of fulfilling the needs of various multicultural communities.⁴⁴ Taylor argues for a “politics of recognition” to support minority cultures in diverse social contexts, contending that the dominant culture’s pressures force minority cultures to conform, which hinders the development of minority culture and language.⁴⁵ While designed to foster unity and inclusivity, the concept of the “rainbow nation” in South Africa can inadvertently create a false sense of inclusion.⁴⁶

4. Transformative constitutionalism

Transformative constitutionalism, as articulated by Klare, refers to “a long-term project of constitutional enactment, interpretation, and enforcement aimed at transforming a country’s political, social, and economic institutions and relationships in a democratic, participatory, and egalitarian direction”.⁴⁷ In the South African context, this concept has become a central framework for understanding how the post-apartheid Constitution seeks to redress historical injustices and promote substantive equality.⁴⁸

The right to basic education, entrenched in section 29(1) of the Constitution, is one of the key rights through which transformative constitutionalism seeks to effect structural change.⁴⁹ The Constitutional Court has recognised this transformative potential, emphasising that basic education is “immediately realisable” and

44 Trivedi “Is multiculturalism antiquated? A dialogic debate on negotiating liberalism, finding symmetry sustenance” 2022 *Journal of Studies of Social Science* 1–2.

45 Bignall “Dismantling the face: Pluralism and the politics of recognition” 2012 *Deleuze Studies* 389–410.

46 Ndlazi “Racial inequality and the imperative critique of the South African negotiated settlement” 2022 *Journal of African Philosophy, Culture and Religions* 94.

47 Klare “Legal culture and transformative constitutionalism” 1998 *South African Journal on Human Rights* 150.

48 *Governing Body of the Juma Masjid Primary School v Ahmed Asruff* Essay 2011 8 BCLR 761 (CC).

49 s 29(2) of the Constitution.

not subject to the internal limitations applicable to other socio-economic rights.⁵⁰

Furthermore, transformative constitutionalism challenges traditional legal formalism, which tends to focus on abstract reasoning and neutrality while ignoring structural inequalities.⁵¹ Instead, it calls for a substantive engagement with the lived realities of marginalised groups and the social context in which rights are exercised.⁵² This approach has influenced the Court's interpretation of education rights, particularly in cases involving access, equity, and language policy.⁵³ In the landmark *Basic Education for All* case, the Supreme Court of Appeal affirmed the transformative role of education, declaring that the state's failure to provide textbooks to learners violated their right to basic education. The judgment highlighted the need for the state to take positive measures to ensure that this right is effectively realised, not merely on paper but in practice.⁵⁴

The role of transformation in interpreting the Constitution is an extensive theme that cascades throughout court decisions in South Africa.⁵⁵ In the *City of Johannesburg* case, the court emphasised that the Constitution mandates the transformation of society to tackle the persistent effects of racism and inequality.⁵⁶ Similarly, in the *Van Rooyen* case, the court highlighted the crucial role of transformation in guaranteeing access to education, particularly through measures such as affirmative action.⁵⁷

Within the context of language in education, transformative constitutionalism has shaped the judiciary's approach to balancing cultural rights with equality and access. Rather than treating

50 Veriava "The Limpopo textbook litigation: a case study into the possibilities of a transformative constitutionalism" 2016 *SAJHR* 331.

51 Albertyn "Substantive equality and transformation in South Africa" 2007 *SAJHR* 254.

52 Albertyn (n 51) 259.

53 Diala "Courts and transformative constitutionalism: Insights from South Africa" in Sterett and Walker *Research Handbook on Law and Courts* (2019) 97.

54 Veriava (n 50) 331.

55 Diala (n 53) 97

56 *City of Johannesburg v Rand Properties (Pty) Ltd* 2006 6 BCLR 728 (W).

57 *Minister of Finance v Van Heerden* 2004 11 BCLR 1125 (CC).

language rights as isolated entitlements,⁵⁸ the courts have evaluated them against the broader constitutional commitments to non-racialism, equity, and historical redress. This is evident in cases such as *Hoërskool Ermelo* and *Laerskool Middelburg*, where the courts scrutinised the language policies of Afrikaans-medium schools, considering their potential to exclude black learners.⁵⁹

The application of transformative constitutionalism requires courts and policymakers to look beyond the formal text of the law and engage with the substantive effects of policies and practices.⁶⁰ Within the context of language in education, this means assessing whether language policies promote inclusion and equal opportunity or whether they function as barriers to access for historically disadvantaged learners.

