



Towards the Human Rights Protection of Minority Languages in Africa

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Does not the sun shine equally for the whole world? Do we not all equally breathe the air? Do you not feel shame at authorizing only three languages and condemning other people to blindness and deafness? Tell me, do you think that God is helpless and cannot bestow equality, or that he is envious and will not give it?

Constantine the Philosopher (Cyril), 9th Century A.D.[1]

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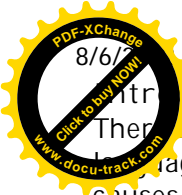
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Introduction

There has been little scholarship in the human rights discipline on the human rights protection of minority languages in Africa. Yet minority languages remain marginalized and language issues have become one of the causes of conflict in Africa. This article intends to bridge that gap. It explores the nature and scope of protection of minority languages in Africa. The basic research question for this paper is: 'Are minority languages adequately protected in Africa?' From the research question, three critical sub-questions flow, namely: 'What is the normative content of language rights?', 'To what extent does the African human rights system protect minority languages?' and 'What measures can be taken at the national and regional level to improve respect for and protection of minority languages in Africa?' To this end the paper is divided into four parts. Part A lays a foundation on why minority language rights ought to be protected in Africa. Part 2 defines minority languages and establishes the global normative content of minority language rights. Part three explores the linguistic situation of Africa. Part 4 then proposes possible measures that can be taken to improve protection of minority languages in Africa.

A. RATIONALE FOR PROTECTING MINORITY LANGUAGES

1.1 The threat of extinction of minority languages

Most minority languages^[2] in the world are currently in rapid decline and face a serious threat of extinction.^[3] Nettle and Romaine estimate that up to 90% of the world's languages are now considered endangered.^[4] Crace^[5] argues that

"[t]here are about 6,000 languages in the world yet 55 per cent of the population speaks just 15 of them. Economic imperialism has gone hand in hand with linguistic imperialism as people abandon their mother tongues in favor of the globally dominant English, Spanish, Arabic, Chinese and Russian."

Krauss further predicts from the present trends that of the 6000 languages spoken today, between 20% and 50% will 'die' by the end of the twenty-first century.^[6]

On the African landscape, the drive towards national unity, social integration and construction of a national identity in most African countries has led to linguistic assimilation, linguistic loss and discrimination against linguistic minorities.^[7] Dorian^[8] vividly contends that

"It is the concept of the nation-state coupled with its official standard language ... that has in modern times posed the keenest threat to both the identities and the languages of small [minority] communities."

Bamgbose^[9] convincingly argues that the rationales for this approach are the notions that multilingualism inhibits national integration, and national integration necessarily involves the emergence of a nation state with only one national language. Linguistic diversity, linguistic minorities and minority languages have been viewed as problems. Minority language speakers are constructed as linguistic oddities, deficient, suffering from lack of knowledge of the dominant language and backward rather than owners of a positive resource, another language, or multilingual skills.

The nation state argument is not sustainable because it overlooks two salient points. Firstly, linguistic diversity per se is not a political problem. Rather, ignoring linguistic diversity is the problem. Secondly, national unity does not imply cultural or linguistic uniformity. Instead, nation states can be more representative and achieve stronger and sustainable unity if they guarantee the right of minority communities and their individual members to distinct language and cultural practices, and do not withhold resources or power from such communities.

The antagonism towards minority languages in most bilingual or multilingual African countries has led to linguistic assimilation and loss. May^[10] argues that

"a 'majority' language – that is, a language with greater political power, privilege and social prestige – comes to replace the range and functions of a 'minority' language. The inevitable result of this process is that speakers of the minority language 'shift' over time to speaking



the majority language. The process of language shift described here usually involves three broad stages. The first stage sees increasing pressure on minority language speakers to speak the majority language, particularly in formal language domains. This stage is often precipitated and facilitated by the introduction of education in the majority language. It leads to the eventual decrease in the functions of the minority language, with the public or official functions of that language being the first to be replaced by the majority language. The second stage sees a period of bilingualism, in which both languages continue to be spoken concurrently. However, this stage is usually characterised by a decreasing number of minority language speakers, especially among the younger generation, along with a decrease in the fluency of speakers as the minority language is spoken less, and employed in fewer and fewer language domains. The third and final stage – which may occur over the course of two or three generations, and sometimes less – sees the replacement of the minority language with the majority language. The minority language may be ‘remembered’ by a residual group of language speakers, but it is no longer spoken as a wider language of communication.”

1.2 The importance of language

A review of literature in law, politics, sociology, anthropology and linguistics reveals that language is important in at least six ways:

Firstly, language is a medium of communication, mirrors one’s identity and is an integral part of culture. Ngugi wa Thiongo referred to language as the soul of culture.^[11] Put differently a person’s language is a vehicle of their particular culture. Mumpande^[12] contends cogently that

“This is clearly shown in proverbs and riddles. The former, for example, have dual meanings: a literal meaning and a metaphoric or cultural significance. When literally translated into another language, a proverb frequently loses its meaning and flavor.”

He further argues that ‘a community without a language is like a person without a soul.’

