United Nations CCPR/C/139/D/3178/2018

International Covenant on Civil and Political Rights

Distr.: General
13 December 2023

Original: English

Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3178/2018*, **

Communication submitted by:	C.L. (not represented by counsel)
Alleged victim:	The author
State party:	South Africa
Date of communication:	30 March 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 19 June 2018 (not issued in document form)
Date of adoption of decision:	31 October 2023
Subject matter:	Discrimination on the ground of language
Procedural issue:	Level of substantiation of claims
Substantive issues:	Right to fair trial; non-discrimination; right of minority groups to enjoy own culture and use own language
Articles of the Covenant:	2, 14, 26 and 27
Article of the Optional Protocol:	2

1. The author of the communication is C.L., a national of South Africa born in 1961. The author claims that the State party has failed to comply with its obligations under articles 2, 14, 26 and 27 of the Covenant by not taking the necessary legislative and other measures for the translation of national legislation into all the official languages of the State party. The Optional Protocol entered into force for the State party on 28 November 2002. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author notes that he is a practising lawyer and a member of the Afrikaans language community. He also notes that section 6 of the Constitution of South Africa regulates the use of languages by the Government of South Africa.[1] He further notes that

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

[1] Section 6 of the Constitution of South Africa reads as follows: "(1) The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English,

section 6 (1) of the Constitution assigns official status to 11 languages and that section 6 (2) recognizes the "historically diminished use and status of indigenous languages" and stipulates that the "state must take practical and positive measures to elevate the status and advance the use of these languages". Section 6 (4) of the Constitution stipulates that the Government by legislative and other measures must regulate and monitor the use of the official languages and that all "official languages must enjoy parity of esteem and must be treated equitably". Section 6 (5) of the Constitution establishes the Pan South African Language Board, the mandate of which is to promote and create conditions for the development and use of all the official languages.

2.2 The author notes that there is a high number of legislative acts that have not been translated and published in Afrikaans, which is one of the recognized official languages. He also notes that: (a) there are 166 principal acts on the South African statute book that have not been published in Afrikaans; (b) at least 65 principal acts that were initially published in Afrikaans have since been amended in English or an official language other than Afrikaans, without translation of those amendments; and (c) approximately 300 other acts have not been translated into Afrikaans or contain provisions that have not been translated into Afrikaans. He further notes that the same problem exists in relation to all other official languages apart from English, with the result that no coherent corpus of legislation in official languages other than English exists. He claims that this process of translating legislative acts is arbitrary and selective in nature and exclusionary of most South African languages and therefore discriminatory. He argues that, as a result, access to legislation by citizens who are not proficient in English is severely restricted. The author claims that the Government has clearly failed to abide by section 6 (4) of the Constitution to provide for and regulate the translation of national legislation into all official languages.

2.3 The author notes that he has initiated several domestic proceedings in the State party to address his claims before the Committee. He also notes that he initially filed suit before the North Gauteng High Court claiming that the State party authorities were not complying with the constitutional language obligations and requesting the Court to, inter alia, issue an order to Parliament to publish all legislation in all the official languages of the State party, with retroactive effect to 1996. The author further notes that, on 16 March 2010, the North Gauteng High Court held that, while legislative acts should be published in all official languages, the duty to do so rested with the executive branch, and not Parliament as claimed by the author.

2.4 The author brought further action before the Equality Court of Cape Town, a division of the High Court of Western Cape, requesting the Court to declare that the practice of Parliament and the Minister of Sport, Arts and Culture, in his capacity as a member of the executive, not to translate and publish all national legislation in all 11 official languages to be unfair discrimination on the ground of language and to rectify the situation within a reasonable time. The author notes that, on 17 September 2014, the Equality Court held that in view of the outcome in the case initiated by the author before the North Gauteng High Court regarding the locus of the duty to translate, the Equality Court considered the matter to be res judicata, but nevertheless accepted in an obiter remark that it "could be argued that,

isiNdebele, isiXhosa and isiZulu. (2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages. (3) (a) The national government and provincial governments 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. (b) Municipalities must take into account the language usage and preferences of their residents. (4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably. (5) A Pan South African Language Board established by national legislation must (a) promote, and create conditions for, the development and use of (i) all official languages; (ii) the Khoi, Nama and San languages; and (iii) sign language; and (b) promote and ensure respect for (i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and (ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa."

irrespective of the provisions of section 6 (3) (a) of the Constitution, statutes should be available in all eleven of the official languages".

2.5 The author appealed the judgment of the Equality Court to the Supreme Court of Appeal. On 10 March 2016, the Supreme Court upheld the judgment of the Equality Court. The author notes that the Court, however, stated that Parliament and the Government should aspire to translate legislation in all official languages. In 2016, the author sought leave to appeal the judgment of the Supreme Court of Appeal before the Constitutional Court. On 7 July 2016, the Constitutional Court dismissed the application for leave to appeal.

