
REPORT NO. 6 OF 2009/10

REPORT ON AN INVESTIGATION INTO THE ALLEGED UNFAIR LANGUAGE PRACTICES OF THE MATZIKAMA MUNICIPALITY
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Executive Summary

(i) The Office of the Public Protector investigated complaints against the Matzikama Municipality (Municipality) after a complaint was lodged by a Xhosa-speaking resident. Amongst the complaints lodged with the Office were the following:

(a) The Municipality has failed to develop a language policy that takes into account the interests of Xhosa and English-speaking residents of the Municipality; and

(b) The Municipality has effectively maintained a unilingual approach in that it has consistently communicated exclusively in Afrikaans to the detriment of the other two official languages.

(ii) The Municipality in its response conceded that it has not developed a language policy that is responsive to the needs of the above-mentioned linguistic communities. It informed the Office that it is in the process of requesting assistance and guidance from the Pan South African Language Board (PANSALB) in developing one. Such guidance and assistance was still awaited at the time of the report.

(iii) It also transpired that the South African Human Rights Commission (SAHRC) had previously received and investigated similar complaints against the Municipality. It would appear that the complaint was lodged in frustration of perceived reluctance by the Municipality to address the situation.

(iv) It was found that the Municipality has not developed a language policy despite the obvious need to do so. The investigation revealed that the Municipality has failed from 2005 to address the situation in relation to equitable language usage delivery. It was also found that a natural consequence of the aforesaid failure
and continuous communications in Afrikaans is a feeling of marginalisation of the minority linguistic communities within the Municipality.

(v) It was found that lack of financial resources and capacity on the subject matter has had an impact on the ability of the Municipality to develop a coherent and comprehensive language policy. It was found that the Municipality has sought assistance and guidance from the PANSALB.

(vi) It is recommended that:

(a) The Municipality must take urgent steps to diversify its communication to include all three official languages of the Western Cape Province;

(b) The Municipality must develop a comprehensive language policy after having consulted with PANSALB and the residents;

(c) The Municipality should ensure that its staff complement is composed of officials who are proficient to serve in the Afrikaans, Xhosa and English languages;

(d) All official languages (Afrikaans, English and Xhosa) must enjoy parity of esteem and must be treated equitably; and

(e) These changes must be effected through a binding Council resolution and must be reflected in the Integrated Development Plan Document.
REPORT ON AN INVESTIGATION INTO THE ALLEGED UNFAIR LANGUAGE PRACTICES OF THE MATZIKAMA MUNICIPALITY

1. INTRODUCTION

1.1 This report is submitted to the Member of the Executive Council for Local Government in the Western Cape Provincial Government, Municipal Council and Executive Mayor of the Matzikama Municipality in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

1.2 It relates to an investigation conducted by the Office of the Public Protector (Office) into allegations that the Matzikama Municipality (Municipality) has failed to treat Xhosa and English languages equitably and has failed to develop a language policy.

2. BACKGROUND

2.1 The Office received a complaint concerning alleged unfair and discriminatory language practices being perpetrated by the Municipality.

2.2 The Municipality is located on the West Coast of the Western Cape Province and based in Vredendal.

2.3 The Municipality was until 1994 exclusively predominantly inhabited by Afrikaans speakers.

2.4 Since the advent of democracy other South Africans particularly non-Afrikaans speakers have migrated and settled in the area.
2.5 These new residents have demanded since 2005 to be addressed in their preferred languages.

2.6 To date the Municipality has not acceded to their requests to be addressed in their preferred languages.

3. THE COMPLAINT

3.1 The Office received a complaint from Ms P Mqela (the Complainant) during August 2008.

3.2 She claimed that as a Xhosa speaker, she felt marginalised when the Municipality persisted in communicating in official correspondence exclusively in Afrikaans despite her insistence that she would prefer the Municipality to communicate with her in writing either in English or Xhosa.

3.3 The Complainant further mentioned that the Municipality has failed to develop a language policy that treats the other two official languages (Xhosa and English) equitably and has in fact failed to take practical and positive measures to elevate the status and advance the use of Xhosa as an official language despite the injunction of the Constitution.

3.4 As a result of its conduct, the Municipality has allegedly marginalised Xhosa speakers and failed to employ sufficient Xhosa speakers within its staff complement thus inhibiting its ability to promote the use of the language within its area of jurisdiction.
4. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

4.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution and its additional operational requirements are governed by the Public Protector Act. The Public Protector was established to strengthen constitutional democracy.