Makoni and Trudell observe that in sub-Saharan Africa, language functions as one of the most obvious markers of culture.^[13] Webb and Kembo-Sure further note that in Africa, ‘people are often identified culturally primarily (and even solely) on the basis of the language they speak.’^[14] Examples include the Tonga, Ndebele and Shona in Zimbabwe and the Xhosa and Zulu in South Africa. Serpell notes that the Zambian languages are intimately bound up with many of the society’s traditional practices, and enshrine in multiplex and subtle ways the epistemological foundations of indigenous moral values.^[15] In this sense, linguistic diversity becomes symbolic of cultural diversity, and the maintenance or revitalization of language signals ongoing or renewed validity of the culture associated with that language.^[16] Accordingly, linguistic diversity becomes symbolic of cultural diversity, and the maintenance or revitalisation of language signals ongoing or renewed validity of the culture associated with that language.

Secondly, language is a means of expression and allows a person to participate in community activities. It can be used as a medium of fostering a democratic culture. In this sense, language policy plays a vital role in the process of democratic transition.^[17] According to the African Commission on Human and Peoples’ Rights,^[18]

Language is an integral part of the structure of culture; it in fact constitutes its pillar and means of expression par excellence. Its usage enriches the individual and enables him to take an active part in the community and its activities. To deprive a man of such participation amounts to depriving him of his identity.

Thirdly, languages are also valuable as collective human accomplishments and on-going manifestations of human creativity and originality. This is buttressed by the argument for language preservation by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) that^[19]

The world’s languages represent an extraordinary wealth of human creativity. They contain and express the total ‘pool of ideas’ nurtured over time through heritage, local traditions

and customs communicated through local languages.

Fourthly, language can be a source of power, social mobility and opportunities. Williams and Smith emphasize that in some quarters, language is a form of power. [20] The linguistic situation of a country's society usually reflects its power structure, as language is an effective instrument of societal control. According to Makoni and Trudell 'it is undeniably true that communities of speakers of smaller languages tend also to be the less politically empowered communities.' [21] May [22] contends that

Language loss is not only, perhaps not even primarily, a linguistic issue – it has much more to do with power, prejudice, (unequal) competition and, in many cases, overt discrimination and subordination... Language death seldom occurs in communities of wealth and privilege, but rather to the dispossessed and disempowered.

This normally leads to situations where majority or minority communities within African states become vociferous in support of their own identity and desire to ensure that their language, customs and traditions are not lost. In this regard, language becomes an almost inevitable point of contention between communities.

Fifth, linguistic loss is sometimes seen as a symbol of a more general crisis of biodiversity, especially indigenous languages that are seen as containing within them a wealth of ecological information that will be lost as the language is lost. This ecolinguistic school of thought regards saving endangered languages as an important part of the larger challenge of preserving biodiversity. In Keebe's words, 'the loss of a language is the permanent, irrevocable loss of a certain vision of the world, comparable to the loss of an animal or a plant.' [23] Nettle and Romaine [24] further argue that

Losing a language, irrespective of the number of speakers of that language, deprives humanity of a part of our universal human heritage insofar as the language embodies a unique worldview and knowledge of local ecosystems.

The biodiversity analogy has engendered the use of metaphors such as 'language survival and death' [25] and even more emotively, 'killer languages' and 'linguistic genocide.' Makoni and Trudell contend that this terminology highlights an ethical judgment that language loss is morally wrong, regardless of the particular conditions of its social uses, and that linguistic diversity is inherently good. [26]

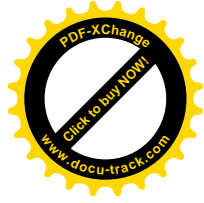
Sixth, language has served both as a reason (or pretext) for brutal conflict, and as a touchstone of tolerance. Language can serve, in all spheres of social life, to bring people together or to divide them. Language rights can serve to unite societies, whereas violations of language rights can trigger and inflame conflict. There is, therefore, every reason to clarify the position of language rights in various African states and in international human rights law, and to analyze the experience of the management of multilingualism in diverse societies. This paper becomes useful in this regard.

1.3 Theoretical framework

The paper is predicated on the understanding that linguistic diversity is desirable, that all language groups should be accorded language rights and that the allocation of rights to minority groups is in fact in the interest of all groups. The paper is informed by Elson's proposed linguistic creed that: [27]

[A]ny language is capable of being a vehicle for complicated human interaction and complex thought, and can be the basis for a complex culture and civilization. Therefore, all languages deserve respect and careful study. . . . Interest in and appreciation of a person's language is tantamount to interest in and appreciation of the person himself. All languages are worthy of preservation in written form by means of grammars, dictionaries, and written texts. This should be done as part of the heritage of the human race.

It argues that substantive equality and equity of languages in Africa can be achieved through an enabling legal regime that guarantees linguistic diversity and enables Africans to assert their identity and culture and freely express themselves. Put differently, minority languages can be protected through linguistic human rights in Africa. The paper seeks a multidisciplinary understanding of linguistic human rights from the fields of law, sociology, politics, anthropology, economics and linguistics. It affirms Kontra *et al*'s argument that [28]



Firstly, people need linguistic human rights in order to prevent their linguistic repertoire to be treated from *becoming a problem* or *from causing them problems*. Secondly, people need to be able to exercise language rights in order for their linguistic repertoire to be treated as, or to become, *a positive, empowering resource*.