2.6 The author notes that, in addition to seeking redress through the courts, he also lodged a complaint with the Pan South African Language Board in 2000 when the then Department of Justice and Constitutional Development announced its intention to declare English as the only language of record in the courts, which he asserts would have paved the way for legislation to be available in English only. On 29 November 2002, the Language Board published an advisory decision stating, inter alia, that the English monolingual policies of the Department of Justice and Constitutional Development were unconstitutional.

Complaint

3.1 The author claims that the State party's failure to take necessary legislative and other measures for the translation of national legislation into all official languages enumerated in section 6 (1) of the Constitution of South Africa amounts to a violation of articles 2, 14, 26 and 27 of the Covenant. He also claims that, by allowing an arbitrary and selective legislative language practice, the State party is discriminating against non-English language communities, such as the Afrikaans language community, of which the author is a member. He further claims that said discrimination is not based on reasonable and objective criteria and does not aim at achieving a purpose that is legitimate under the Covenant.

3.2 The author claims that the State party has failed to comply with its obligations under article 2 (1) and (2) of the Covenant by failing to: (a) provide for the translation of national legislation in all official languages; and (b) demonstrate that its practice regarding the translation of national legislation is necessary and proportionate to the pursuit of a legitimate aim.

3.3 The author claims that the arbitrary and selective approach used by the State party regarding the translation of national legislation amounts to discrimination on the basis of language in violation of article 26 of the Covenant.

3.4 The author notes that he is a lawyer and has a large Afrikaans-speaking client base. He claims that the State party's refusal to translate legislation interferes with and restricts his professional ability to effectively represent some of his clients before the courts, because he is forced to use the English version of legislation and is therefore discriminated against on the basis of language, resulting in a violation of article 14 of the Covenant. Furthermore, he claims that his clients are placed in a disadvantaged position because they are prevented from reading legislation in any language other than English.

3.5 The author claims that the arbitrary and discriminatory translation practice of the State party has unjustifiably restricted or prevented the maintenance and further development of the official status of Afrikaans, which he claims constitutes a violation of article 27 of the Covenant.

3.6 The author claims that the State party has failed to provide an effective remedy to address the language discrimination and implement measures to avoid continuing violations of the language rights of the author in violation of article 2 (3) of the Covenant.

3.7 The author requests the Committee to direct the State party to comply with its obligations under the Covenant through the adoption of effective legislative and other measures that will ensure the expeditious translation of all new national legislation in all official languages within five years of its enactment and to prioritize past general core legislation with a view to having such legislation translated into all official languages within a period of five years.

State party's observations on admissibility and the merits

4.1 On 19 December 2018, the State party submitted its observations on admissibility and the merits of the communication. It notes that, in his complaint, the author has referred to a number of proceedings before the domestic courts, but it argues that he has not referred to all relevant findings of said proceedings. The State party refers to the judgment of the Equality Court of 17 September 2014[2] and it notes that the Court specifically ruled that, even though it may be accepted (or "assumed"), without deciding in favour of the complainant, that the non-publication of national legislation in all official languages did indeed amount to discrimination on a prohibited ground, as contemplated by section 13 (2) (a) of the Promotion of Equality and Prevention of Unfair Discrimination Act, the fundamental question was whether the State party had discharged the onus of proving that such discrimination was fair.[3] The State party also notes that the Equality Court consequently found that "the inevitable conclusion is that, to the extent that the practice of publishing national legislation in only two official languages may be discriminatory, such discrimination is fair".[4] The State party further notes that that judgment was upheld on appeal, and it argues that, being a citizen of the State party, the author is bound by said judgments.

4.2 The State party notes that the author's argument that section 6 of the Constitution requires that the authorities of the State party publish all national legislation in all the official languages of the State party is an incorrect interpretation of the section in question. It also notes that, as confirmed by the national courts in domestic proceedings, section 6 (3) (a) of the Constitution only provides that the national Government and each provincial government must use at least two official languages. The State party further notes that section 4 of the Use of Official Languages Act provides that every national department must adopt a language policy and identify three official languages that it will use for government purposes. It notes that that Act goes further than the Constitution but, again, does not require the use of all official languages.

4.3 Regarding the author's claims under articles 2 and 26 of the Covenant, the State party affirms that a wide range of provisions in the Constitution provide for non-discrimination and equality and are supported further by an array of legislation providing, in greater detail, the normative and institutional framework for the protection of this right in the State party. It notes that jurisprudence in the State party on non-discrimination and equality makes a distinction between fair discrimination and unfair discrimination. Only the latter is prohibited. Unfair discrimination is held to have an unfair impact that impairs to a significant extent the fundamental dignity of a complainant, namely, discrimination based on one of the grounds listed in section 9 of the Constitution, which includes race, gender, sex, ethnic or social origin, sexual orientation, disability, religion, culture and language. If a discriminatory law or action is designed to achieve a worthy and important societal goal, it may make fair what would otherwise be unfair.[5] The State party argues that insofar as the author submits that the State party has unfairly discriminated against him – and the users of the other languages – such an argument goes beyond the final and definitive judgments of the highest courts of South Africa.

