

ON LANGUAGE RIGHTS IN KENYA*

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ABSTRACT

Studies on linguistic human rights in various parts of the globe are now in vogue. The present paper analyses the language policy and practice in Kenya so as to determine the extent to which language rights are observed. The analyses focus on language use both in private and public domains. It turns out that to a large extent the language rights are upheld. However, some degree of infringement is noted both in the private and public levels of language use. It is shown that what constitutes a breach of language rights at the private level is largely “voluntary”. The article calls for a balancing act from the language planners and policy implementers so that a higher level of language rights for enhanced democracy is realised.

Keywords: language policy, language rights

1. INTRODUCTION

This paper attempts to unravel whether or not language rights² are observed both in private and public use in Kenya. It has been argued that language rights are an integral part of well established basic human rights widely recognised in international law, just as are the rights of women and children (Varenes 2001: 1). These rights are also enshrined in various articles of the UN by member states that cherish democracy. As a signatory to these UN articles, Kenya is both politically and morally obliged to not only observe the articles but to also enforce them for enhanced democratic citizenship. Thus the present paper argues that if Kenyans wish to be part of the increasingly democratic world, then they must have everybody effectively participate in decision-making. Everybody here includes: the elite, the highly and lowly educated, those in cities and rural areas, members of the numerically large and small ethnic

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² Language rights as used in the present article imply both the right of language(s) and language right. Following Mazrui & Mazrui (1998: 115), the right of language(s) refers to the right of each and every language in a multilingual society to exist and the equality of opportunity for it to ‘develop’ legal and other technological limbs and to flourish. Language right refers to the right to use the language one is most proficient in, as well as the right of access to the language(s) of empowerment and socio-economic advancement.

groups, the handicapped such as the deaf and blind, monolinguals and bilinguals, the youth and what have you. All these groups should make informed decisions as they elect their leaders, contribute to the writing of a new constitution³, build the nation in various ways as pastoralists, as fishermen etc. For them to do so, they need access to information since information is power and that information should be availed in a language they understand best – be it a minority or majority language. The language's speakers should be appreciated and given a chance to access information in their language. Such an approach goes a long way to respecting human and language rights.

The fundamental questions to pose when talking about language rights in Kenya include: Are language rights part of the Universal Declaration of Human Rights? Does the constitution of Kenya talk about language rights? In what ways, if any, has Kenya tried to safeguard language rights both in private and public use? What are the future prospects for language rights in Kenya? In a nutshell, the present discussion revolves around whether or not Kenya safeguards language rights of both the majorities and the minorities through her language policy and practice.

The presentation has five sections. Section one is the introduction. Section two unravels the sociolinguistic situation in Kenya. Section three briefly presents the theoretical argumentations behind language rights while section four presents the methodology and data. I conclude in section five.

2. SOCIOLINGUISTIC SITUATION OF KENYA

Talking about language rights in any society presupposes either a real or imagined existence of inequality among the language(s) used in a given speech community. One way of bringing about inequality in languages is when in a multi-ethnic setting there is some functional distribution of languages whereby one or some languages are functionally prestigious while others are not. Thus those people who do not know the prestige language(s) do not have access to information and they are most likely to miss out in political decision making (read democracy and human rights). Whether or not the language situation in Kenya provides ground for possible linguistic inequalities can be discerned after sketching her sociolinguistic profile.

Kenya is a typical representation of a multilingual society. It is however difficult to state the exact number of languages spoken in Kenya depending upon the source one is citing and whether or not one is referring to only grammatically stable codes⁴ or both the grammatically stable and unstable

³ This paper was prepared at a time when Kenyans were busy reviewing the constitution.

⁴ Ogechi (2002) has defined a grammatically stable code as one that has native speakers and one whose grammar and lexicon are fairly stable and one can study them while a grammatically unstable code is one whose lexicon and grammar are unstable. Examples of the latter include Sheng in Kenya.

codes. For instance, a report of the Constitution of Kenya Review Commission (CKRC) (2000: 95) puts the number of languages at 70 while other sources (e.g. Webb & Kembo-Sure 2000) put it at 42. If the number of the grammatically unstable but widely used code among the youth – Sheng⁵ – is included, then the count of languages spoken in Kenya goes up. This article adopts 42 as the number of languages spoken in Kenya. However for purposes of the argumentations to be adduced later in the discussion, both the spoken and signed languages plus Sheng will be considered.