B. THE NORMATIVE CONTENT OF MINORITY LANGUAGE RIGHTS

2.1 What is a minority language?

International human rights law does not currently have an agreed definition of a minority language. This section will analyze the definitions proposed by different scholars in a bid to couch a working definition for minority languages.

Firstly, a minority language has been defined as 'a language spoken by a minority of the population of a country.'^[29] This definition is problematic in that it overlooks the fact that the term 'minority' is not yet defined in international law. An understanding of the concept of 'minority' is therefore significant to understanding this definition of a minority language.

Francesco Capotorti^[30] defines a minority as

A group numerically inferior to the rest of the population of a state, and in a non-dominant position whose members – being nationals of the state – poses ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religions and language.

This definition derives from the provisions of article 27 of the International Covenant on Civil and Political Rights (ICCPR) that limits minorities to national, linguistic and religious minorities. According to Capotorti, a minority can be identified by numerical inferiority, non-dominance and solidarity.^[31] Jelena Pejic^[32] explains the meaning of numerical inferiority, non-dominance and solidarity:

Pursuant to the express language of the definition, the numerical inferiority of a minority is to be established by comparison to the entire population of a state... Non-dominance has been understood not only as relating to political power, but also to economic, cultural, or social status. The sense of solidarity referred to in Capotorti's definition implies an awareness by persons belonging to a minority group of the ethnic, religious, or linguistic characteristics that set them apart from the majority, and a desire to preserve those characteristics as central to the common identity.^[33]

It is interesting to note that Capotorti's definition excludes refugees, foreigners and migrant workers who may arguably be regarded as minorities. This latter argument is supported by the United Nations Human Rights Committee General Comment No. 23 which states

The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language... [They] need not be citizens of the State party... A State party may not, therefore, restrict the rights under article 27 to its citizens alone... Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights.^[34]

Capotorti's definition is narrow in limiting article 27 of ICCPR to citizens. The Kenyan High Court in *IL Chamus v Attorney General of Kenya and Others* was therefore correct to hold that minorities under modern and forward-looking jurisprudence should include non-citizens as well.^[35] It would therefore follow that a minority language is a language spoken by ethnic, religious and linguistic groups (citizens and or non-citizens) that have a sense of solidarity, are numerically inferior and non-dominant.

Secondly, article 1 of the European Charter for Regional or Minority Languages (European Language Charter) defines minority languages as languages different from the official language(s) of that State traditionally spoken by part of the population of a state that are not dialects of official languages of the state, languages of migrants or artificially created languages. One weakness of this definition is that it limits minority languages to those spoken by citizens. As argued above, such an approach is inconsistent with article 27 of the ICCPR as read with the United Nations Human Rights Committee General Comment No. 23.

It is important to note that this definition introduces the issue of minority languages vis a vis official languages. It would appear that once a language is accorded official language status by the state, it (together with its dialects) ceases to become a minority language albeit it is spoken by a numerically inferior group of people. An example is English language. Even though very few people in Africa speak it, it is accorded official language status. Because of the protection bestowed by official language status, it is not a minority language. This approach makes sense for two reasons. Firstly, official language status confers language rights and places an obligation on states to ensure the public and private use of official languages. Secondly, official language status accords language rights to a language together with its dialects. It avoids situations where speakers of a dialect of an official language claim language rights that are already accorded to the official language.

In this sense, a minority language can be defined as 'a language different from the official language(s) of the state traditionally used by part of the population of a state that is not a dialect of official languages of the state or artificially created languages and includes languages of foreigners, migrants and visitors.'

2.2 The normative content of language rights of minorities in international human rights law
Two preliminary points are worth noting before analyzing the human rights instruments that protect minority languages. Firstly, true democratic states are obliged to promote substantive equality through laws that enable minorities (including linguistic minorities) to preserve their characteristics. The Minority Schools in Albania Advisory Opinion 6 of the Permanent Court of International Justice [\[36\]](#) brilliantly sums this up as follows:

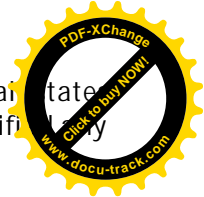
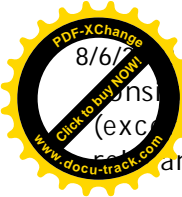
The idea underlying the treaties for the protection of minorities was to secure for them the possibility of living peaceably alongside of the population, while preserving their own characteristics. In order to attain this objective, two things were regarded as particularly necessary. The first was to ensure that members of racial, religious and linguistic minorities should be placed in every respect on a footing of perfect equality with the other nationals of the state. The second was to ensure for the majority elements suitable for the preservation of their own characteristics and traditions... These two requirements are indeed closely interlocked, for there would not be true equality between a majority and a minority if the latter were ... compelled to renounce that which constitutes the very essence of its being a minority.

Secondly, there is a distinction between standards that are part of international law and principles that are morally or politically desirable. The former indicate the language rights that are protected by international human rights law and the latter are not binding on states but can be of persuasive value in advocating for law reform. Such non-binding principles are sometimes referred to as 'soft law', and may shape the practice of states, as well as establish and reflect agreement of states and experts on the interpretation of certain standards. [\[37\]](#)

International law, unlike domestic law, depends on the consent of the state concerned for it to be binding. Such consent is expressed where a state ratifies a treaty or can be inferred from established and consistent practice of states in conducting their relationships with each other. Put differently, states are bound by the provisions of treaties that they ratify as well as practices that constitute customary international law. Other sources like declarations, principles, recommendations, resolutions and writings of eminent scholars are not binding on states.

