

A Critical Comparison of Legal Interventions Regarding the Officiality of Languages in Israel and South Africa

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Abstract

Language legislation is increasingly being accorded a central role in managing language contact, addressing language inequality and language conflict, and legitimising recognised official languages within multilingual settings. In many cases language legislation takes the form of a central language act, such as the *Welsh Language Act* (1993), while in other cases, primary and secondary language legislation become important legal instruments in regulating official languages. Primary language legislation can take the form of constitutional provisions on language or language provisions in ordinary legislation passed by legislatures. Secondary language legislation can be found in regulations and other measures on language guiding governmental treatment of official languages. However, a further aspect of legal intervention that is not always considered in discussions about language legislation is case law on language. Case law has proved to play a prominent role in correcting tendencies towards the non-implementation of measures to ensure language equality, such as in the instance of Arabic in Israel. A similar situation is found in South Africa where case law complements language legislation in different domains of official language use. This article provides a comparative perspective on language legislation and case law on language as two forms of legal intervention in language officialisation.

Keywords: Language legalisation, case law on language, language policy,

language officialisation, language planning, language rights.

Introduction

Larrivée (2003:188) considers Israel to be ‘one of the success stories of language planning’ alongside of two others, Catalonia and Quebec. A notable feature of language planning in regions such as Catalonia and Quebec, as well as the Baltic States, Finland, Ireland, Wales and Scotland (Hogan-Brun *et al.* 2008; Williams 2008) is the central role that language legislation plays, particularly in the form of a central language act. The *Welsh Language Act* (Welsh Language Act 1993) is a typical example of a central language act and in fact serves as a model for the language acts of other countries (Dunbar 2006). By comparison, however, language planning in Israel is not underpinned by a similar language act. Other forms of legal intervention seem to be contributing to the ‘success’ of language planning in this relatively young state. In similar vein, South Africa, another young democratic state, is often seen as the language planning success story of Africa. Smitherman (2000:87) for instance writes: ‘I applaud South Africa’s national language policy and see it as a major step forward in the decolonisation of the minds of Black South Africans’. Attempts at promulgating the *South African Languages Bill* (DAC 2000) as a language act have failed. As in the case of Israel, the status, function and use of the official languages of South Africa are regulated through other forms of legal intervention. Whether one agrees or disagrees with such appraisals and whether they are well founded or not, the fact is that some form of legal intervention undeniably played a role in establishing the official language regimes after the ‘rebirth’ of the states of Israel and South Africa. As the legal treatment of (official) languages differs according to circumstances (Gibbons 1999:163) a comparative study can reveal useful insights into the different forms of legal intervention regarding language in these two states. Such insights could shed more light on the commonly held perceptions above about the ‘successes’ of language planning, given the central role that language legislation has been accorded in managing language contact, addressing language inequality and resolving language conflict (Turi 1993:6), and in legitimising recognised official languages (Williams 2008:172).

The study that follows, attempts to offer a comparative perspective on legal intervention¹ as mechanism of language policy (Deutch 2005; Foucher 2007) in two post World War II states without a central language act. Both Israel and South Africa are multilingual states where the official language dispensation has undergone significant changes during the 20th and 21st centuries. The official language regime of Israel changed from a predominantly trilingual one (English/Arabic/Hebrew) at the start of the 20th century to a predominantly monolingual Hebrew regime after 1948, despite the fact that an indigenous language (Arabic) had been awarded official status. In the case of South Africa the official language regime changed from a predominantly monolingual English one at the start of the 20th century, to a predominantly English/Afrikaans bilingual one during the apartheid era (in the period after 1948), to a predominantly monolingual one since 1994, despite the fact that more than one language (including indigenous ones) have been declared official. A striking similarity can be found towards the latter part of the 20th century where both states overtly opted for more official languages, including indigenous languages, but covertly were seen to be promoting essentially one language. In the case of Israel this language is Hebrew and in the case of South Africa it has become English.

Legal Intervention as Mechanism of Language Policy

Legal intervention in language policy is usually associated with language legislation, defined by Turi (1993:6) as ‘legal language obligations and language rights’ (Ruíz 1988) drawn up to protect, defend or promote one or several designated languages. Besides distinguishing between legislation that deals with the official or non-official usage of languages, Turi (1993:7) also identifies four types of language legislation: officialising, normalising, standardising or liberalising language legislation.

Officialising language legislation is intended to make one or more designated languages official in the domains of legislation, the judiciary, public administration and education, what Williams (2003:45) describes as ‘key domains’ or Williams (2008:162) as ‘key strategic areas’. According to Turi (1993:8), officialising language legislation is usually organised in terms

¹ Williams (2008:172) prefers the concept ‘legal system’.

of two principles, linguistic territoriality (legal rules regarding the use of one or more designated languages within a given territory) or linguistic personality (legal rules about the use of one's own language). Normalising language legislation is intended to establish one or more designated languages as 'normal, usual or common languages' in the unofficial domains of labour, communications, culture, commerce and business. Standardising language legislation is intended to make one or more designated languages adhere to certain language standards in very specific domains, usually official or highly technical. Liberalising language legislation is intended to enshrine legal recognition of language rights implicitly or explicitly, 'in one way or another' (Turi 1993:8).

Williams (2008:162) similarly distinguishes between institutionalising language legislation (ensuring the representation of languages in the key domains or strategic areas) and normalising language legislation (extending the use of the designated languages 'into the optimum range of social situations', including the domains mentioned above).

Officialising or institutionalising language legislation can also refer to what Saban and Amara (2004:17) understand as the 'officiality' of languages, in other words legal arrangements regarding the official status of one or more languages. Shohamy (2006:61-63) treats officiality in a wider sense as a language policy device used to grant preference to certain languages in given territories and to remove power from the use of other languages. According to her, officiality can be determined by language legislation, but can also materialise through sanctioning a particular language in the public domain using a variety of agents, not only governmental authorities.

Turi (1993:7) discusses three ways of attaining 'officiality' that relate to Shohamy's view:

- formally designating specific languages as official languages (or 'national' languages) by means of a country's constitution or another form of legal text of national importance;
- designating specific languages as 'the languages' in certain official domains such as allowing a non-official language within education, as in the case of Spanish in the USA and South African Sign Language in South Africa; and

- granting languages superior status in comparison to other languages, for example accepting only one language version of a legal text as authentic, or limiting language requirements for obtaining citizenship (requiring for instance competency in only one of the official languages of a country).