The languages used in Kenya include not only Kiswahili but also English whose increased use has led scholars such as Webb & Kembo-Sure (2000: 13) to conclude that English is now one of the Kenyan languages. English is the exoglossic official language used in government, international business, diplomacy etc. while Kiswahili is the endoglossic national language that is also used for government administration and casual inter-ethnic communication. However, it is worth noting that Kiswahili itself is as alien to most rural people as is English, and, even among those who claim to speak it, only a small proportion are fluent enough to engage in serious discussions (Webb & Kembo-Sure 2000: 9). The rest of the Kenyan languages are largely used for intra-ethnic communication in homes and rural areas.

Worth noting also is the fact that some spoken Kenyan languages such as Gikuyu have 5.3 million (Daily Nation, January 30, 2001) native speakers while others such as the Elmolo have too few speakers. Indeed in its report on the status of endangered languages published in 2002, UNESCO claimed that 16 Kenyan languages are threatened with extinction or death⁶. Amidst this quagmire is Sheng whose increasing use among the urban youth and adults (Ogechi 2002; Kiessling & Mous 2001) is laying a serious claim to recognition. Kenyan sign language that is used by a small but significant deaf community (Republic of Kenya 1999; Adoyo 2002) also has its constituency that one cannot overlook.

From the foregoing, it is safe to claim that the languages in Kenya are not equal in status. There are majority languages and minority languages⁷. Thus there is reason to argue a case for the language rights of their users as being part of their human rights.

⁵ Sheng is a grammatically unstable social code that sounds like Kiswahili (Ngesa 2002) but has a distinct and unstable vocabulary. It is widely spoken among the urban and a few rural youngsters in Kenya (Ogechi 2002: 4). Below is an example of Sheng:

Kithora ma-doo z-a mathee
to.steal CL6-dollar CL10-ASS mother

‘to steal my mother’s money’ (Abdulaziz & Osinde 1997: 56)

⁶ A language dies when all its speakers cease to live or stop using it and instead shift to using another language. For instance, Suba and Dholuo are spoken in Western Kenya. However, most speakers of Suba do not speak it; rather, they use Dholuo.

⁷ I distinguish between majority and minority languages according to Webb & Kembo-Sure (2002: 41–42). That is, besides understanding the concepts quantitatively, the functional value (what functions a language can perform) and the prestige of a language are also considered.

3. CONCEPTUAL FRAMEWORK

One of the main pillars of language rights is the UN's 1948 Universal Declaration of Human Rights:

Everyone is entitled to all the rights and freedoms set forth in this Declaration (of human rights) without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national, or social origin, property, birth or other status.

It is clear that language rights are enshrined in UN documents and scholars have researched and written about language rights (Blommaert 2003; Skutnabb-Kangas 1985; Skutnabb-Kangas & Cummins 1988; Skutnabb-Kangas 1990, 1995; UNEP 2001; Varennes 2001).

A conceptual distinction ought to be drawn between the right to private and public use of language. According to Varennes (2001), private use of a language usually refers to the individual use of one's native language in family life, freedom of expression, non-discrimination or the right of persons belonging to a linguistic minority to use their language with other members of their group. Varennes further singles out the use of one's name or surname in their own language, private conversation in mother tongue in public streets or in a public park as typical examples of private use of a language. It is also further noted:

The freedom for private individuals to use a minority language in private correspondence or communications, including in private business or commercial correspondence, by telephone, electronic means; to have private displays such as outdoor commercial signs and posters, commercial signs, etc. of a private nature; the freedom to print in a minority language; the freedom to use a minority language in the conduct of private business and economic activities; even the right to create and operate private schools teaching in a minority language are all language rights. But their very nature is anchored, they originate, from existing human rights. (Varennes 2001: 5)