(a) Customary International Law

Customary international law refers to 'general practice of states accepted as law.' [\[38\]](#) In other words, customary international law results when states follow certain practices generally (state practice) and



consistently out of a sense of legal obligation (opinio juris). [39] Customary international law binds all states (except those that may have objected to it during its formation) irrespective of whether they have ratified a relevant treaty.

According to Sepúlveda *et al* [40]

Many scholars argue that some standards laid down in the Universal Declaration of Human Rights (which in formal terms is only a resolution of the United Nations General Assembly and as such not legally binding) have become part of customary international law as a result of subsequent practice; therefore they would be binding upon all states.

United Nations Human Rights Committee General Comment No. 24 summarizes the rights in the Universal Declaration that have become part of customary international law as:

[A] State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women and children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or *to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language...* [41]

What emerges from this discourse is that under customary international law states cannot deny linguistic minorities the right to use their own language. However, it is not yet clearly established that customary international law affords minority language speakers a positive right to use their own language.

(b) Treaties

Treaties are legally binding and oblige states to respect, protect and fulfill human rights (the tripartite typology). Sepúlveda *et al* [42] cogently summarize the meaning of the tripartite typology as:

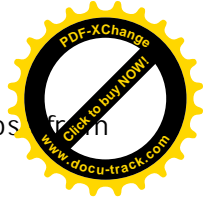
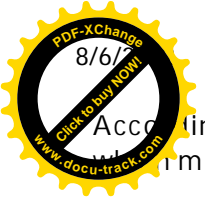
...The obligation to respect requires the state to refrain from any measure that may deprive individuals of the enjoyment of their rights or of the ability to satisfy those rights by their own efforts... The obligation to protect requires the state to prevent violations of human rights by third parties... The state is obliged to prevent violations of rights by any individual or non-state actor; to avoid and eliminate incentives to violate rights by third parties; and to provide access to legal remedies when violations have occurred in order to prevent further deprivations... The obligation to fulfill requires the state to take measures to ensure, for persons within its jurisdiction, opportunities to obtain satisfaction of the basic needs as recognized in human rights instruments, which cannot be secured by personal efforts.

Binding treaties are adopted and ratified under the United Nations and regional human rights systems and interpreted by treaty bodies established by them through general comments, resolutions and decisions. Accordingly, the dissertation will use general comments, resolutions and decisions of treaty bodies as useful tools to clarify the normative content of minority language rights.

2.2.1 The Normative content of minority language rights under the United Nations system

There is no specific United Nations human rights instrument exclusively devoted to the protection of minority languages. Different treaties make reference to minority languages. Interestingly, a study of these treaties reveals that international law does not provide for an unqualified right to use a minority language. Instead minority language rights can be gleaned from existing rights that affect minority languages. According to Fernand de Varennes [43]

There is not in the present state of international law an unqualified 'right to use a minority language' but there are a number of existing rights and freedoms that affect the issue of language preferences and use by members of a minority or by the state.



Accordingly, this paper will review rights that make specific mention of minority languages and those for which minority language protection can be inferred.

2.2.1.1 Rights that make mention of minority languages

Article 27 of the ICCPR obliges states not to deny linguistic minorities the right to use their language.

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.^[44]

The question that inevitably arises is what is the nature of protection afforded to minority languages by article 27? Pejic^[45] argues that article 27 is ambiguous in the following respects

First, by employing the words "in those States in which . . . minorities exist," Article 27 leaves states the option of declaring that they have no minorities, thereby excluding its application to persons within their territory or subject to their jurisdiction... Secondly, the rights provided for in Article 27 are conferred on persons belonging to ethnic, religious, or linguistic minorities. It is left to interpretation whether citizenship is a precondition for invoking Article 27 and whether indigenous groups are entitled to the rights for which it provides. The third limiting element is that Article 27 is the only provision in the Covenant which is negatively phrased. Instead of stating that persons belonging to minorities "shall have" the rights specified, it declares that they "shall not be denied" those rights. The exact meaning of this phrase has been the subject of much debate, carried on to this day. Finally, the text also leaves ample room for interpretation regarding the subjects--individuals or groups--to which it applies. While it obviously confers rights on individual members of minority groups, the phrase "in community with the other members of their group" suggests that a collective element was intended as well.