So far we have largely dealt with what can be referred to as ‘primary language legislation’, usually understood as language legislation made by the legislative branch of government (the legislature). As Deutch (2005:264) remarks, this would refer primarily to laws, some dealing with the use of designated languages *per se*, such as Quebec’s *Charter of the French Language* (Q.C.L.F. 1978), and others dealing with language in passing, such as South Africa’s *Broadcasting Act* (RSA 1999). ‘Additional primary language legislation’ covers legal provisions that expound upon basic primary language legislation and includes constitutional provisions on language. ‘Secondary language legislation’ would then refer to language legislation made by the executive branch of government that incorporates rules, regulations and ordinances pertaining to the use of designated languages published in notices and other legal documents (Deutch 2005:264).

Turi (1993:7-8) stresses that the designation of official languages ‘does not necessarily or automatically entail major legal consequences’. Officiality will largely depend on the ‘effective legal treatment’ of designated official languages. Shohamy (2006:61-63) concurs. The mere declaration of official languages does not guarantee officiality in practice; more often than not it mostly reflects intentions. As a legal arrangement or ‘language policy mechanism’ officiality does offer legal recourse in a court of law and can strengthen rights pertaining to ‘weaker’ languages. The legal system remains the ‘bulwark for the defence of justice’ and a major ‘instrument for the articulation of language rights and services’, writes Williams (2008:172). Canada has shown that the courts can become ‘a major bastion’ for the protection and promotion of language rights, a position that is supported by the careful analysis of Dor and Hofnung (2006). Williams (2008:172) argues that ‘language-related legislation is a *sine qua non* for the establishment of a binding commitment by the state to honour the putative rights of speakers of officially recognised languages’ and states that language

legislation becomes ‘the basis by which the growth of deliberative democracy is enabled’.

Legal intervention in language policy should thus not conclude with legislation. Following Deutch (2005:264) we can broaden our understanding by taking into consideration case law. Case law reflects the interpretation of laws by the courts of a country and deals with current issues not regulated by law (Walker 1980:190). Deutch demonstrates how case law in Israel is contributing to language policy-making and how the concept of officiality is being articulated in the process. Dor and Hofnung (2006) discuss litigation as another form of ‘language policy-making’ or legal intervention. However, language litigation is possibly also the most successful instrument of language activism (Martel 1999; Lubbe 2004; Du Plessis 2006). In terms hereof litigation is not a legislative process, but a process one step removed which, if successful, could result in language legislation. For the purposes of the discussion below we shall maintain this distinction.

The means to change the status of a language can also refer to what Shohamy (2006:54) calls mechanisms of language policy, ‘overt and covert devices that are used as the means for affecting, creating and perpetuating de facto language policies’. Rules and regulations are the most commonly used language policy mechanisms and include policy devices such as language laws and officiality. To these we can add case law. Deutch (2005:283-284) states that the combination of language legislation and case law can deepen our understanding of language policy and how the legislature and judiciary deal with the language rights of individuals and minority groups.

Given the growing interest in the legal system as an instrument of language rights, it has become important to measure the effectiveness of language legislation. Dunbar (in Williams, 2008:173) has developed a framework for evaluating the level of implementation. Williams (2008:389) mentions the European Bureau for Lesser-Used Languages (EBLUL) monitoring project, ‘From Act to Action’, as an example of the evaluation of the instruments of language legislation in the public sector. His study investigates the level of coherence between the legislative and administrative systems in three countries, Finland, Ireland and Wales. All three countries have a central language act that legislates language use in the official language domains. The project analyses the relation between rights granted (through legislation), public services rendered and the monitoring or

regulatory mechanisms in place in each country. One of the central findings from this project is that each country has adopted different mechanisms. However, the overall challenges remain similar, namely the quest for language equality.

Legal Intervention in the Language Situation of Israel and South Africa

The approach of this article is to focus on the role and nature of legal instruments as mechanisms of language policy in Israel and South Africa. As mentioned earlier neither country has a central language act as legal instrument. A comparison will be made of the effect of institutionalising and normalising legislation on language policy in the key strategic domains of legislation, the judiciary, public administration and education. Since the two states are in transition, the focus will be on officialising language legislation and similar legal interventions in terms of primary and secondary language legislation. Case law will also be considered. The objective is to establish the role of different types of legal intervention in officialising the languages of the two countries.

Two major questions that will be asked is what legislative directives were provided for the treatment of the official languages in each of the key language domains and whether this intervention contributed to promoting and ensuring language equality.

The comparison below draws largely on current studies in the field regarding legal intervention and the officialisation of languages in Israel and South Africa.

Legal Intervention and the Officialisation of Languages in Israel

Deutch (2005) serves as point of departure for the overview on legal instruments regarding language in Israel². He in turn draws on the work of

² As the author is not fluent in reading Hebrew, it was necessary to rely on secondary sources such as the one referred to.

Tabory (1981), Amara (2002), Amara and Mar'i (2002), Saban (2004), Saban and Amara (2004), but his study is the first publication that provides a comprehensive overview of both Israeli language legislation and case law on language. Deutch (2005:284) concludes that language legislation and case law in Israel 'demonstrate the sensitivity of the legislature and the courts to language rights of individuals', an issue that is not pertinently covered in Israeli primary language legislation discussed below. More recent studies build on the preceding work, but present a different perspective. For instance, Harel-Shalev (2006:46) argues that despite the sensitivity to the rights of individuals, Jews enjoy 'more numerous collective rights' and 'despite the formal rights granted to the Arab minority by law, the latter's share in national centers of power remains limited'. The official status of Arabic is therefore effectively 'downplayed' by the Israeli state. By implication, legal intervention has not really contributed to ensuring equality in the status of Hebrew and Arabic. Yitzhaki (2008:6-10) aptly summarises this as follows:

In summary, Arabic's public role in Israel is marginal. Legislation aimed at preserving or promoting its status exists in parallel to a monolingual type of legislation that seeks to strengthen the role of Hebrew. Moreover, pro-Arabic legislation and arrangements are in many cases not put into practice and the authorities' failure to implement pro-Arabic policies is often not viewed by the court as a violation of the law.

Israeli Language Legislation

As far as primary language legislation is concerned, authors distinguish between 'founding' legislation (such as a language act) and 'ordinary' legislation (not essentially legislation dealing with language but where some central language provisions can be found).

Since Israel does not have a constitution determining the status of its official languages, the officiality of Hebrew and Arabic is considered by some to be a legacy from the British Mandate period. Before the establishment of the State of Israel in 1948, three languages enjoyed official status in Palestine—an area including contemporary Israel i.e. English,

Arabic and Hebrew (in that order). This arrangement was done in terms of Article 22 of the *Palestine Mandate* of 1922³ which provided for the equal treatment of Arabic and Hebrew within specified domains. The *Palestine Order-in-Council* of 1922 condoned this status and extended its provisions on language treatment in Article 82. In their appraisal Saban and Amara (2004:7) find that the extension in this article does three things:

- 1) It defines the obligations regarding the languages in which the *Central Government* must carry out central functions.
- 2) It sets down the languages in which official notices must be issued by the *local authorities*.
- 3) It names the languages in which an individual can access the *public service* of the central government including the law courts.