Failure to guarantee such uses of language amounts to a breach of an individual's language rights. At another level, language rights can be explained by distinguishing language use in public. This includes the use of a language that an individual understands well both in court proceedings and court documents as universally recognised in international law as a basic "linguistic" right based on a fundamental human right (Varennes 2001: 6). The language uses at this level are also understood to include uses by public authorities:

... such as public education using a minority language as a medium of instruction, public radio and television broadcasting in a minority language, use of minority language by public officials in the provision of services to the public (and therefore a major source of employment for individuals within the civil service) etc. (Varennes 2001: 6)

Concerning public education for instance, Skutnabb-Kangas (2000) argues that if the UN's Education For All (EFA) is to be achieved, then basic education should be availed to all humanity. That education should not be education for education's sake; rather, it should be an enriching, rewarding and emancipating education. It should be systematically introduced and presented in a language that the individual knows well enough. By so doing, the individual learns to the maximum and not in piece meal. Skutnabb-Kangas' idea of linguistic rights calls for education not just in the global language (English) but also in indigenous languages.

Skutnabb-Kangas' line of argument tends to concur with Webb & Kembo-Sure's (2000: 8–10) thesis that democracy as a basic human right is incomplete if there is very little meaningful citizen participation in political and economic decision making. The citizenry can participate in decision-making if and only if they have information. As Okombo (2001: 14–17) argues, the best languages for passing on information in Africa include not only the official and national languages but also the various indigenous languages, braille for the blind and sign language for the deaf. The braille and sign language users are considered a disadvantaged minority whose language rights must be catered for. Okombo argues that it is not enough to use sign language in Kenya; rather, a local variety of the sign language, namely, Kenyan sign language is the most ideal language to use. In brief, language rights as a basic human right advocate for policies and practices that take care of all the languages be they majority or minority languages.

At the public level of using language, Varennes (2001) posits that public authorities have to cautiously choose between a language of wider communication and a local language. They are obliged to use a local language in appropriate circumstances, such as the numbers and geographic concentration of the speakers. The public officials should also avail official documents and forms in the local languages in addition to bilingual documents. However, there is no violation of language rights where the concentration of a homogenous speech community is sparse and the public officials opt to use a language of wider communication.

4. LANGUAGE POLICY AND PRACTICE IN KENYA

Based on the foregoing conceptualisation, an analysis of the language policy and practice in Kenya is made to determine the extent to which language rights are observed. Phase one (cf. 4.1) of this analysis deal with language use in private while phase two (cf. 4.2) deal with language use in public. The discussion heavily draws from information available in various government and academic documents. Observations made from every day language use and experiences are also cited to beef up the argumentations.

4.1 PRIVATE USE OF LANGUAGE

To a large extent, one can assert that Kenyans have leeway to use their native languages in private. It is common practice to find members of a given ethnic community conversing in their mother tongue not only in the family but also in public streets or offices even when non-native speakers are present without state hindrance. Further, though most Kenyans have either a European, Jewish or Arabic name as their first name, depending on whether one is a Christian or Muslim, the second name or surname is usually an ethnic name. The ethnic names are so distinct that some speakers of a given language are tempted to switch to the native language attributed to a given name once the name is mentioned even when the interlocutors are non-acquaintances. For instance, mention of a name such as *Mogaka* tells an Ekegusii speaker that the person named is an Ekegusii speaker while the name *Kiprop* easily identifies a Kalenjin to a Kalenjin speaker.

What is interesting is that out of individual choice, very few people do private correspondence in their mother tongues. True, correspondence is a preserve of the elite many of who prefer English to either Kiswahili or mother tongue for communication among themselves. However, the few who use mother tongue do so with their aged parents who do not know English. This trend extends to private displays such as outdoor commercial signs and posters. Many such displays (including names of business premises) use either English-based compound names, namely, *Petreshah Enterprises*, *Uhuru Plaza* etc. or English names, e.g. *Hellen's Exclusive Restaurant*, *White Castle Motel*, *Eldoret Glaziers and Hardware* etc. Whereas Kiswahili is rarely used, the native languages are almost non-existent in use. However, one needs to note that this practice is not out of any official coercion whatsoever; rather, it is a practice that has been going on for long so that young and upcoming entrepreneurs perhaps find it fashionable to coin English-based trade names.