With respect, Pejic's concerns are more apparent and of an academic interest than real. The United Nations Human Rights Committee General Comment No. 23 clarifies the ambit of article 27 of the ICCPR:

The Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant... The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party... Just as they need not be nationals or citizens, they need not be permanent residents... The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria... Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a "right" and requires that it shall not be denied.^[46]

In short, article 27 of the ICCPR affords individuals belonging to linguistic minorities (whether citizens or non-citizens) in a state the individual and collective right to use their language among themselves, in private or in public.^[47] General Comment 23 further stipulates that the rights protected under article 27 depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by states may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language, in community with the other members of the group.^[48] Article 27 should be distinguished from other instances where a minority language may be used irrespective of whether a minority group maintains its culture or language. For example, the right to be informed of any criminal charges in a language that you understand and to an interpreter during trial is a general right that can be exercised by anyone irrespective of whether they belong to a minority group or not.^[49]

...the explicit rights granted to linguistic minorities include a qualified right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each state, teaching of their own language.^[50] Children of migrant workers and indigenous peoples have a right to be taught in their mother tongue.^[51] It is important to note in this regard that International Labour Organisation Convention 107 encourages 'a progressive transition from the mother tongue or the vernacular language to the national language or to one of the official languages of the country'^[52] (linguistic assimilation) and International Labour Organisation Convention 169 encourages preservation of the mother tongue concurrently with attainment of fluency in the national or official language (linguistic diversity). This paper advocates for the latter approach.

2.2.1.2 Rights from which protection of minority languages can be inferred

The right to use a minority language can be implied in the rights to private and family life, freedom of expression^[53] and non-discrimination.^[54] It therefore follows that a government which, by legislation or other conduct, forbids family members to use a language amongst themselves would be in breach of the right to private and family life as well as freedom of expression. Fernand de Varennes^[55] gives very interesting examples. He argues that where a government authority bans the private use of a minority language in public areas (for example banning individuals from having a private conversation in their own language in public streets, or banning the use of a particular language in a public park, etc), this breaches the right of freedom of expression and amounts to discrimination on the basis of language.

He argues further that a state cannot forbid individuals to use a minority language in private correspondence or communications (including private business or commercial correspondence by telephone, electronic means, etc). He avers further that a prohibition making it illegal to play any song, or to stage theater presentations, operas, etc, either in private or in public, in a particular language would be violation of rights that already exist in international law. He contends further that a government that prevents an individual from having a name or surname which is not in an official language or which does not feature in a prescribed list violates the right to use one's name which falls under the ambit of article 27 of the ICCPR.^[56] In any case, he argues, names and surnames constitute a means of identifying persons within their families and the community, and as such are an inseparable part of private and family life.

It is worth noting that under international law, freedom of expression includes the right to linguistic expression.^[57] Fernand de Varennes states that members of linguistic minorities (as well as all other individuals) have the right to use their language of choice in private activities involving expression. This includes the use of outdoor commercial signs and posters^[58] and applies to the language used in the private display of signs, posters, or other notices of a commercial, cultural and even political nature. Private broadcasting in a minority language is permitted. There is also a right to create and operate private educational facilities in which a minority language may be used as a medium of communication. Minority languages may also be used during religious worship or other religious practices, during a private part of a marriage ceremony, in private economic activities, within private groups and organizations and by political associations or parties.^[59]

An emerging discourse is whether the state is obliged to guarantee use of minority languages in public. One school of thought believes that such 'right' does not exist and the other emphasizes that such a 'right' exists but should only be exercised by members of national minorities.^[60] However, this matter was authoritatively decided in the *Diergaardt* case in which Afrikaans in Namibia alleged discrimination on the basis of language. The Human Rights Committee held that minority Afrikaans speakers in Namibia were victims of a violation of article 26 of the ICCPR and were entitled to the use of their mother tongue in administration, justice, education and public life.^[61]

2.2.2 The Normative content of minority language rights under regional human rights systems

Only the Inter-American and European systems of human right will be discussed here because a discussion of the African system will be done in Chapter 3. The Inter-American system has neither a specific treaty dealing with minority languages nor any specific provision expressly providing for minority languages. However, minority language rights can be inferred from rights like freedom of expression^[62] and freedom from discrimination on the ground of language.^[63]

The European system has two specific conventions dealing with protection of minority language rights. The Framework Convention for the Protection of National Minorities provides for specific rights and obligations. Articles 5 and 6 oblige states to be tolerant to, take measures and promote the conditions necessary to promote linguistic diversity. Article 11(1) recognizes the right of every person belonging to a national minority to use his or her surname (patronymic) and first names in the minority language and the right to official recognition of such names. Article 14 provides for the right to learn in a minority language. Minority language rights are also inferred from freedom of expression^[64] and freedom from discrimination on the ground of language.^[65]

The European Charter for Regional or Minority Languages (European Language Charter) uses the words 'regional' and 'minority' languages interchangeably and obliges states to take measures to protect minority languages (in addition to official languages) in the regions where they are spoken most. It defines minority languages and confirms the value of language as an expression of cultural wealth. It enjoins state parties to encourage and or facilitate the use of minority languages in speech and writing, in public and private life and promote study and research on minority languages at tertiary institutions in areas where regional languages are spoken.^[66]

It is imperative to note that the European Language Charter does not provide for specific rights but state obligations. This distinction is significant in showing that a breach of the treaty does not entitle any individuals to make any 'legal claims' and remedy at the international or domestic level but would have to be treated as a failure of a state's obligations in international law. The explanatory document from the Council of Europe and the plain wording of the treaty reveal that the European Language Charter is not directly enforceable and does not grant any right to any individuals. The European Language Charter therefore creates legal obligations on states, but does not award any 'language rights' to individuals (or minorities).