Consequently, Saban and Amara (2004:7) argue that any discussion on the legal status of the languages of Israel should start with Article 82 of the *Palestine Order-in-Council* of 1922⁴, one of the founding documents of the state of Israel. However, Deutch (2005:269) argues that Article 82 also established a language hierarchy where English remained the dominant official language. When legal disputes arose during the Mandate period, the English text was authoritative. According to Deutch this tradition continued after 1948 in the case of Hebrew, with Hebrew replacing English as the dominant language.

³ Article 22. English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew and any statement or inscription in Hebrew shall be repeated in Arabic.

⁴ 82. All ordinances, official notices and official forms of the Government and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner, shall be published in English, Arabic and Hebrew. The three languages may be used in debates and discussions in the Legislative Council, and, subject to any regulations to be made from time to time, in the Government offices and the Law Courts.

Other overviews of language legislation in Israel seem to concur with the view held by Saban and Amara (Tabory 1981; Amara & Mar'i 2002; Deutch 2005; Harel-Shalev 2006).

The *Israeli Declaration of Independence* (1948) which defines the character of the new state as a Jewish state is another example of founding legislation (Deutch 2005:264). Although it makes no explicit reference to official languages, Hebrew is mentioned in relation to its revival, implying its centrality within the Jewish state.

There are questions about the validity of using the 'founding' documents as legal grounds for the co-officiality of Hebrew and Arabic. For instance, authors such as Saban and Amara (2004), Deutch (2005) and Harel-Shalev (2006) point out that in case law on language and language litigation, the Supreme Court is hesitant to grant language rights on the basis of officiality. Deutch (2005:266) argues that the two 'founding' documents mentioned here lack legal authority, implying that they cannot support claims about co-official status. Saban and Amara (2004:17) ascribe this to the fact that Article 82 forms part of a mere statute and not of a constitution. Following Deutch (2005:266) we may group additional primary language legislation in Israel after 1948 into two categories, legislation confirming Hebrew supremacy and legislation determining Arabic minority status.

Hebrew supremacy is confirmed by three pieces of language legislation which Tabory (1981:276) refers to as 'basic' acts that 'regulate the use of languages as a legal and practical matter in Israel'. The first is *The Law and Administration Ordinance* of 1948 (Deutch 2005:265), which effectively repeals English as the third official language of Israel. The second is the *Interpretation Law* (1981), which rules that the binding text of any law is the text in the language in which it was enacted. The third piece of legislation is the *Nationality Law* (1952), which explicitly requires 'some knowledge of the Hebrew language' as a condition for naturalisation.

The minority status of Arabic can be deduced from a variety of further acts. The peculiarity of these acts is that they contain provisions requiring the explicit public use of Arabic in addition to Hebrew, effectively determining the minority status of Arabic. These are acts that deal with matters such as the publication of official notices, permits and orders which must also be done in Arabic as can be found in provisions of the *Planning and Building Law* (1965), *Banking (Service to Customers) Law* (1981) and

the *Control of Prices of Products and Services Law* (1996), etc. Some acts also deal with the use of Arabic on ballot slips, such as the *Knesset Election Law (Consolidated Text)* (1964) and the *Local Authorities Law* (1975), that require ballot slips to be in Hebrew or Arabic only. The fact that special legal arrangements are required for Arabic confirms its subsidiary official status, although in principle these arrangements do ensure the equal treatment of Arabic. Deutch (2005:275) argues that the additional language legislation discussed above gives an indication of 'positive group differentiated language rights granted to the Arab minority in a wide range of areas'. These laws substantiate a language policy which accommodates the language needs of the Arab minority, 'while strictly avoiding the national aspect'. The 'national aspect' is a reference to the recognition of Arabic as fully-fledged co-official language of the state of Israel. Arabic legally enjoys 'limited' official status, whilst Hebrew effectively enjoys status as 'national language' (Amara & Mar'i 2002:141). For the latter authors, 'Arabic is an official language, but mainly at the declarative level', in other words its officiality is limited to specific functions.

Secondary language legislation seems to be continuing the above trends. Saban and Amara (2004:25) and Deutch (2005:274) refer to regulations regarding official language use in notices and other official communiqués, such as the *Notary Regulation* (1977), which requires confirmation on a notary in Hebrew or in Arabic, the *Tenders Requirement Regulations* (1993), which obligates authorities to publish notices of governmental tenders in Arabic as well as Hebrew and the *Consumer Protection Regulations* (2002) which require cellular phone companies to disclose information on radiation hazards in a leaflet also in Arabic. A letter of the Attorney General to the legal counsels of the government ministries dated November 17, 1999, instructs government offices to publish notices inviting civil bodies to apply for state funding in Arabic, as well as Hebrew.

The language legislation discussed above deals with the use of the official languages in the domains of legislation, the judiciary and public administration. No primary legislation pertinently regulates the use of official languages in education. This is done through secondary language legislation in the form of a language-in-education policy document which was first issued in 1995 and re-issued in revised form in 1996 (Spolsky & Shohamy 1999:27). Hebrew and Arabic are to be used as official media of

instruction in single-medium schools. Both official languages are to be taught as second languages, but not at the same levels — Hebrew is compulsory until the end of secondary education, an arrangement that again confirms the supremacy of this language.

The above overview points to a kind of sanctioned inequality of official languages. Primary language legislation serves to confirm Hebrew supremacy on the one hand, and to confirm the subordinate official status of Arabic on the other hand. Secondary language legislation serves to entrench further the latter position. As Spolsky and Shohamy (1999:118) aptly put it, ‘the legal situation of languages in Israel is far from straightforward’.

Israeli Case Law on Language

Authors such as Saban and Amara (2004), Deutch (2005) and Harel-Shalev (2006) point out that in case law on language, the Supreme Court is hesitant to grant language rights on the basis of officiality.

According to Deutch (2005:276ff) Israeli case law provides further evidence on the official language hierarchy of Israel. Three Supreme Court cases are usually cited as containing important decisions on and implications for (official) language use in Israel (Saban & Amara 2004:24). Two of these cases, *Re'em Engineers and Contractors Ltd. v. Upper Nazareth Municipality* (C.A. 105/92, P.D. 47(5) 189) and *Adallah Legal Center for the Rights of the Israeli Arab Minority v. the Tel Aviv-Jaffa Council* (H.C.4112/99, P.D. 56(5) 393), deal with the regulation of language visibility on municipal bill boards and street signs in both official languages, and one case, *Meri v. Sabac* (M.C.A. 12/99, P.D. 53(2) 128), with the use of official languages on the ballot slip. In the cases dealing with language visibility the Supreme Court granted the right to use Arabic on billboards and street name signs in mixed cities with a minority of Arab residents. In the case of Arabic on a ballot slip, Court recognized the legitimacy of an Arab voter to write the letter on the ballot slip solely in Arabic. Deutch (2005:279) emphasises that the rationale for the ruling was not the official status of Arabic but the use of Arabic as minority language. In fact, when the Court mentioned the status of Arabic as an official language, it claimed that this status was not unanimously accepted.