The right to create and operate private schools in Kenya does exist. Whilst some schools are huge enterprises, others especially the “academies”⁸ that mushroomed in the last one decade, are too small some of which operate in tiny rooms behind iron-sheet-built or mud-walled shopping premises in remote rural settings. Interestingly none of them teaches in the language of the catchment. All such institutions aspire to make their learners speakers of English from day one in kindergaten/nursery or primary one. Given that English is deemed the gateway to upward social mobility, parents and guardians encourage the use of English even when the child uses a different language at home. Teachers on their part enforce the policy of using English with a lot of gusto. In some primary schools, children who do not use English are given menial or corporal

⁸ Many private primary and secondary schools that sprung up in the 1990s were referred to as “Academy”, e.g. Kapsuya Academy. Perhaps the proprietors wanted to distinguish them from the “ordinary” public schools whose prestige had waned over the years. By academy a supposed superior education, standards and services is implied.

punishment besides having a poster slung around their necks for a whole day reading: *I am a fool – I spoke Kiswahili (or mother tongue)*. At kindergaten/nursery level, children who speak English are applauded and clapped for while those who do not are laughed at at the teacher's instigation. This worrying abuse of linguistic human rights is poised to go on for a long time to come.

Christian missions that preach with a lot of zeal in open air mammoth rallies, crusades and in public halls are presently fashionable in Kenya. Their preachers are mainly found in towns and cities but others are now spreading into rural market centres. It is safe to posit that Kiswahili is widely understood in the towns and almost all attendants at such sessions speak Kiswahili. The rural markets are largely inhabited by homogeneous monolingual speech communities of various ethnic groups. What is however interesting is that too few of the preachers use either Kiswahili or the language of the catchment. On many occasions, they preach in English so that another person translates to Kiswahili even when the same preachers and audiences can speak Kiswahili fluently. It appears fashionable to have a translator at such meetings. Subsequently, one wonders if the “soul” winners have any basic respect for the right of their listeners to access the Almighty in their native language or a language of wider communication.

4.2 PUBLIC USE OF LANGUAGE

Emphasis in this sub-section is laid on the policy and practice in education, the constitution, the national assembly, and the judiciary. As already noted (see section 3), the term “language” in the present discussion means not only the spoken language but also the signed and braille languages.

4.2.1 Education

The educational curriculum in Kenya has undergone several changes occasioned by recommendations of various government commissions that have been appointed since independence from British colonialism in 1963. It is notable that four major commissions have been appointed, namely, the Ominde commission (1964), the Gachathi commission (1976), the Mackay commission (1981) and the Koech commission of inquiry into education (1999)⁹. These curricula changes have also impacted on language policy and practice over the years. The impact of the commissions can be assessed based on the language policy and practice in primary, secondary, tertiary and special education. To date, government policy is in line with UNESCO (1953: 47–8) that,

⁹ The commissions are popularly known by the names of the persons who chaired them although they are published as Republic of Kenya documents.

“On educational grounds, we recommend that the use of the mother tongue be extended to as late a stage in education as possible. In particular, pupils should begin their schooling through the medium of the mother tongue, because they understand it best and because to begin their school life in the mother tongue will make the break between home and the school as small as possible.”

Falling from this, mother tongues are used in rural areas while either Kiswahili or English or both are used in urban centres. This policy is supposed to be observed for the first three years during which English is taught as a subject. It is assumed that teaching materials are also available in the various mother tongues. The policy sounds good and supports language rights although it is doubtful if by Grade 3 a child in a rural setting will have known English well enough to use it for learning.

However, the practice on the ground is different. To begin with, many parents, guardians and even head teachers insist that English be used not only from primary one but also even in kindergarten largely because it has a higher sociolinguistic market¹⁰. Secondly, it is doubtful if there exist teachers who can teach, let alone speak, the vernaculars well enough. Third, and this is where the problem stems from, publishers have been unable to publish in all the 42 Kenyan languages (Chakava 1995: 386). As the Koech commission (Republic of Kenya, 1999) reports, publications exist in only 22 Kenyan languages. So where are the remaining 20 languages? Are they enjoying their right to exist? Isn't there a danger that a majority of the speakers of these languages are uninformed and therefore cannot effectively exercise their democratic rights? How sure are we that people whose language is not used in introducing education get to move up the academic ladder and subsequently participate in decision-making? Aren't such people's human and language rights not trampled upon? Can such people make informed decisions? Do we expect such people to discriminate between policies of the ruling party and the opposition parties? Further, do we expect such people not to be gullible to selling their voter's cards to unscrupulous and undemocratic politicians, that is, if at all they see sense in registering as voters?