Article 8 obliges states to make available a substantial part of pre-school, primary, secondary, technical, vocational, university and higher education in the relevant regional or minority languages. The curriculum should also include the history and the culture that is reflected by the regional or minority language. Article 9 obliges states to ensure that, if the interests of justice are not hampered, minority languages are used in criminal and civil proceedings and proceedings before the courts that involve administrative matters in both procedural and substantive issues. Article 10 provides for the use of minority languages by administrative authorities and in public service including use of minority languages in family names, documents used, deliberation, and recruitment.

Article 11 obliges states to guarantee the use of minority languages in the media. States should ensure that there is at least one radio station and television channel in a minority language and must encourage the training of journalists in minority languages. Article 12 enjoins states to facilitate the use of minority languages in all cultural activities. Article 13 obliges states to guarantee the use of minority languages in economic and social life that includes public and private companies and hospitals. It even encourages state parties to enter into bilateral agreements that benefit regional language speakers who speak a similar language. The Convention further obliges states parties to submit periodic reports which are examined by a committee of experts.

2.3 Summation

Five points can be drawn from the above discourse. Firstly, the United Nations human rights instruments do not define a minority language. Secondly, the definition enshrined in the European Language Charter is narrow because it is restricted to citizens when international law recognizes non-citizens as minority language speakers. Thirdly, both customary international law and the United Nations human rights instruments protect the minority languages of citizens and non-citizens through a hybrid of individual and collective rights. Fourthly, these rights are either expressly or implicitly provided for. Express rights include the right to use a minority language among linguistic minorities in private and public life, right to be taught in a mother tongue, run educational institutions even in a minority language, the right to informed of allegations of criminal charges in a minority language and the right to an interpreter. Minority language rights can be inferred from the rights to a private family life, freedom of expression and freedom from discriminated on the basis of language. Fifth, even though the European Language Charter is the most comprehensive instrument devoted to minority or regional languages, it only enumerates state obligations and does not afford individuals rights.



LINGUISTIC SITUATION OF AFRICA

Linguistic history of Africa

The African problems associated with the protection of minority languages arguably have their genesis in the colonial domination of Africa. Pre-colonial Africa had communities bound together with culture and language. Language was a vehicle of culture. People were culturally identified by the languages they spoke.[\[67\]](#)

When the colonialists occupied Africa, they viewed linguistic diversity as a barrier to their hegemony and administration of their new colonies.[\[68\]](#) The French, British and Portuguese particularly adopted language assimilation policies in most of their colonies. The French and Portuguese were more radical in their assimilation policies than the British who were a bit accommodative of African languages. The colonial powers accorded official language status to their foreign languages. The relics of such policies are prevalent in Africa today where states are divided into English-speaking, French-speaking and Portuguese-speaking.

Colonial language policies forced Africans to speak foreign languages as a medium of communication, a source of acquiring information and language of opportunity. Languages like the English-based Pidgin developed in British colonies in West Africa affirming the belief that any variety of English was preferable to attempting to communicate in the plethora of African languages in use by the colonized populations.[\[69\]](#) In Zeleza's words:[\[70\]](#)

Colonialism not only brought European languages to Africa, it also sought to invent indigenous languages, and to establish hierarchies between them, in which the European languages were hegemonic, as part of the process of constructing colonial states, spaces, and societies.

In education, European-style education was introduced in European languages in African communities over the first decades of the colonial era. African languages and cultures began to be marginalised in the new world order. This became the culture of education. When the British tried to introduce adapted education[\[71\]](#) – that advocated for a curriculum embedded in local knowledge and local languages – in their colonies, African parents vigorously rejected it arguing that it was an attempt to keep them from acquiring European knowledge and power.[\[72\]](#) They rejected both the local knowledge curriculum and the local language in which it was to be taught. This sense of the inappropriateness of African language as a medium of conveying knowledge in the formal classroom continues to be a widespread perception among African parents today.

This scenario created a group of black elites who became superior by virtue of their mastery of the foreign language. The foreign language became a language of opportunity and a pathway to good jobs, material benefit and power in the colonial Africa. As the black elite grew in size and quality, they became far removed from their African culture. They denigrated and belittled African languages as primitive.

According to Prah:[\[73\]](#)

Colonialism triumphed through the perpetration of various degrees of ethnocide. The cultural world of the colonized was condemned in the names of inferiority and irredeemable primitivism. The languages installed by the colonial overlords dethroned the supremacy of African languages in the affairs of Africans. These languages of conquest and empire slowly formed the linguistic basis for the creation of an indigenous elite, which in the language of the time was "acculturated" and was in "culture contact" with an overwhelming western colonial culture. Western languages did not triumph on account of their innate or inherent superiority. They were culturally and politically installed only after the armed and forcible subjugation of native peoples.

Colonialism therefore introduced numerous linguistic problems that Africa is still grappling with today. Firstly, it separated language and culture. Secondly, competence in the foreign language became a medium of access to information, securing good jobs and dominating in politics. Thirdly, indigenous (minority) languages were marginalized.