Critics of transformative constitutionalism recognise its potential to bring about significant internal coherence. However, they argue that the doctrine overemphasises the role of the courts and rights discourse, potentially failing to address the deep-rooted structural inequalities within South African society.⁶¹ Despite these critiques, transformative constitutionalism remains a powerful framework for understanding the constitutional mandate to transform South African society. It offers a lens through which to evaluate whether language policies and school governance structures advance the goals of dignity, equality, and freedom or whether they perpetuate patterns of exclusion. The debate on language in education, particularly in relation to Afrikaans-medium schools, presents a crucial test for the transformative potential of the Constitution. These disputes raise fundamental questions about how to balance the preservation of cultural and linguistic identities with the constitutional commitment to non-racialism and equality. Transformative constitutionalism demands that such balancing be informed not only by legal

58 Arendse “Slowly but surely: The substantive approach to the right to basic education of the South African courts post-*Juma Masjid*” 2020 *AHRLJ* 294.

59 *Laerskool Potgietersrus* case (n 20).

60 Fredman “Substantive equality revisited” in Fredman *Discrimination Law* (2016) 720.

61 Klug “Transformative constitutionalism as a model for Africa?” in Dann, Riegner, and Bönnemann *The Global South and Comparative Constitutional Law* (2020) 141–164.

formalism but also by a substantive consideration of social justice and historical context.

5. Critical analysis of basic education in South Africa

The transformation of South Africa's education system represents one of the most significant challenges in the post-apartheid era. Historically, education was deliberately structured to reinforce racial segregation and inequality, with the apartheid government systematically denying quality education to black learners through the Bantu Education system. This legacy has left enduring disparities in access, resources, infrastructure, and educational outcomes between different racial and socio-economic groups.⁶²

The White Paper on Education and Training of 1995 and the South African Schools Act 84 of 1996 (SASA) set out the legislative and policy framework for the transformation of education.⁶³ These instruments aim to democratise governance, decentralise decision-making, and promote participatory democracy through structures such as SGBs.⁶⁴ The underlying vision was to foster equity, access, and quality in education while promoting cultural and linguistic diversity.⁶⁵

The history of exclusion and inequality has made language in education contentious and divisive. The challenge to fully implement mother-tongue education, worsened by the dominance of Afrikaans and English in the education system, perpetuates inequality and exclusion.⁶⁶ The 1976 Soweto uprising is a significant historical event symbolising the rejection of language as a tool of oppression and domination. This uprising was primarily sparked by the apartheid regime's policy to enforce Afrikaans as the medium of instruction in schools, which was perceived as an attempt to entrench apartheid

62 Woolman and Fleisch "The problem of the 'other' language" 2013 CCR 153.

63 Motala *Transformation of the South African schooling system* 2017 The Centre for Education Policy Development 17.

64 Motala (n 63) 14.

65 Motala (n 63) 2.

66 Manyike and Lemmer "Research in language education in South Africa: Problems and prospects" 2014 *Mediterranean Journal of Social Sciences* 251.

further and suppress the cultural identity of the black population.⁶⁷ The legacy of apartheid, and the polarisation created by an oppressive regime, has unfortunately tainted the important historical role of Afrikaans as an academic language, significantly restricting the role which Afrikaans can play as one of the official languages in the transformation of the educational system in South Africa.⁶⁸ The court observed in the *Laerskool Potgietersrus* case that language and culture were operating as “surrogates for race”.⁶⁹ This has reinforced the perception that “Afrikaans–single–medium schools perpetuate racial exclusion”.⁷⁰

While South Africa’s Constitution recognises twelve official languages and the Norms and Standards for Language Policy in Public Schools aim to promote active bilingualism and the use of learners’ home language for instruction, English continues to dominate as the primary medium of instruction. This entrenched “language hierarchy” marginalises mother–tongue languages, undermining the constitutional commitment to linguistic diversity and equity.⁷¹ In September 2013, South Africa adopted the Policy of Incrementally Introducing African Languages into the Education System.⁷² This policy initiative represents a concerted effort to uphold and strengthen the fundamental right to language within the educational system by elevating the status of African languages by promoting them as mediums of instruction, bolstering their proficiency, and encouraging the widespread use of African languages within homes and communities, facilitating their integration into everyday linguistic practices.⁷³

67 *Soweto uprising*, available at <https://www.britannica.com/event/Soweto-uprising> (29–04–2025).