One needs not belabour on the language policy and practice in secondary and tertiary education, where English is the medium of instruction and all materials are prepared in English. Very few people access this level of education, as primary education is terminal in most of Africa (Bamgbose 2000: 82). Unfortunately, the knowledge gained at the tertiary level rarely trickles down to the rest of the Kenyan masses. As the Mackay report (Republic of Kenya 1981) found out (and the situation is largely the same to date), most graduates schooled

¹⁰ It is worth noting that the use of English as required from Grade 4 is more often violated. For instance, it is common practice for teachers to resort to code-switching involving English and a local language or even Kiswahili to enhance learning (Wolff 2002: 136). One reason why the code-switching occurs is because the teachers do not have a strong mastery of English.

in English have a poor command of Kiswahili and the rest of the indigenous languages. So they cannot articulate the knowledge and skills acquired to the general populace that does not speak English. The graduates cannot explain in the indigenous languages what they have acquired in the English medium. In a way, failure to address language rights at the tertiary level denies society the advantages of biotechnology, sound policies of animal husbandry, democratic governance, and preventive medicine among others.

The language rights in education are badly reflected in special education. Special institutions for the handicapped are not commensurate with the population of the handicapped in Kenya:

For instance, there are only 479 special education programmes, which include 385 units and 94 schools including vocational and technical institutions. The number of children enrolled in these schools stands at 14,600 with 1,962 teachers, and 1,449 classrooms. Yet out of the estimated 90,452 physically handicapped children only 3,003 are in special education programmes. Among the visually impaired only 2,208 children out of 220,000 are enrolled. These figures clearly demonstrate that special education has not received adequate attention to ensure equal access to education for the learners with special education needs. (Republic of Kenya 1999: 97).

In addition, to the best of my knowledge, only the Kenya Institute of Special Education (KISE) and Kenyatta University have programmes training teachers for the handicapped.

It is noted that members of the deaf community join school having learnt Kenyan sign language at home (Adoyo 2002). But at school they are subjected to either American sign English or sign exact English. The sequel of this practice is that the deaf do not learn much. As if that is not enough, their blind counterparts have no reference materials published in braille. Thus blind people depend on the goodwill of their seeing colleagues to read for them. In this scenario, how sensitive are language planners to the language and democratic rights of the handicapped?

Another special category of special schools in Kenya consists of schools for rehabilitating street families and children. The newly installed NARC¹¹ government has been attempting to clear the city and town streets of these street urchins and families by placing them in rehabilitation centres and the National Youth Service (NYS) where they learn income-generating trades such as carpentry, masonry, welding, mechanics etc. However, before the advent of the NARC administration, some non-governmental organizations had set up centres for the so-called *chokoras*¹² such as the Eldoret Children's Rescue Centre. The

¹¹ NARC (National Rainbow Coalition) is a coalition of fifteen political parties that came together in October 2002 to hand KANU (Kenya African National Union) a resounding electoral defeat after 39 years in power.

¹² *Chokora* is the name popularly used to refer to the street children in Kenya.

children usually come here from diverse ethnic backgrounds. Their languages of wider communication in the streets are Sheng and code-switching¹³ involving Kiswahili and several local languages. The rescue centre at Eldoret has not assumed that all the urchins use Kiswahili as the first language as is the norm among town dwellers in Kenya. Besides, the centre has not bothered to find out the various ethnic backgrounds of the urchins in order to assign them into different classes where their various mother tongues could be used. Instead the centre has recognized Sheng and codeswitching as the children's codes¹⁴. Thus it introduces literacy in codeswitching and Sheng before shifting to English at higher grades (Jwan 1998). One could argue that this is one instance where a people's language rights are respected.

