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## **HEADS OF COURT RESOLUTION ON THE LANGUAGE OF RECORD IN SOUTH AFRICAN COURTS**

In February 2003, the Heads of Court established a committee tasked with preparing a report on the usage of the various official languages of the country in the courts, to determine whether there are any issues with its usage and offer recommendations, if necessary. The view of the Heads of Court is that changes are necessary in the use of the various official languages in the courts, as not all languages are currently afforded the same status. Only English and Afrikaans enjoy the status of official languages and the other nine are handled in exactly the same manner as foreign languages.

The question that therefore arises is how can the need for an increase in the usage of all official languages in the courts be recognised, when only Judges who speak a certain language end up adjudicating cases where the parties involved are from the same language group? An appropriate balance must be struck among the various cultural interests by addressing the need for factors such as the following:

- Providing for our constitutional imperatives on official languages, whilst taking practicality and expense into cognisance;
- Developing and advancing the official indigenous languages, with particular regard for the development of legal terminology in all official languages;
- Ensuring fair trials and hearings to make sure justice is served and access to justice is promoted, and
- Accommodating reasonable and legitimate expectations of all language groups in our country, within the severe constraints of various resources.

The Committee recommended that, for reasons of practicality, English should be regarded as the language of record for all courts. This should not deny the litigant, witness or legal practitioner the right, where practicable, to address the court in the language of his or her choice. In instances where a language other than English is used during court proceedings, it must be translated



contemporaneously into English. Where contemporaneous translation is not available, the court record, or portions of the court record in a language other than English, must be translated into English.

At the Heads of Court meeting held in March 2017, it was decided that the recommendation that English be the language of record at the Superior Courts must be implemented in the absence of a policy decision from the Executive in this regard.