The advent of independence saw the emergence of what Praah calls 'nation states' in Africa that employed colonial policies. African states considered the formal recognition of multiple languages and languages of minority communities as a significant barrier to national integration.^[74] They argued that national integration necessarily involves the emergence of a nation state with only one national language.^[75] This argument overlooked two salient facts. Firstly, linguistic diversity per se is not a political problem. Rather, ignoring linguistic diversity is the problem. Secondly, national unity does not imply cultural or linguistic uniformity. Instead, nation states can be more representative and achieve stronger and sustainable unity if they guarantee the right of minority communities and their individual members to distinct language and cultural practices.

Some African states argue that linguistic diversity retards development. Praah addresses this:^[76]

Language is the central feature of any culture. It relates to all areas of the social, economic and political lives of the people. It is in language that the genius of people is ultimately registered at both the individual and collective expression of people and societies. It is in the language of the masses that social transformation in its most far-reaching sense makes an impact. A society cannot develop if language is the monopoly of a small and restricted minority whose orientation is directed outside, towards cultures that have had an imperial or colonial relationship with the society that is endeavoring to develop. Education for the masses must be done in the languages of the masses so that development becomes a mass phenomenon, which is part of mass culture. Only then will development translate relevantly in the lives of the broad and major sections of the population. It is my view that language is the key to the challenge of African development.

Post-colonial Africa saw African governments maintaining and extending the position of European languages in political, economic, educational and social systems. According to Adegbija:^[77]

Post-colonial policy makers in Africa have largely rubber-stamped or toed the line of language and educational policies bequeathed to them by the colonial masters. . . . Educational systems, which have widened and extended beyond what they were in colonial days, have been further used to entrench and perpetuate the feeling of the inviolable worth of colonial languages. In this environment, linguistic diversity becomes a characteristic to ignore as far as possible.

This has excluded and marginalized minority languages. It has prevented minority language speakers from accessing knowledge and information and hindered them from participating in national politics, development and the decision making process. According to Lodhi,^[78]

The dominance of the metro-languages deprives the majority of Africans of access to knowledge, and hinders them from participating in national politics and the decision-making process. It slows down national integration and development of a nation-state, with a national culture, creates insecurity and feeling of inferiority among those who have to operate in the foreign language of the ruling elite. This has led to ethnic unrest, political instability and brutal violence from time to time in several parts of Africa where the main political problems are not really ideological but rather ethno-linguistic. Peace is a prerequisite for growth and prosperity, and in the African context, peace may be maintained only through some degree of national integration achieved by a reasonable amount of linguistic homogenization. Language development in all forms should therefore be part and parcel of overall development.

Another issue that has arisen with the advent of both independence and globalization is the use of minority languages on the internet. This is important because the internet is one of the greatest sources of information in the present day and minority language speakers who are not proficient in the English, French, Portuguese, Arabic and Spanish can only access such information if it is packaged in their language. Since language is a vehicle for the expression and generation of indigenous knowledge, the use of minority languages on the internet can also be important in the dissemination and generation of such knowledge.^[79] However, there is very little use of minority languages on the internet in Africa today. On the web official languages like Swahili,

Yoruba, Swahili, and Hausa are used. Regarding e-mail and e-mail lists, there are web based e-mail service providers like Africafirst.com and Mailafrica.net that use official African languages.^[80] As indicated above, the use of these languages do not fall within the purview of the definition of minority languages in Chapter two. The sum of this is that the internet does not currently use African minority languages. Osborn articulates the reasons:^[81]

First of all, the factors that define the digital divide also tend to minimize the potential for African language use [on the internet]. Connectivity is centred on cities and towns where official languages – the same languages that are dominant on the internet – may be more widely spoken. In addition, only people with means and education, who are also more likely to have facility in use of the official languages, can access computers and internet connections. The digital divide therefore is arguably more localized than bridged, being replicated on national and local levels along the lines of deeper social, economic, and linguistic divides.

The history chronicled above demonstrates that colonialism and the post-colonial nation state marginalized minority languages. This gave rise to problems associated with issues like language and culture, language and access to information, language and development, language and work and language and the internet. In order to analyze how human rights law in Africa has tried to address these problems, part 3.2 will analyze the extent to which the African human rights system establishes norms that protect minority languages and part 3.3 analyses African constitutions and policies to assess the extent to which African states are implementing human rights norms that protect minority languages.

3.2 African human rights instruments dealing with language rights.

There is no treaty specifically devoted to language rights in Africa. However, the protection of minority languages can often be gleaned from either express treaty provisions relating to language rights or can be implied from other rights.

3.2.1 Express provisions relating to language rights

Part V of the Cultural Charter for Africa^[82] specifically deals with the use of African languages. Article 17 of the Cultural Charter for Africa recognizes the need to develop African languages with a view of ensuring cultural advancement and accelerating economic and social development. It enjoins state parties to formulate a national policy in regard to languages. Article 18 further grants state parties the discretion to choose one or more African languages to introduce at all levels of education. Article 19 further states that 'the introduction of African languages at all levels of education should have to go hand-in-hand with literacy work among the people at large.'

At least four things emerge from Part V of the Cultural Charter for Africa. Firstly, language is an integral part of culture. Secondly, there is a need to teach African languages as one of the mediums of promoting literacy, ensuring cultural advancement and accelerating economic and social development. Thirdly, African state parties have an obligation to develop a national language policy. Fourthly, state parties have the discretion to choose one or more languages to introduce in education. These provisions potentially protect minority languages in that states may develop policies on minority languages or choose to introduce minority languages in education. Conversely, African states can use the same provisions to discriminate against minority languages.

