

THE *USE OF OFFICIAL LANGUAGES ACT*: DIVERSITY AFFIRMED?

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SUMMARY

A full sixteen years after the coming into force of the 1996 *Constitution*, Parliament responded to the constitutional obligation to regulate and monitor, by legislative and other means, the use of official languages by adopting the *Use of Official Languages Act* 12 of 2012. The Act represents a very limited normative appreciation of this constitutional instruction. The official language clause of the *Constitution* expresses a normative commitment regarding the positive affirmation of linguistic diversity, which is directly informed by and closely aligned to the core normative values of the *Constitution*. The *Constitution's* positive evaluation of difference, including linguistic difference, *inter alia*, flows from the values of substantive equality, equal citizenship, dignity and proportionality. However, the way in which the Act institutionalises the promotion of inclusive linguistic diversity does not reflect an unambiguous recognition of this obligation being normatively embedded in the foundational value structure of the *Constitution*. The real responsibility for decisions regarding official language use is located in the policy-making competence of non-independent administrative bodies. The Act itself is devoid of instructive standards of its own to guide administrative decision-making regarding official language use. This results in the responsibility for making the most important normative choices regarding the use of official languages not being reserved for the legislative process, but entrusted to non-independent advisory administrative bodies. The nature of the Act confirms that it never was the intention of the government to be bound by legislation in this respect. This *modus operandi* is

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democratically deficient and compromises both the separation of powers and the principle of legal certainty as fundamental tenets of the rule of law.

KEYWORDS: *Official Languages Act*; linguistic diversity; constitutional rights; language rights; core normative constitutional values