The school dropout rate in Kenya is high. Hence one would expect that adults could have a chance to make up for the lost opportunities as adult education learners. True, the adult education programme has been in place since the late 1960s and Kenya is a member state of UNESCO, which held a conference on adult education in Hamburg, Germany, in 1997. The conference declared adult learning and democracy as one of the challenges of the twenty first century. Among other commitments, the conference resolved that member countries raise awareness of the learners about prejudice and discrimination in society:

(e) by recognizing that all indigenous peoples and nomadic peoples have a right of access to all levels and forms of state education, and the right to enjoy their own cultures and to use their **own languages**. Their education should be **linguistically and culturally appropriate** to their needs and should facilitate access to further education and training by working together and learning to respect and appreciate each other's differences in order to ensure a shared future for all members of society. (UNESCO, 1997: 28) (Emphasis is mine).

Whereas Kenya was represented at the conference and appended her signature to the resolutions, her language policy is not in tandem with the resolutions. It has been argued that there is no clear-cut government language policy in adult education (Owino 1999; Ogechi 2001). However, just as in the primary schools, mother tongues are advocated for at the basic literacy level while English and Kiswahili are recommended for the post-literacy level¹⁵. The reality as already mentioned is that only 22 languages have publications. Teachers, where they

¹³ Codeswitching is the alternate use of two or more languages in the same conversation, e.g., **ananihate** 's/he hates me' - **Kiswahili**-English code-switching.

¹⁴ Blommaert & Meeuwis (1998) argue that there is nothing like codeswitching whereby two or more languages are used in one conversation; rather, the speakers who are not aware that they are mixing languages assume that they are speaking one language. That language is their code.

¹⁵ The literacy level introduces the learners to basic literacy skills such as numeracy and writing while the post-literacy level is for those learners who wish to advance their knowledge beyond basic literacy.

exist, are trained in English and they prepare and deliver lessons in English (Owino 1999). The question is whether these adult people need English in their day-to-day interactions/chores as pastoralists and growers.

The closest that adult education has come in terms of respecting linguistic human rights is through a GTZ-sponsored pilot programme since 1996 in collaboration with the Department of Adult Education (DAE). The GTZ works in collaboration with non-governmental organisations such as Literacy and Evangelism Fellowship and the Kenya Bible Society, and the ministries of Health, Information, Agriculture, Labour and Education. The GTZ's primary objective is "to enhance the capacities of individuals and organizations by conveying or mobilizing knowledge, skills, or by improving the conditions for their application" (GTZ in Thompson 2001: 10). Learners are involved in the discussion and production of learning materials that are useful to their needs. This is done through tapping of indigenous knowledge. Under the theme 'Talk a Book', learners facilitate the documentation of the knowledge in a variety of thematic areas like animal and crop husbandry, irrigation, beekeeping etc. The project plans to publish these manuscripts as post-literacy materials in English, Kiswahili and local languages.

It is however surprising that the local languages advocated by UNESCO and the same GTZ project have been left out. For instance, a report from Korr, Marsabit District shows that out of the six draft booklets prepared in 2000 for use among Rendille speakers, none was in Rendille. Five were in English while one was in Kiswahili. A recommendation at the end of the writing workshop suggested that Rendille should also be used in booklets in future. The practice could be in place in other districts participating in the project in Kenya. This practise is not in line with the linguistic human rights of the adults.

4.2.2 The Constitution

A country's constitution is an important pillar of a people's human rights including language rights. However, the current constitution of Kenya (Revised Edition, 1992) addresses no language issues except in relation to qualifications for election as a member of the National Assembly (Chapter III, Part 2, Section 34 (c)). The clause stipulating the language requirements states:

at the date of his nomination for election, one must be: able to speak and unless incapacitated by blindness or other physical cause, to read the Swahili and English languages well enough to take an active part in the proceedings of the National Assembly.

According to this clause, language rights of the deaf are not guaranteed. This clause also discriminates against any Kenyan who can speak and write any of the two languages, namely, Kiswahili and English but cannot use the other. In particular, contestants not competent in English have legally been barred from

contesting (CKRC 2002: 97). Section 53 (1) refers to the official languages of the National Assembly:

Subject to this section, the official languages of the National Assembly shall be Swahili and English and the business of the National Assembly may be conducted in either or both languages.