68 Thomas and Maree “A coat of many colours: A critical race theory analysis of language uses at two South African higher education institutions” 2024 *Journal of Language, Identity and Education* 96–110.

69 Woolman and Fleisch “The problem of the ‘other’ language” 2013 *CCR* 153.

70 Woolman and Fleisch (n 69) 153.

71 Kretzer and Kaschula “Language policy and linguistic landscapes at schools in South Africa” 2021 *International Journal of Multilingualism* 122.

72 *Incremental Introduction of African Languages: Draft Policy*: September 2013.

73 *Draft Policy* (n 72).

Section 6 of the Constitution states that: “the official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu and South African sign language”.⁷⁴ The recent constitutional amendment recognising South African Sign Language (SASL) as an official language represents a significant legal development. However, the mere enactment of this provision does not automatically ensure its effective implementation or the realisation of its intended benefits to learners with hearing disabilities. Several factors may present challenges to the full and effective operationalisation of this right, and its realisation will be assessed in accordance with the standard of “reasonably practicable”. Further empirical and doctrinal research is required to evaluate how these factors impede the meaningful realisation of the right to education in SASL. Moreover, it is imperative to critically examine the criteria that should govern the determination of what constitutes “reasonably practicable” in providing education in SASL.

6. Analysing section 29(2) of the Constitution and the reasonably practicable test

Section 29(2) of the Constitution provides that “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”.⁷⁵ This provision affirms the right to mother-tongue education but qualifies its realisation by the standard of reasonable practicability.⁷⁶ The Constitution does not explicitly define what is “reasonably practicable”, leaving courts to interpret the standard based on factual circumstances, policy considerations, and constitutional values.⁷⁷ Instead of establishing an objective framework to delineate the scope, nature, and content of

⁷⁴ S 6 of the Constitution.

⁷⁵ Malan “The constitution, education authorities and the road ahead for single medium Afrikaans schools” 2010 *Tydskrif vir Geesteswetenskappe* 261-263.

⁷⁶ Quan, Fambasayi and Ferreira “Transforming education through mother tongue language as a language of instruction in South Africa” 2024 *AFHRL* 274-275.

⁷⁷ Essop “Children’s right to education versus their right to religion and culture in South Africa: With specific reference to the wearing of a headscarf in South African” 2023 *PELJ* 6.

the right to basic education, the courts have embraced a substantive interpretative approach, prioritising entitlements such as the provision of textbooks, furniture, infrastructure, qualified teachers, transport, and nutrition.

6.1 Case law analysis

6.1.1 Matukane v Laerskool Potgietersrus

In *Laerskool Potgietersrus*, black English-speaking learners were denied admission to an Afrikaans-medium school on the basis that admitting them would undermine the school's Christian Afrikaans culture and ethos. The Court found that the refusal amounted to unfair discrimination and held that the right to cultural preservation could not justify exclusionary practices that perpetuated racial segregation.⁷⁸ Importantly, the Court in *Laerskool Potgietersrus* did not directly engage with the “reasonably practicable” standard under section 29(2), focusing instead on equality and non-discrimination.⁷⁹ However, the case established the principle that cultural rights cannot operate as a defence for racial exclusion, setting the tone for subsequent language rights litigation.⁸⁰

6.1.2 Laerskool Middelburg v Departementshoof, Mpumalanga Departement van Onderwys

The *Middelburg* case involved a dispute between the SGB of an Afrikaans-medium school and the provincial education department, which directed the school to admit English-speaking learners. The SGB resisted, citing its language policy.⁸¹ The Court ruled that while SGBs have the authority to determine language policy under section 6(2) of the SASA, this power is not absolute and must be exercised

⁷⁸ *Primary school renamed as per community's wishes*, available at https://www.edu.limpopo.gov.za/index.php?option=com_content&view=article&id=99:primary-school-re-named-as-per-communitys-wishes&catid=25:the-project (30-08-2024).

⁷⁹ *Laerskool Potgietersrus* case (n 20) at 231F.

⁸⁰ *Laerskool Potgietersrus* case (n 20) at 226B.