Discussion

The overall impression gained by this overview of developments in the Israeli legal domain is an ambiguity regarding the official status of Arabic. Does the language enjoy full status as co-official language alongside of Hebrew (as national language), or does it enjoy limited official status (as minority official language)? This uncertainty can partly be ascribed to the relative absence of primary language legislation on the official languages of Israel. The selected language legislation mentioned in this overview points to a disparity in status between the languages which can also be ascribed to a hesitancy to recognise the legitimacy of Arabic as official language. Yitzhaki (2008:100) provides an illuminating discussion on this ambiguity.

Perhaps the strongest evidence about the subsidiary status of Arabic is the complete absence of laws and rules regarding official bilingualism. In countries with two official languages, such as Canada and Belgium (and apartheid South Africa), laws and rules constitute the cornerstone of legal arrangements regarding official languages. Overviews on language-in-education policy (Amara 2002; Amara & Mar'i 2002; Shohamy 2006: 84) allude to this weakness in the case of Israel. There is no overt language policy that obligates all Israeli citizens to learn the two official languages at the same level at school (Yitzhaki 2008:8; Spolsky & Shohamy 1999:138-152). In practice, the policy is a failure. In fact, the dominance of Hebrew in Israeli society has contributed to asymmetrical and incongruent bilingualism — Arabic children learn Hebrew as second language, while a large portion of Hebrew children rather learn French as second language.

Most striking about this overview of legal arrangements regarding the official languages of Israel is the prominent role of language litigation in defining the official status of Arabic. Saban and Amara (2004:24) appraise this aspect as follows:

It is a pattern to be remembered: the promise inherent in Law (here, the legal status of Arabic) will only be realized if the minority will insist upon its materialization. Left to its own devices the State has taken no positive steps, initiated no policy to actively close the gap that has evolved over the years between the legal and the sociopolitical status of Arabic.

Legal Intervention and the Officialisation of Languages in South Africa

South African studies similar to the work of Deutch (2005), which deal with both language legislation and case law on language, are less prominent and quite specific. Malherbe (1997) provides an early overview on language legislation and case law on language in education. A more comprehensive overview on the same topic is provided in the recent study of Woolman and Fleisch (2009). The overview by Cowling (2007) deals with legal intervention regarding language in court, as does the one by Malan (2009b). At this stage no study presents a general overview and analysis. Some further studies deal primarily with case law on language, again focusing primarily on specific domains. Authors such as Visser (1997), Kriel (1997) and Lubbe (2004) deal with case law on language in education, whilst Matela (1999) and Hlophe (2000) deal with case law on language in court. The findings of these studies indicate that legal intervention in language in South Africa is not contributing to equitability in status as far as the official languages are concerned.

South African Language Legislation

South Africa has a constitution which contains several provisions on the official languages. Central to these is a so-called language clause, Section 6 (RSA 1996) which declares 11 languages official. Although there is uncertainty about the exact implications of this declaration (Rautenbach & Malherbe 2004:103), it indicates which languages are to be used for official purposes. Previous constitutions (going back to the foundation of the South African state in 1910) recognised two official languages at national level (English and Afrikaans)⁵ and nine Bantu languages at regional level (Du Plessis 2000). The official languages at national level were treated on an equal basis. However, the new language clause has moved away from this principle of language equality and introduced two new sets of norms, equitable treatment and parity of esteem. Rautenbach and Malherbe

⁵ Only since 1925. Until that stage Dutch was recognised as co-official language.

(2004:103-104) point out that in terms of these norms, the official languages must receive recognition in government activities. Further, no one language may dominate at the expense of the others and no language is to be neglected. They go on to argue why the notion of an ‘anchor’ language used in conjunction with some other languages (on a rotational basis) would be wrong and emphasise the constitutional requirement for government to function in an equitable multilingual way.

Section 6(4) of the Constitution is especially important as it requires national and provincial government to regulate and monitor its use of official languages by legislation and other measures. This clause effectively recognises the limitations of the language clause in regulating the day-to-day language matters, hence the need for further language legislation. The *South African Languages Bill* (DAC 2000) is an example of such an attempt. However, it has never been promulgated into law.

Section 6 of the South African constitution provides for language use in the four key language domains. Further clauses deal with specific aspects. The use of language in the court is covered in Section 35(3)(k) which grants the right to a trial in a language that the accused understands and the use of interpreting services where this is not possible. The use of language in education is addressed in Section 29(2) which grants the right to education in the official language of choice and the establishment of single-medium schools.

One of the prominent features of Section 6 and the other language clauses is the shift away from the principle of language equality (the basis of the language clauses of the previous constitutions since 1909). Other notable features are the level of ambiguity and lack of legal force contained in the language provisions (Pretorius 1999; Rautenbach & Malherbe 2004; Currie 2006). Seemingly, great care has been taken to avoid prescriptive language.

We shall now consider South Africa’s equivalent to Israel’s two cardinal laws regarding language use, the *Interpretation Law* (1981) and the *Nationality Law* (1952). These acts played a central role in establishing Hebrew as the dominant and *de facto* singular official language of Israel.

South Africa does not have a law to equal the former Israeli law. The equivalent provision regarding the equal treatment of English and Afrikaans from the 1983 constitution, the basis for ‘statutory bilingualism’ (Devenish 1990), has not been taken up in the 1996 constitution. The same principle

with regard to the recognition of a legal text in a particular language does apply, i.e. that only the legal text in a language specified for that purpose is taken as authoritative in the case of disputes that may arise. The current convention in South Africa is that the language of a bill is determined by the state department that is introducing it⁶.

According to Malan (2009a) the time-honoured convention of alternating in legislation between the two erstwhile official languages, English and Afrikaans (Devenish 1990:441) has been discontinued and it has become customary to sign primarily the English version of new laws.

South Africa's equivalent of Israel's *Nationality Law* (1952) is the *South African Citizenship Act* (RSA 1995). (Interestingly, on 28 September 1995 the President signed the Afrikaans text of the act). A provision of this act under the section that deals with naturalisation requires a new citizen to have a command of only one official language:

Section 5. (1) The Minister may, upon application in the prescribed form, grant a certificate of naturalisation as a South African citizen to any alien who satisfies the Minister that-... (f) he or she is able to communicate in any one of the official languages of the Republic to the satisfaction of the Minister; and ...