In spite of this perceived right to use either language, subsections (2) and (3) clearly spell out that English is the sole language for any resolutions, amendments, documents and quotations that shall be made by the National Assembly. Subsequently, it has been correctly observed (CKRC 2000a: 97) that the current constitution does not recognise Kiswahili as an official language per se despite its importance nationally, regionally and continentally. The current constitution is also silent on the role of other Kenyan languages and there are no mechanisms for their protection, promotion and development.

However, the proposed constitution of the Republic of Kenya (2002b) somehow presents hope to constitutional language rights in Kenya. Chapter II, Part 9 of the draft is devoted to language rights:

1. The official languages of Kenya are Kiswahili and English and all official documents shall be made available in both languages.
2. The national language of Kenya is Kiswahili.
3. The state shall respect and protect the diversity of languages of the people of Kenya and shall promote the development and use of Kiswahili, indigenous languages, sign language and Braille.

This is further captured in The Bill of Rights in Chapter 5, Section 63A:

1. Everyone has the right to use the language, and to participate in the cultural life, of his or her choice, but no one exercising these rights may do so in a manner inconsistent with any provision of this Bill of Rights.

Whereas the proposed constitution seems to portray Kenyans as having come of age in their constitution making, it is doubtful if the constitution is explicit in guaranteeing the desired linguistic human rights. The constitution sharply contrasts with the constitution of South Africa, which clearly spells out how the rights are preserved and how the languages are promoted. The constitution of South Africa says:

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 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.

The makers of the constitution of South Africa appear to have clearly observed the Organisation of African Unity's¹⁶ Language Plan of Action for Africa (1986). The plan not only spelt out the aims, objectives and principles but it also proposed a programme of action with methods and means. Borrowing from it, the constitution of South Africa outrightly compels provincial and municipal governments to observe and practise a specified language policy. In addition, a body, Pan South African Language Board (PANSALB), has been constituted to advise and assist the government in language-related matters (van Huyssteen 2002: 151). Among other functions, the board initiates, supervises and funds research into language-related issues besides dealing with complaints in cases where language rights are abused. Nothing of the sort is said or envisaged in the proposed constitution of Kenya. It is therefore simplistic and academic to purport to respect all languages yet no outline is provided on how these languages are to be respected and particularly developed.

What is however interesting is that the draft constitution is explicit on language requirements for members of parliament in Chapter 7, Part 11, Section 108 (e) which states that a person is eligible to be a member of parliament if that person:

has attained at least form four standard of education with a pass, and is proficient in Kiswahili and English, but persons who can only express themselves in sign language are qualified.

Indeed the same Chapter 7, Part (iv), Section 134 declares the official languages of parliament thus:

The official languages of parliament shall be Kiswahili, English and sign language.

The policy proposed was in practice at the constitution of Kenya review delegates' conference at Bomas of Kenya¹⁷ where sign language was used although no deaf delegates were present. The draft constitution is also presented in both English and Kiswahili unlike the constitution presently in force. Be that as it may, there was so much use of English at Bomas of Kenya and one wonders if delegates who were not proficient in English got a fair deal. True to this, during the closing days of the conference, a delegate was reported to have

¹⁶ OAU is since 2002 Africa Union (AU).

¹⁷ This paper was written in May 2003 when the draft constitution of Kenya was being discussed at a national delegates' conference held at the Bomas of Kenya in Nairobi.

called for more use of Kiswahili at such a forum¹⁸. The delegate also called for increased use of local languages in public offices where public officers were accused of being ashamed of using their own languages as if the languages are a “plague”. The said delegate, called for the elevation of all Kenyan indigenous languages to the level of national languages.