4.4 The State party notes the author's claims under article 14 and argues that nothing prevents him from engaging court-appointed interpreters to assist during his consultations.

[2] Equality Court of Cape Town, *L. v. Speaker of the National Assembly and others*, Case No. EC08/12, Judgment, 17 September 2014.

[3] Ibid., para. 27.

[4] Ibid., para. 29. In its judgment, the Equality Court concluded that there was no constitutional or statutory duty to publish all national legislation in all official languages, nor to translate all national legislation into all official languages. It noted that the Constitution permits the use by the national and provincial governments of any particular official languages for the purpose of government, provided that they use at least two official languages. It concluded that, to the extent that publication of legislation in only two official languages may be discriminatory, such discrimination was fair as contemplated by section 13 (2) (b) (ii) of the Promotion of Equality and Prevention of Unfair Discrimination Act.

[5] The State party refers to the judgments of the Constitutional Court in: *Harksen v. Lane No and others*, Case No. CCT 9/97, Judgment, 7 October 1997; *S v. Ntuli*, Case No. CCT 17/95, Judgment, 8 December 1995; and *President of the Republic of South Africa and another v. Hugo*, Case No. 11/96, Judgment, 18 April 1997.

Moreover, it argues that the fact that not all legislative acts are translated into Afrikaans does not amount to unfair discrimination under domestic law. The State party also notes the author's claims under article 27 of the Covenant and it reiterates its submission that, under applicable domestic law, there is no requirement to translate all legislative acts into all official languages.[6]

Author's comments on the State party's observations on admissibility and the merits

5. On 31 January 2019, the author submitted his comments on the State party's observations. He notes the submission of the State party in which it affirmed that, as a citizen of the State party, he is bound by the decisions delivered by its courts. He also notes that that argument would make the State party's ratification of the Optional Protocol devoid of any meaning. He further notes the State party's argument that, under applicable domestic law, there is no requirement to translate all legislative acts into all official languages. He argues that the granting of official status to the 11 languages listed in the Constitution causes their use by State authorities to be compulsory, and he reiterates his argument that the translation practice in relation to national legislation adopted by the State party constitutes unfair discrimination on the basis of language. He argues that the State party in its observations has failed to respond to the central issue of his complaint, namely that its translation practices are arbitrary and selective and lead to discriminatory consequences in violation of its obligations under the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes the author's claims that the State party's failure to take the necessary legislative and other measures for the translation and publication of national legislation in all official languages amounts to a violation of articles 2, 14, 26 and 27 of the Covenant. It understands the author's claims under article 2 to be raised in conjunction with his claims under articles 14, 26 and 27 of the Covenant.

6.5 The Committee notes the author's claim that the State party's failure to translate domestic legislation interferes with and restricts his professional ability to effectively represent some of his clients before domestic courts, in violation of article 14 of the Covenant. The Committee also notes his claim that the State party has violated his rights under article 26 of the Covenant by failing to provide for the translation of national legislation into all official languages of the State party, as well as his claim that the alleged arbitrary and discriminatory translation practice of the State party has unjustifiably restricted or prevented the maintenance and further development of the official status of Afrikaans, in violation of article 27 of the Covenant. The Committee further notes, however, that, although the author has provided general information in support of his claims, he has not provided any specific information or argumentation to substantiate said claims. He has not provided any specific

[6] The State party refers to: Supreme Court of Appeal, *L. v. Speaker of the National Assembly of Parliament and others*, Case No. 20827/2014, Judgment, 10 March 2016, in which the Court noted that: "On the contrary – the Constitution itself requires that acts of government, including the passing of acts of Parliament, be conducted in only two of the official languages. Thus the Constitution itself would be guilty of unfair discrimination on [the appellant's] argument, which is plainly absurd."

information either as to how he or his clients have been personally adversely affected by the alleged failure of the State party to translate national legislation. In the absence of such information, the Committee therefore finds his claims under articles 14, 26 and 27, read alone and in conjunction with article 2, of the Covenant inadmissible for lack of sufficient substantiation under article 2 of the Optional Protocol.[7]

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That the decision shall be communicated to the State party and to the author.

[7] See, for example, *Tatyana v. Poland* (CCPR/C/101/D/1517/2006 and CCPR/C/101/D/1517/2006/Corr.1), paras. 6.4, 6.5 and 9.6.