The notable aspect of this provision is the lack of specification of language. This is in contradiction to the naturalisation requirements of some other African states. Harrington (2008:9) points out that these states usually specify that the required language be an indigenous language. Another

⁶ 'Joint Rule 220 of the South African Parliament provides that any bill must be in one of the official languages. The language in which a bill is introduced is the official text for the purposes of parliamentary proceedings. The official text of the bill must be translated into at least one of the other official languages before the official text is sent to the President for assent, and the official translation/s must accompany the official text. The department that submits the bill decides on the languages in which the bills are submitted and is responsible for translating and submitting the documents' (Correspondence to the author from the Information Services of the South African Parliament provided per e-mail on 2009/03/26.)

problem is that the provision effectively undermines South Africa's language-in-education policy which requires additive bilingualism, albeit without prescribing in which two languages. The current provision in the South African act thus opens the door for a market-driven approach to language choice which could favour dominant languages, given the strong link between 'destination (dominant) language proficiency, employment status and earnings' (Deumert 2006:78-79). According to the latter author, in the South African case English is becoming that language. On the other hand, the requirement of knowledge of one official language could also be ascribed to the difference between 'language right' and 'language status' as discussed by Davis, Cheadle and Haysom (1997:280), with the first-mentioned aspect relating to the legal position of the individual and the latter to the legal position of an official language.

Both Israel and South Africa do not specify any particular official language as medium for the purposes of sanctioning laws. In principle the choice is left open, implying that none of the official languages of these two countries are being advantaged. South Africa has adopted the same non-prescriptive approach regarding the language requirements for naturalisation. Israel, on the other hand, does specify knowledge of Hebrew and by implication thus favours this language as the preferential official language of the state. In the end South Africa's non-specification could lead to a market-driven approach that would favour the dominant official language, English.

As it would not be possible to find exact equivalents for all the examples of secondary language legislation from Israel discussed above, we shall rather look at some of the more prominent South African examples and identify tendencies regarding the treatment of the official languages that will correspond to the Israeli case.

Education is one of the more prominent areas in which South Africa has passed language legislation since 1994. This has also been a domain of ongoing language conflict since the days of so-called Bantu Education, an education system that enforced mother tongue tuition in primary education for black South Africans, and the two erstwhile official languages as sole media of instruction in secondary and tertiary education (Du Plessis 2003).

Four South African education acts contain provisions on language,

i.e. the *National Education Policy Act* (RSA 1996), the *South African Schools Act* (RSA 1996), the *Higher Education Act* (RSA 1997) and the *Further Education and Training Act* (RSA 2006). These acts complement the provisions on language and education contained in Section 29 of the South African constitution.

Section 3 of the *National Education Policy Act* (RSA 1996) deals with the principle of governance regarding language-in-education policy and grants core language rights in education. The act makes provision for the Minister to determine national education policy. One of the areas of determination is listed under Section 3(4)(m) as national policy on 'language in education'. Section 4 deals with rights in education. Particularly Section 4(a)(v) determines that the policy contemplated in Section 3 shall ensure among others, the right 'of every student to be instructed in the language of his or her choice where this is reasonably practicable'. Section 4(a)(vii) furthermore ensures the right 'of every person to establish, where practicable, education institutions based on a common language, culture or religion, as long as there is no discrimination on the ground of race'; whilst Section 4(a)(viii) ensures the right 'of every person to use the language and participate in the cultural life of his or her choice within an education institution'.

The *South African Schools Act* (RSA 1996) expounds upon governance issues. Section 6 of this act, entitled 'Language policy of public schools', provides for the actual procedure the Minister should follow to 'determine norms and standards for language policy in public schools' (Section 6(1)) and determines the role of the governing body of the school to 'determine the language policy of the school' (6(2)). It also grants further rights by prohibiting any form of racial discrimination 'in implementing policy determined under this section' (6(3)) and by declaring South African Sign Language to be considered an official language for the 'purposes of learning at a public school' (6(4)).

Issues of governance of language-in-education policy are also addressed in the *Higher Education Act* (RSA 1997). Section 5 of this act provides for the establishment of a Council on Higher Education (CHE) which may advise the Minister on language policy (Section 5(2)(i)). Section 27(2) provides that the Minister will determine language policy for higher education and once this has been done, the council of the higher education

institution, ‘with the concurrence of the senate, must determine the language policy of a public higher education institution and must publish and make it available on request’⁷.

The provisions discussed here reflect a tendency of avoiding a prescriptive approach to language rights. Emphasis is placed on the right of choice and on avoiding discrimination on the basis of language and using language as a barrier to access. One of the consequences of this hesitancy is the failure to promote official bilingualism. Another feature relates to the governance of language-in-education policy where a mixture between a top-down and bottom-up approach is envisaged.

The striking feature of the examples of South African language legislation discussed is that no particular language is advanced as official language of preference. Instead, a rather open-ended approach is followed. Since such an approach lacks prescription, it almost amounts to a *laissez-faire* approach where the door is left open for market forces to determine language policy. This is not in keeping with the requirement of government to function in at least two official languages, a requirement that suggests a bilingual approach is to be followed (involving two official languages).

Secondary language legislation regarding education is found in government notices published to regulate language media in schools, as well as in language policy drafted to regulate language in higher education milieu.

In accordance with the *South African Schools Act* (RSA 1996), the Minister published the *Language-in-education policy 14 July 1997* as a notice in the *Government Gazette* (DoE 1997)⁸. This notice contains two subsections, one on the language-in-education policy (Section IV) and one on the norms and standards regarding language policy (Section V).

The stated objective of the first section is ‘to establish additive multilingualism as an approach to language in education’ (Section IV.C.2)⁹.

⁷ Department of Education 2002. Language Policy for Higher Education. November 2002.

⁸ A correction notice was published on 4 August 1997 (Notice 1700, *Government Gazette* No. 18546 of 1997).

⁹ The Department understands by ‘additive multilingualism’, ‘that learners reach high levels of proficiency in at least two languages, and that they are able to communicate in other languages’ (DoE 2002:20).

What is envisaged is essentially a system of bilingual education that will deliver a multilingual South African. The Department of Education wants to achieve this through the maintenance of the mother tongue 'while providing access to and the effective acquisition of additional language(s)' (DoE 1997:Section IV.A.5). The language-in-education policy provides for various options for the promotion of multilingualism.