At present, public servants are allowed to serve in two languages, namely, Kiswahili and English, even in rural areas where the numerical concentration of speakers of one language is large and many of them are monolingual. Government documents such as forms are presented in English and Kiswahili only. There is none in the native language. Where the people are unable to comprehend Kiswahili and English, the officials resort to using translators. It is doubtful if the translation is good. Perhaps government should institute a policy where one learns another Kenyan language besides Kiswahili as a pre-requisite for recruitment into the civil service. This is the only way to also motivate parents who want their children to learn in English:

With years of indoctrination, many people have come to accept that ‘real’ education can only be obtained in a world language such as English. Even the idea that a child will benefit if his or her initial education is given in the first language is disputed by many so-called educated parents. Here, there is undoubtedly ignorance and prejudice at work and a major aspect of the implementation of a policy of using indigenous media of instruction should be enlightenment campaign designed to explain, in terms that the layperson can understand, the arguments in favour of the policy. Having said this, there is another aspect of this question of attitudes. Parents who prefer an English-medium education sometimes do so because they see the products of an English-medium getting rewards in terms of lucrative jobs and upward social mobility. Suppose the knowledge of an African language is required for certain positions, it will not be surprising if there is a mad rush to acquire that language and the prestige of the language rises phenomenally. (Bamgbose 2000: 88)

4.2.3 Judiciary

For a long time since Kenya attained her independence from Britain, English has remained the official language of the law (Mukuria 1995; Okeiga 1998; Gaskins 1997; Ogechi 2002a; 2002b). Kiswahili may be used in the lower courts. In line with the international law, translation into the various ethnic languages is also allowed if the accused does not understand English. But this is only in lower

¹⁸ Hon. Prof. Wangari Maathai, an assistant minister for the environment, was reported in the Sunday Nation, May 25, 2003 making the call. She argued that Kenya had been turned into a “superficial state” where those in power hardly communicated with ordinary folk. She said, “There is nothing more dehumanising and distancing than talking to our people in a language they do not understand”.

courts. All records of the court proceedings are kept in English. The justification for doing so is that the records have to be verified by the high court.

It is very interesting that the draft of the proposed constitution of Kenya learnt nothing from the past court cases where justice may have miscarried because plaintiffs, especially those not literate in either English or Kiswahili, were denied justice (Gaskins 1997: 3–5). Indeed in his research, Okeiga (1998) noted that the use of translators who are themselves not trained lawyers may have led to the miscarriage of justice. Either the translators misunderstood the legal jargon of the lawyers and mistranslated the same to the “illiterate” plaintiffs or the translators mistranslated the plaintiffs’ responses. According to Okeiga, the sequel of such a practice was the passing of undeserved verdicts.

The draft of the proposed constitution is silent on the language(s) to be used in law. This implies that the status quo obtains. This further implies that indigenous languages including Kiswahili have not been accorded their rightful place in the law. The users of braille are not assured of legal publications in braille. So is justice being done to our language rights?

5. CONCLUSION

This paper set out to discuss whether or not language rights as part of human rights are observed in Kenya. In this discourse, it has been shown that a society that guarantees language rights stands a better chance of expanding democratic governance as more and more people participate effectively in political debates and decision-making. It has also come out that language rights entail recognition of the spoken and signed languages besides braille and the fast growing youth code – Sheng. The discussion has also shown that the rights must be seen both at the private and public levels of using language.

On balance, the study has shown that language rights at the private level are largely guaranteed in Kenya. Where they do not exist such as in those instances where English-based business names and advertisements are used, the state is not to blame at all since it is individuals who choose the names. At the public level of using language, it has come out that a blend of linguistic rights and infringement into the same does exist. One appreciates the efforts the state has made to guarantee the use of native languages in the public sector. It has also come out that the constitution proposed gives lots of prospects to the future of language rights in public. However, a lot needs to be spelt out on how the proposed changes are to be achieved. In addition, the state has to clearly outline penalties to be meted out to instances where peoples’ language rights are abused.

ABBREVIATIONS USED

ASS	Associative
CKRC	Constitution of Kenya Review Commission
CL	Noun class marker
DAE	Department of Adult Education
EFA	Education for All
GTZ	Gesellschaft für Technische Zusammenarbeit (German Society for Technical Cooperation)
KANU	Kenya African National Union
NARC	National Rainbow Coalition
NYS	National Youth Service
UN	United Nations
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific, and Cultural Organization

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