4.2 In terms of Section 182(1) of the Constitution the Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice. Following an investigation, the Public Protector can report on that conduct and take appropriate remedial action.

4.3 Based on the provisions of Section 6 read with Section 30 of the Constitution relating to official languages and Section 182(1) of the Constitution, the Public Protector has jurisdiction to investigate the complaint and to take appropriate remedial action.

5. **THE INVESTIGATION**

5.1 **The legal framework**

5.1.1 Section 6 of the Constitution provides that the official languages of the Republic are Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu. Recognising the historically diminished use and status of the indigenous languages, it is further provided that the state must take practical and positive measures to elevate the status and advance the use of these languages.

5.1.2 In terms of section 6(4) of the Constitution, National Government and Provincial Government may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional
circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the National Government and each Provincial Government must use at least two official languages. It is further a constitutional imperative that Municipalities must take into account the language usage and preferences of their residents.

5.1.3 It is provided that all official languages must enjoy parity of esteem and must be treated equitable.

5.1.4 Section 6 also provides that a Pan South African Language Board, established by national legislation, must inter alia promote, and create conditions for, the development and use of all official languages.

5.1.5 The fundamental right to language and culture is also provided for in the Bill of Rights. In this regard section 30 of the Constitution provides that everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

5.1.6 Section 6 (4) of the Constitution further provides as follows:

"The National Government and Provincial Government, by legislative and other measures, must regulate and monitor their use of official languages........all official languages must enjoy parity of esteem and must be treated equitably".

In order to give effect to this provision, Parliament has enacted a Bill called the South African Languages Bill, 2000 which is yet to be signed into law.

5.1.7 The Preamble to the South African Languages Bill, refers to section 6 of the Constitution and the recognition of the principle of multilingualism as well as the obligation on the state to take practical and positive measures to elevate the status and advance the use of the historically marginalised languages of South Africa. Furthermore, that everyone has the right in terms of section 30 of the Constitution to use the language of their choice.
5.1.8 Given the fact that the Bill has not been signed into law, the question arises what other legislative measures have been put in place to give effect to the provisions of section 6 of the Constitution.

5.1.9 It would appear that the earlier enactment of the Pan South African Language Board Act, 1995 and the promulgation of the Regulations and the National Language Bodies Norms and Rules in 2005 somewhat have taken care of the apparent legislative vacuum in regulating the use of official languages.

5.1.10 Provincial Governments are also obliged to fulfill the constitutional obligations imposed by section 6.

5.1.11 It that respect, the provincial government of the Western Cape enacted its own Constitution during 1998 (Constitution of the Western Cape, 1998). The aforesaid provides for three official languages of the Western Cape in terms of section 5, viz Afrikaans, English and Xhosa. These languages must enjoy equal status in terms of this Constitution.

5.1.12 On a local authority level, the Constitution states in section 6(3)(b) “Municipalities must take into account the language usage and preferences of their residents.”

5.2 Preliminary investigation

5.2.1 During the course of this investigation, it was brought to the attention of the Office that a similar complaint had previously been lodged by Xhosa residents with the South African Human Rights Commission (SAHRC). It was noted that the SAHRC had attempted to mediate the complaint relating to the lack of a clear language development policy within the Municipality.

5.2.2 The Municipality in its response to a letter of enquiry from the Office conceded as follows:

“It is true that Council currently does not have a language policy to address the needs of all our customers in the municipal area. Council has however started to
appoint staff that is fluent in Xhosa and plans to appoint more of them to address this need. A communication strategy was developed and adopted by Council. Unfortunately we lack sufficient funding to develop and implement a language policy and have requested the PANSALB for assistance in this regard."

5.2.3 The Municipality attached a copy of a letter written and addressed to Pan South African Languages Board (PANSALB) dated 9 September 2008. This action was taken as a result of the letter of enquiry from the Office dated 2 September 2008.

5.2.4 The Office contacted PANSALB to satisfy itself that the letter requesting assistance from the Municipality was received and to establish what form of assistance, if any, would be rendered to the Municipality. PANSALB advised the Office that a meeting involving the Municipality and other roleplayers was scheduled to be held in Vredendal.

5.2.5 At the conclusion of the investigation the Municipality was advised of the negative finding to be made against the Municipality and was invited to furnish the Office with further comments, if any, within a specified time period. The Municipality indicated that it concurred with the recommendations.