The objective to achieve additive multilingualism is supported by two further sets of policy provisions, i.e. provisions on language of learning and teaching (medium of instruction) and provisions on language as a subject. It is obvious that these two sets of provisions should be interrelated. The policy regarding language of learning and teaching (LoLT) determines that this language must be an official language in public schools (Section IV.E). It further provides that parents are responsible for the choice of medium (Section V.B.1) and that the parent body is to determine the language policy of the school (Section V.C.1). (This policy must specifically stipulate how the school will promote multilingualism). The policy also sets minimum requirements in terms of student numbers which are to be used as a guide when dealing with requests from learners for another medium of instruction where that language is not offered by a school. The policy regarding language as subject (LaS) determines that all learners shall offer at least one approved language as a subject in Grade 1 and Grade 2 (Section IV.D.2) and that from Grade 3 they shall offer their language of learning and teaching and at least one additional approved language (Section IV.D.3). Two languages must be passed from Grade 10 to Grade 12, one at first language level and the second at least at second language level, and at least one of these must be an official language.

The languages to be offered in the final grades are not specified. What is also notable is that only one official language is required for the final grades. This is a serious shortcoming in terms of the stated objective of delivering multilingual South Africans. It is unclear how the Department of Education envisages achieving this objective through the current minimum requirement. A South African who leaves school qualified in only one South African language is surely not what the Department has in mind with its ideal of 'being multilingual should be a defining characteristic of being South African' (DoE 1997: Section IV.A.4). In fact, the LaS policy as a whole is actually more geared to promoting individual and not necessarily official

bilingualism (bilingualism in two official languages).

The *Language Policy for Higher Education* (DoE 2002) recognises English and Afrikaans as the only languages of instruction in higher education (par. 15.1), but rejects the continuation of monolingual Afrikaans-medium institutions (par. 15.4.3) and envisages a programme for the development of other South African languages as languages of instruction at this level (par. 15.2). Nevertheless, the *Language Policy for Higher Education* does not specifically prescribe bilingual higher education, but allows for Afrikaans to be retained ‘through a range of strategies, including the adoption of parallel and dual language medium options’ (par. 15.4.4). The historically Afrikaans-medium universities are furthermore required to submit plans indicating strategies and time-frames to ensure that the language of instruction does not hinder access to these institutions (par. 15.4.5). Universities are also required to develop strategies to promote efficiency in the designated language(s) of instruction (par. 15.3) and to offer programmes in South African languages and literature (par. 16), as well as in foreign languages (par. 17). The *Language Policy for Higher Education* also requires higher education to play a role in promoting multilingualism in institutional policies and practices (par. 18). Strategies to promote multilingualism are to be included in the three-year rolling plans that higher education institutions have to submit to the Minister of Education (par. 18.3). All such institutions are required to submit their language policies to the Minister (par. 20).

The examples of secondary language legislation discussed further confirm South Africa’s hesitancy to adopt a prescriptive approach to language management. Although no particular official language is favoured through this legislation, there is a suggestion that the established languages (English and Afrikaans) will be implicitly favoured; this is definitely the case in education (more specifically in higher education).

South African Case Law on Language

South African case law after 1994 deals primarily with two language rights issues, the use of language in court and the issue of single-medium schools. Case law regarding the use of language in court deals with the constitutional right in Section 35(3)(k) to be tried in a language which an accused person

understands or, where not practicable, to have the proceedings interpreted in that language. Case law regarding single-medium schools deals with the constitutional right in Section 29(2) obliging the state to consider all reasonable educational alternatives, including single-medium institutions, in order to realise the right to education in the official language or languages of choice in public educational institutions, given a set of conditions.

The use of language in court is dealt with in four cases, *Mthethwa v De Bruyn NO and another* (1998 (3) BCLR 336 (N)), *S v Matomela* (1998 (3) BCLR 339 (Ck)), *S v Pienaar* (2000 (7) BCLR 800 (NC)) and *S v Damoyi* (2004 (2) SA 564 (C)). These cases raise two cardinal questions. The first is whether it is permissible to conduct a court case in an official language other than Afrikaans and English, in other words a practice which is contrary to the language provisions of the *Magistrates' Courts Act* (RSA 1944). This act, which has not been repealed, provides for the two former official languages as languages of the South African court. The second question is to what extent an accused has the right to insist on a trial in a language he/she understands and whether such right includes the right to a trial in an official language which is the mother tongue of the accused.

The first case, *Mthethwa v De Bruyn NO and another* (1998 (3) BCLR 336 (N)), came before the High Court of KwaZulu/Natal (a predominantly Zulu-speaking province). The applicant, a mother tongue speaker of Zulu, requested a trial in Zulu, one of South Africa's official languages. The regional magistrate declined the request and directed that the case continue in Afrikaans and English. The applicant approached the High Court seeking an order declaring the refusal of the magistrate unlawful and unconstitutional. An order was also requested for him to be tried in the official language of his choice on the basis of Section 35(3)(k) of the RSA constitution. The application was dismissed with costs. The High Court pointed out that Section 35(3)(k) did not grant the right to be tried in a language of choice, but rather the right to be tried in a language that the accused understands and where not practicable, to have the proceedings interpreted into that language. In this case the accused could understand English. However, from the facts before the Court it can be gleaned that a trial in Zulu was not practicable in the area of the provincial division in question. The Court based its case on 'the dictates of practicability' provided for by Section 35(3)(k). As Malan (2009b:150-151) points out, the ruling

therefore did not actually have a bearing on the right of the accused to testify in Zulu. According to Hlophe (2000:694) an opportunity was missed to promote the use of Zulu as additional language of the court.

Section 35(3)(k) also featured in the second case, *S v Matomela* (1998 (3) BCLR 339 (Ck)), a criminal review case. Here an entire trial was conducted in Xhosa and the proceedings recorded in Xhosa, another official language of South Africa. No interpreter was available on the day of the trial and instead of postponing the trial a decision was taken to proceed in Xhosa as all parties concerned could follow the proceedings in this language. This criminal case originated in the Eastern Cape, a predominantly Xhosa-speaking area, and the proceedings were considered to be in accordance with the spirit of the provisions of both Sections 6 (official languages) and 35(3)(k) of the constitution. When the Court on review considered the reasons provided for the decision to proceed in Xhosa, it confirmed the conviction and sentence. However, it observed that nothing prevented the repetition of such an occurrence which could result in inconvenience, delay and additional expense (because of the need for translation) when such cases came up for review. It foresaw this as a problem that deserved the urgent attention of the Department of Justice in terms of Section 171 of the constitution regulating the rules and procedures of courts. The Court proposed the adoption of one official language to be used for the purpose of court proceedings, irrespective of the mother tongue of court officials involved and directed that the matter be referred to the Minister of Justice for his urgent consideration. Malan (2009b:152) argues that this decision is unacceptable as it pays lip-service to the requirement in Section 6(4) of the constitution that official languages should be treated equitably and should enjoy parity of esteem. It also disavows the injunction of Section 6(2) that the state must advance the use and elevate the status of the historically marginalised indigenous languages.