⁸¹ *Laerskool Middelburg v Departementshoof, Mpumalanga Departement van Onderwys* 2003 4 SA 160 (T).

consistently with the Constitution.⁸² The judgment emphasised that language policies should not be used to undermine equitable access to education. The case clarified that reasonable practicability must be assessed based on objective criteria, including the number of learners requesting instruction in a particular language and the feasibility of providing such instruction without undermining the right to education for others.⁸³

6.1.3 Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo

In *Ermelo*, the provincial Head of Department withdrew the SGB's authority to determine the school's language policy and appointed an interim committee to revise the policy to allow English-speaking learners admission.⁸⁴ The CC upheld the department's power to intervene, finding that the right to education in one's language of choice is subject to the qualification of reasonable practicability. The CC stressed that this standard requires consideration of multiple factors, including resource availability, integration imperatives, and the need to redress past injustices.⁸⁵ The legal significance of this case lies in the Court's application of the "rational basis test" to assess the school's Afrikaans language policy.⁸⁶ This test evaluated whether the policy was linked to a legitimate aim, such as promoting cultural identity and language rights, or whether it unjustifiably excluded students from accessing basic education in the language of their choice. While the Court recognised the school's constitutional right to select its language of instruction under section 29 of the Constitution, it held that this right was not absolute. Instead, it must be balanced against the public interest in ensuring equal access to education. The Court found the school's decision to operate as a single-medium Afrikaans institution was unjustifiable.

82 *Laerskool Middelburg* case (n 81) par 173, 175.

83 *Laerskool Middelburg* case (n 81) par 61.

84 *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo* 2010 2 SA 415 (CC) par 1.

85 *Ermelo* case (n 84) par 2.

86 Mawdsley and Beckmann "Language and culture restrictions in K-12 non-public schools in the United States: Exploring the reach of federal non-discrimination law and implications for South Africa" 2013 *De Jure* 340.

6.1.4 Minister of Education, Western Cape v Governing Body of Mikro Primary School

Mikro Primary concerned the provincial department's attempt to compel a single-medium Afrikaans school to adopt a dual-medium policy. The SGB challenged the directive, arguing that its existing language policy complied with constitutional and legislative requirements.⁸⁷ The Supreme Court of Appeal ruled in favour of the SGB, finding that the department had not followed the proper procedure to withdraw the SGB's language policy function. The Court also emphasised that state intervention must be legally justified and procedurally fair.⁸⁸ Although the case did not reject the state's authority to regulate language policy, it reinforced the principle that any such intervention must comply with due process and respect the autonomy of SGBs within constitutional limits.⁸⁹

6.1.5 Seodin Primary School v MEC of Education, Northern Cape

In *Seodin*, the department sought to convert several Afrikaans single-medium schools into dual-medium institutions as part of an effort to promote racial integration. The schools argued that this amounted to an attack on Afrikaans culture.⁹⁰ The provincial department of education requested that all single-medium Afrikaans schools in the Kuruman district in the Northern Cape shall, from the effect of January 2005, change their language policies to double-medium Afrikaans and English.⁹¹ The respective schools challenged the department's decision to convert several Afrikaans-medium schools to double-medium schools. These schools believed that the Department of Education was purposefully targeting them and by attempting to "force racial integration", the department was seeking to "obliterate" Afrikaans and single-medium Afrikaans schools and did not make a reasonable effort to preserve the status of these schools as much as possible and practicable. However, the court

87 *The Western Cape Minister of Education v The Governing Body of Mikro Primary School* 2005 10 BCLR 973 (CC) par 1.

88 *Mikro* case (n 87) par 43.

89 s 22(2)(3) of Act 84 of 1996

90 *Seodin Primary School v MEC, Northern Cape* 2006 4 BCLR 542 (NC).

91 *Seodin* case (n 90) par 3.

rejected the school's argument that the department was attempting to "obliterate" Afrikaans and single-medium Afrikaans schools.

6.2 *Judicial approaches to the reasonably practicable standard*

Under section 29(2), determining what is "reasonably practicable" involves both factual and normative considerations. The state must assess all reasonable educational alternatives, including single-medium institutions, while weighing factors such as equity, feasibility, and the imperative to redress historical racial discrimination.⁹² In making decisions about language in education, the state should consider fairness, feasibility, and historical injustices. It should ensure the consistent use of mother-tongue languages and provide equitable education in all official languages to effectively address past discriminatory laws and practices.⁹³ The courts use two complementary tests, context-sensitive and objective, to assess the practicality of providing basic education in the language preferred by the learners. In the *Ermelo* case, the court adopted a "context-sensitive test", considering various circumstances, including feasibility and the obligation to remedy past discrimination. In contrast, in the *Gelyke Kanse* case, the court adopted an objective test, requiring an evidence-based approach to determine "reasonable practicability" based on concrete evidence whether it was the feasibility of providing education in a particular language.