6. **EVALUATION**

6.1 The Constitution and legislative obligations relating to the promotion of multilingualism are very clear.

6.2 The National and Provincial Governments have taken practical steps to comply with the legal injunctions.

6.3 Less clear is the meaning and interpretation of section 6(3)(b) of the Constitution which requires "Municipalities to take into account the language usage and preferences of their residents."
6.4 The question could be posed whether the subsection intended to mean that municipalities must simply determine the language usage on the basis of sheer majorities of members which are conversant in a particular language, or if individual language preference of the speakers should be taken into account. The reason put forward by the Municipality for the lack of development of a language policy (lack of financial resources and expertise) also has to be scrutinised.

6.5 It is submitted that apart from the constitutional provisions which are clear and unambiguous, the Constitution of the Western Cape, 1998 provides that for the purpose of provincial government the official languages, Afrikaans, English and isiXhosa are to be used and these languages enjoy equal status (section 5).

6.6 The above subsection is subject to the provisions of item 2 of Schedule 3 in terms of which the Western Cape government must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the equal status of Afrikaans, English and isiXhosa. (Provincial legislation envisaged in this sub item must be enacted within 12 months of the date when this Constitution took effect).

6.7 From the above, it could be deduced that lack of resources can impede the achievement of objectives set out in section 6(3)(b) for the municipalities.

6.8 The above statement must not be construed to endorse the prevailing situation in the Municipality. Far from it, it also means that there must be an ongoing effort to achieve the progressive realisation of the equality of the languages.

6.9 In the present scenario there is evidence that complaints regarding the language issue were first raised with the Municipality during 2005 when a memorandum on the issue was delivered to the Municipality from the affected residents and youth groups.
6.10 The Office has not been informed how the Municipality has attempted to address the complaint in the intervening period.

6.11 A similar complaint was again lodged with the SAHRC during 2007 which resulted in its mediation effort. This effort did not bear the desired results hence the complaint to the Office.

7. OBSERVATIONS

7.1 It is common cause that the predominant language used by the residents of the Municipality is Afrikaans. It is also a recent development that South Africans other than those who are Afrikaans speaking have migrated to the area, thus posing new challenges in terms of developing multilingualism for the Municipality. In particular residents who are Xhosa speaking and/or with preference for English or Xhosa as a medium of official communication with the Municipality have settled into the area.

7.2 The essence of the complaint was directed at the perceived reluctance of the Municipality to proactively and positively embrace multilingualism and to practise it to the benefit of all the residents of the Municipality.

7.3 The Municipality did not promote the use of languages other than Afrikaans in the past. This is evident by its failure to have developed a language policy guideline over a number of years.

7.4 The approach to the PANSALB was a reaction response prompted by the enquiry from the Office.

7.5 Whilst its lack of financial resources cannot be dismissed out of hand, this cannot be accepted as an excuse for its lack of initiative up to recently to take steps to develop a language policy.
7.6 The migration of people other than Afrikaans speakers to the area is a reality and their language needs should be and should have been dealt with. At least the Municipality should genuinely attempt to accommodate and engage the new residents in their preferred languages, which are official languages in the Western Cape Province.

8. FINDINGS

8.1 The Municipality has not developed a language policy despite the obvious need to do so. It has failed from 2005 to address the situation in relation to equitable language usage.

8.2 A natural consequence of the aforesaid failure and continuous communications in Afrikaans is a feeling of marginalisation of the minority linguistic communities within the Municipality.

8.3 Lack of financial resources and capacity has had an impact on the ability of the municipality to develop a coherent and comprehensive language policy. The municipality has sought assistance and guidance from the PANSALB.

9. RECOMMENDATIONS

It is recommended in terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act that:

9.1 The Municipality must take urgent steps to diversify its communication to include all three official languages of the Western Cape Province;

9.2 The Municipality must develop a comprehensive language policy after having consulted with PANSALB and the residents;
9.3 The Municipality should ensure that its staff complement is composed of officials who are proficient to serve in the Xhosa and English languages to reflect the demographics of the concerned communities;

9.4 All official languages (Afrikaans, English and Xhosa) must enjoy parity of esteem and must be treated equitably; and

9.5 These changes must be effected through a binding Council resolution and must be reflected in the Integrated Development Plan Document.

10. CONCLUSION

The Office will monitor the implementation of these recommendations on a quarterly basis.

ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 24/07/09

Assisted by: Mr A Lose, Senior Investigator, Western Cape Provincial Office