The view that consideration be given only to one official language as the language of court proceedings was found unacceptable in *S v Pienaar* (2000 (7) BCLR 800 (NC)), a criminal review of a trial in the Northern Cape province (a predominantly Afrikaans speaking region). If the towel were to be thrown in every time a practical difficulty arose when trying to give effect to the spirit and letter of the constitutional provisions on language, the review judges argued, the constitution 'would become a useless piece of

paper'. Instead, it could be expected of the Department of Justice to manage language use in South African courts with understanding. The review judges found that the conduct of the magistrate in this particular case amounted to a denial of the accused's right to legal representation which resulted in a denial of a fair trial including the right to be tried in Afrikaans. Legal representation had been provided to the accused in the form of a public defender who could not speak Afrikaans. Leave was granted for this representative to withdraw. The accused then undertook his own defence ultimately resulting in his conviction and sentencing. Given the practical denial of the accused's right to a fair trial, the review judges instructed that the conviction and sentence be set aside.

In the last case, *S v Damoyi* (2004 (2) SA 564 (C)), the judge found the basis for the opinion expressed in the previous case problematic and argued that the *Magistrates' Courts Act* (RSA 1944), which provided for two court languages (English and Afrikaans), could not be used as a basis for rulings regarding language use in courts since Section 6 of the 1996 constitution (proclaiming eleven official languages) had superseded this earlier provision. The *Damoyi* review case dealt with another trial in the Bishop Lavis Magistrate's court in Cape Town where only Xhosa was used since all parties could follow and as in the Bishop Lavis Magistrate court in Cape Town not to unduly delay proceedings because of the non-availability of an interpreter. It is recorded that problems were also experienced with the transcription of the proceedings in the language of the trial. The review judge was of the opinion that the recommendation made in *S v Matomela* (1998 (3) BCLR 339 (Ck)) regarding the use of English as the only language of court was to be upheld and expressed the hope that the 'issue of a language of record in court proceedings will be resolved sooner than later'. The review judge nevertheless confirmed the conviction and sentence.

The rulings in the four cases provide more insight into the language rights accorded by Section 35(3)(k) of the constitution (RSA 1996). Regarding the question as to what extent an accused has the right to insist on a trial in a language he/she understands, and whether such right includes the right to a trial in an official language which is the mother tongue of the accused, the relevant case law is clear. The accused can insist on the right to a trial in one of the official languages where he/she cannot understand another language and would consequently not be guaranteed a fair trial.

Regarding the second question, whether it is permissible to conduct a court case in an official language other than Afrikaans and English, the relevant case law seems too ambiguous. Existing cases point to the dilemma caused by the misalignment between the language provisions of the *Magistrates' Courts Act* (RSA 1944) pertaining to the former official languages dispensation, and Section 6 of the constitution (RSA 1996) which provides for a new language dispensation requiring government to function in at least two (non-specified) official languages. The learned review judge in *S v Damoyi* (2004 (2) SA 564 (C)) chose not to refer to this minimum constitutional requirement which theoretically provides the legal grounds for some form of continuation of the language arrangement from the previous era in South African courts (Davis et al. 1997:280). However, it has been argued that the state is also required to move beyond such continuation and to address the inequalities in the previous language dispensation by introducing further official languages. The latter obligation has not been given attention to. From the four cases it has become clear that the Department of Justice is currently not prepared to proceed with the appropriate alignment of language provisions from the previous era and those of the 1996 constitution (RSA 1996).

The single-medium issue is dealt with in five cases, *Matukane & Others v Laerskool Potgietersrus* (1996 (3) SA 223 (T)), *Laerskool Middelburg en 'n Ander Departementshoof v Mpumalanga Departement van Onderwys* (2003 (4) SA 160 (T)), *Western Cape Minister of Education & Others v The Governing Body of Mikro Primary School* (2006 (1) SA 1 (SCA)), *Seodin Primary School v MEC Education, Northern Cape* (2006 (1) All SA 154 (NC)) and *Hoërskool Ermelo v The Head of Department of Education: Mpumalanga* (2009 (219/08) ZASCA 22). Again, there are two questions to be answered. On the one hand, the cases question the legal scope of the right to single-medium public schools, and on the other hand they question the scope of the state's obligation in providing this schooling option.

In *Matukane & Others v Laerskool Potgietersrus* (1996 (3) SA 223 (T)) a group of black parents (including a Mr Matukane) approached the High Court for an order requiring an Afrikaans-medium primary school in Potgietersrus — a town in South Africa's northern most province, Limpopo — to accept their children who had been refused access on the grounds of

language. However, some white English-speaking learners had been accommodated. The court held that the school had intentionally discriminated against the black children on the grounds of race and issued an order in favour of the black children.

The second case, *Laerskool Middelburg en 'n Ander Departementshoof v Mpumalanga Departement van Onderwys* (2003 (4) SA 160 (T)), dealt with a High Court challenge by an Afrikaans-speaking primary school from a neighbouring province, Mpumalanga, against the provincial education department's attempts to force the school to accept black learners into an English stream. This step changed the school from single medium to parallel medium. Since room was available in the school (whereas neighbouring schools were filled to capacity), the court ruled against the claimant and concluded that under certain circumstances a single-medium school was obliged to become a parallel-medium institution, given the need for equity and historical redress.

The state's obligations regarding single-medium schools came under further scrutiny in a similar case, *Western Cape Minister of Education & Others v The Governing Body of Mikro Primary School* (2006 (1) SA 1 (SCA)). In this instance another Afrikaans-medium school from the Western Cape Province refused to accede to a request by the provincial department of education to change the language policy of the school to allow for parallel-medium education and to give access to English-speaking learners. After the school obtained an order from the Cape High Court which set aside the departmental directives, the department appealed to the Supreme Court of Appeal. The Court ruled against the applicant and upheld the ruling by the Cape High Court. Essentially it based its decision on the right of a school to decide its own language policy and the obligation of the state to provide for single-medium schools where practicable. The ruling prohibited education departments in South Africa from determining the language policies of schools.

In *Seodin Primary School v MEC Education, Northern Cape* (2006 (1) All SA 154 (NC)) the Northern Cape High Court shed more light on the circumstances that would allow a school to remain single medium. Six schools from the Northern Cape were instructed to change from single medium to parallel and dual medium, thus granting English-speaking learners access. Three of the schools (including Seodin) approached the High Court

to set aside these directives. Their application was turned down on the basis that they had no language policy in place to substantiate their case for a single-medium school. These particular schools were undersubscribed and the court ruled that the right of the learners to receive an education trumped the right of the schools to remain single-medium institutions.