6.3 *Implications of the Basic Education Laws Amendment Act 32 of 2024*

The Basic Education Laws Amendment Act 32 of 2024 (BELA Act) represents a significant development in the ongoing debate over school governance, language policy, and the centralisation of authority within South Africa's education system.⁹⁴ Signed into law in September 2024, the BELA Act introduces key amendments to the

92. Malan (n 75) 261-263.

93. Quan, Fambasayi and Ferreira (n 76) 274-275.

94. The Basic Education Laws Amendment Act 32 of 2024.

South African Schools Act (SASA), particularly regarding the powers of SGBs and the oversight role of provincial education departments.⁹⁵

The Act provides that the Head of the Provincial Department of Education holds the authority to approve or override the language and admission policies adopted by SGBs. Specifically, section 6 of the amended SASA now requires SGBs to submit their language policies for approval by the head of department (HOD), who may reject or amend such policies if they are deemed inconsistent with the broader language needs of the community or the principles of equity and inclusion.⁹⁶

Critics have raised concerns regarding the possible reversion to the apartheid education model and its potential impact on language diversity and inclusivity within schools.⁹⁷ Supporters of the BELA Act argue that these changes are essential to transform the South African educational system and address the legacy of exclusion, discrimination, and inequality amongst cultural, racial, and linguistic communities.⁹⁸ According to the memorandum on the objectives of the BELA Act, the changes were necessitated by a review conducted in 2013 that identified the need to amend the SASA and the Employment of Educators Act 76 of 1998.⁹⁹ The BELA Act is highly controversial, particularly regarding its impact on the language policy of single-medium Afrikaans schools in a political environment in which language is an emotional, contentious, and political issue. It remains to be seen whether the shift from a decentralised to a more centralised school governance model will ensure equal access to

95 *Cabinet welcomes signing of BELA Bill into law*, available at <https://www.sanews.gov.za/features-south-africa/cabinet-welcomes-signing-bela-bill-law> (10-09-2024).

96 Veriava “The Basic Education Laws Amendment Bill: A case study in transformative constitutionalism beyond the courts” 2024 *AHRLJ* 171.

97 Kruger, Beckmann and Du Plessis “Non-educator stakeholders and public-school principals’ views on the proposed amendments to the South African Schools Act 84 of 1996” 2024 *PELJ* 10.

98 *Memorandum on the Objects of the Basic Education Laws Amendment Bill*, 2022 available at <https://www.gpl.gov.za/wp-content/uploads/2024/02/MEMORANDUM-ON-THE-OBJECTS-OF-THE-BELLA-BILL.pdf> (20-09-2024).

99 *Memorandum on the Objects of the Basic Education Laws Amendment Bill* (n 98).

quality education for all students and address the disparities created by the previous system.¹⁰⁰

7. Conclusion and recommendations

This article has explored the intersection of multiculturalism, transformative constitutionalism, and the right to basic education under section 29(2) of the Constitution, with emphasis on the “reasonably practicable” standard in school language policy. While section 29(2) guarantees the right to education in one’s preferred official language, this right is subject to practical considerations including demand, resource constraints, and the need for integration and redress. Courts have applied a context-sensitive, evidence-based approach to balance cultural rights with constitutional imperatives of equality and non-racialism.

The *Matukane*, *Middelburg*, *Ermelo*, *Mikro*, and *Seodin* cases illustrate that cultural preservation cannot justify exclusion. The BELA Act further centralises authority over school language policy, aiming to prevent language-based exclusion. While its supporters view the Act as advancing transformation, critics caution that it may threaten minority language rights. These tensions reflect broader challenges in realising the Constitution’s transformative goals. South Africa’s education system must navigate historical inequalities, cultural diversity, and legal commitments to equality. Achieving this requires more than symbolic recognition; it demands substantive policies that dismantle structural exclusion. Grounding language policy in both multicultural recognition and transformative constitutionalism is essential for building an inclusive and equitable education system in South Africa.

100 Veriava (n 96) 172.