The question of the right to education versus the right to a single-medium school also became an issue in the fifth case, *Hoërskool Ermelo v The Head of Department of Education: Mpumalanga* (2009 (219/08) ZASCA 22). When this school resisted directives from the Mpumalanga provincial education department, the school governing body was dissolved and replaced with a departmentally appointed committee. This allowed the department to alter the school's language policy so that it would cater for an English-speaking stream, thus effectively changing the school to a parallel-medium institution. The school requested the Pretoria High Court to set the directives aside, which it did. However, on appeal the same court actually set aside this decision and upheld the decision by the department to change the language policy of the school. The case was taken to the Supreme Court of Appeal where the court ruled against the department and reaffirmed the 'exclusive' right of school governing bodies to determine a school's language policy. The school thus retained its right to remain single medium. However, Ermelo Hoërskool (High School) was instructed to enable English-speaking learners in the system to complete their schooling. On further appeal the Constitutional Court affirmed this ruling but for different reasons. The school was nevertheless required to alter its language policy voluntarily in order to address the shortage of classrooms in the area (*Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo & Others* (Case CCT 40/09 [2009] ZACC 32).

South African case law on language in education provides some perspectives on the first question regarding the legal scope of the right to single-medium public schools. Although the right is confirmed, the cases above show that it is not an absolute, guaranteed right (Woolman & Fleisch 2009:80). An important limitation to the right is the availability of adequate access to schooling for speakers of another language than that of the school in question. The need to provide schooling for the majority takes precedence over the right to provide single-medium schooling for a minority. Regarding the second question about the scope of the state's obligation in providing this

schooling option, the cases above confirm the right of school governing bodies to determine a language policy for a school. However, this right is subject to the general norms and conditions regarding such policy determined by the Minister of Education. Where no such policy exists, a state department of education may determine such policy, it seems.

Discussion

This cursory comparison with regard to the official language dispensations of Israel and South Africa reveals interesting perspectives on the matter of legal intervention as mechanism of language policy. The comparison indicates some significant differences, but also reveals a few startling similarities.

First, we particularly note a difference in primary language legislation. The basis for language officiality in Israel is not determined by a constitution such as in the case of South Africa, but by legislation that essentially stems from the British Mandate period. An important feature of this language legislation is its inherited language hierarchy which has been modified to suit the interests of the Israeli state founded in 1948 making Hebrew the dominant language rather than English. The primary South African language legislation, on the other hand, seems to achieve quite the contrary, namely the demolition of the language hierarchy from the apartheid era and the replacement thereof with a new one similarly reflecting the interests of the new South African state established in 1994. This was done through an egalitarian approach which advocated official multilingualism, but elevated English as the primary official language in the place of Afrikaans as previously 'advantaged' language.

A striking similarity with regard to primary language legislation relates to the concept official language. Both states overtly declare languages official, but seem to be avoiding the principle of equality as the basis for language treatment. Some legislative measures in Israel elevate Hebrew to the level of primary official language, whereas South African legislation emphasises equitability and parity of esteem as core principles. Flowing from this, both states are cautious in using overly prescriptive language to determine the levels of officiality. Although Israel has declared two languages official and South Africa requires the state to use a minimum of two official languages, both states refrain from instituting, or continuing in

the case of South Africa, the notion of statutory bilingualism. At least in the latter case, this principle was the backbone of the language dispensation under apartheid and a remnant of this legal arrangement can still be seen in the *Magistrates' Courts Act* (RSA 1944) which provides for two court languages, English and Afrikaans, and their equal treatment.

We also note a difference between the two states regarding secondary language legislation. A notable feature of Israeli secondary legislation is the entrenchment of the official languages hierarchy with Hebrew as the 'national' official language and Arabic as the 'minority' official language. Much care is taken in secondary language legislation to define the role of Arabic in domains such as legislation, the judiciary and public administration. In the case of South Africa, secondary language legislation purposely does not define the official languages hierarchy. In fact, where Israeli language legislation still defines a role for Arabic, South African language legislation is silent with regard to the role of both the 'primary' official language (English) and the 'secondary' official languages (Afrikaans and the other languages). However, this avoidance of defining the roles of the official languages is contributing to a system of language treatment that could eventually be informed by market-driven language demands.

Another difference between the two states is the more extensive secondary language legislation in the domain of education in the case of South Africa. Notable with regard to this legislation is the avoidance of the principle of compulsory mother tongue education in South Africa. Much emphasis is placed on legislation regarding language choice in terms of the official languages. Education in Israel, to the contrary, is organised wholly on exactly the principle of mother tongue education within two education systems, a Hebrew education system and an Arab education system (Amara & Mar'i 2002:4-15). There is a similarity between the two states relating to the notion of statutory bilingualism, but this time in the crucial domain of education. Amara and Mar'i (2002:141) lament the lack of symmetrical bilingualism in Israel, a feature that primarily relates to the absence of statutory bilingualism. Du Plessis (2003:112-114) similarly points out the negative impact on national unity emanating from the lack of a clear bilingual policy in education in South Africa.

Conclusion

Both Israel and South Africa utilise a variety of legal instruments to intervene in their respective language dispensations. The role and nature of the different types of instruments differ according to circumstances. However, they play an important part in shaping the role of the official languages, whether more directly as in the case of Israel, or more indirectly as in the case of South Africa. Whether explicitly or implicitly, current legal interventions in these two states seem to be contributing to enhancing official monolingualism, a condition definitely not foreseen in the founding documents.

However, the question one needs to pose is whether this outcome is really unexpected, considering the strong underlying ideals in both instances of establishing a single new indivisible state. As in the case of the French Republic, one official language can become a crucial element in the process of centralising power and control (see Adamson 2007). In the case of Israel, Hebrew has become this language and in the case of South Africa, English. Whether this trend can be turned around remains to be seen and whether further intervention by means of a central language act can halt the trends in each case, remains doubtful. In other polities where language dominance has had to be challenged the institution of a language act has been relatively successful in establishing a more just language dispensation.

Of course the related aspect of legal intervention that was not discussed in this article, namely language litigation, can also become an important instrument of change towards achieving language justice. If anything, the case law on language in Israel discussed above resulted from successful language litigation by representatives from the aggrieved minority. The outcome of this litigation is significant. In the case of Arabic it has resulted in increased visibility, a very powerful mechanism of language policy.

The quest for language equality thus remains a challenge in multilingual societies where language serves as a marker of socio-political inequality or stratification. However, what also remains a challenge is the exploration of all avenues of legal intervention in order to effect change, the civilised option for disempowered or marginalised communities.

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