Article 2 of the African Youth Charter^[83] states that

3. State Parties shall recognize the rights of young people from ethnic, religious and linguistic marginalized groups or youth of indigenous origin, to enjoy their own culture, freely practice their own religion or to use their own language in community with other members of their group.

Article 20(1) of the African Youth Charter obliges states to

(e) Harness the creativity of youth to promote local cultural values and traditions by representing them in a format acceptable to youth and in a language and in forms to which

youth are able to relate.

The provisions potentially promote minority languages in three respects. Firstly, they enable youths to speak minority languages to express their talent and creativity in minority languages. Secondly, they enable youths to access and disseminate information in their mother tongue. Thirdly, they ensure the visibility of minority languages which by nature are products of human creativity.

3.2.2 Provisions from which language rights can be inferred or implied

It is possible to infer language rights from rights that are expressly provided for in the African treaties using the doctrine of implied or unenumerated rights which Frans Viljoen defines as entailing 'that explicitly guaranteed rights by necessary implication "imply" the existence of rights not explicitly guaranteed.'[\[84\]](#)

The African Commission on Human and Peoples' Rights (African Commission) has used this doctrine in a number of cases to interpret the rights provided for in the African Charter on Human and Peoples' Rights (ACHPR). For instance, in *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria*, where the Nigeria government was alleged to have burnt and destroyed houses in the Ogoni Village, the African Commission made the following observations about the doctrine of implied rights:[\[85\]](#)

Although the right to shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under article 16 above, the right to property and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health and family are adversely affected. It is thus noted that the combined effect of articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing which the Nigerian government has apparently violated.[\[86\]](#)

This approach affirms the averment that all treaties are living documents that need to be (re)interpreted continuously in the light of changing and contemporaneous circumstances.[\[87\]](#) In this regard the African Commission[\[88\]](#) argued that

The uniqueness of the African situation and the special qualities of the African Charter on Human and Peoples' Rights imposes upon the African Commission an important task. International law and human rights must be responsive to African circumstances...

The African Commission is likely going to imply the right to use minority languages into the rights enshrined in the ACHPR and other African treaties because the history of marginalisation of minority languages chronicled above justifies the need for African treaties to be responsive to such marginalisation. The African Commission can use articles 60 and 61 of the ACHPR to draw inspiration from a wide range of international human rights sources. Article 60 and 61 of the ACHPR state that

60. The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the Field of human and peoples' rights, as well as from the provisions of various instruments adopted within the specialised agencies of the United Nations of which the parties to the present Charter are members. 61. The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or specialised international conventions laying down rules expressly recognised by member states of the Organisation of African Unity, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognised by African states, as well as legal precedents and doctrine.

Viljoen convincingly argues that these provisions open a wide array of possible sources that could give interpretative guidance, including African and United Nations human rights instruments, customary



International law, judicial precedents, doctrine (academic writing) and general principles of law recognized by African states. [\[89\]](#)

The protection of minority languages can arguably be implied in at least nine rights enshrined in various African treaties. Firstly, the right to use a minority language can be implied in non-discrimination provisions that proscribe discrimination on the ground of language. [\[90\]](#) Implicit in these non-discrimination provisions is the fact that if a state denies a speaker of a minority language access to rights on the basis of the language they speak, the state will be deemed to be in violation of the right to use a minority language.

Secondly, the right to use a minority language can be implied in the equality provisions. For instance, article 3 of the ACHPR states that 'Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.' Article 19 of the ACHPR stipulates that 'All people shall be equal; they shall enjoy the same respect and shall have the same rights.' Implied in this right is that minority languages speakers should enjoy similar rights with majority language speakers. This includes using their language in public and in private.

Thirdly, the right to private and public use of language can be implied in the right to freedom of expression. The right to freedom of expression refers to the right to hold opinions without any interference and to access, seek, receive and impart information through any media and without any frontiers. It includes freedom of speech and freedom of the press. Article 9 of the ACHPR states that '1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law. [\[91\]](#) Implied in the right to freedom of expression is the right to receive, hold and impart information in a minority language. It has already been argued above that international law recognizes the right to linguistic expression as part of freedom of expression. [\[92\]](#) The right also includes correspondence and broadcasting in a minority language.

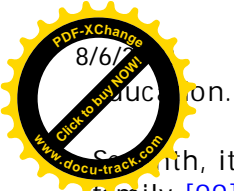
Fourthly, the right to use of a minority language can also be implied in the right to culture. [\[93\]](#) It has been established above that language is a vehicle of cultural expression. For instance, in *Malawi African Association and Others v Mauritania*, [\[94\]](#) the African Commission held that

Language is an integral part of the structure of culture; it in fact constitutes its pillar and means of expression par excellence. Its usage enriches the individual and enables him to take an active part in the community and its activities. To deprive a man of such participation amounts to depriving him of his identity.

It is therefore discernible that the right to use a minority language is impliedly protected under the right to culture.

Fifth, the right to use minority languages can also be implied from the right to work under equitable and satisfactory conditions [\[95\]](#) and the right to access to the public service of one's country. [\[96\]](#) Implied in these rights is that minority language speakers have a right to access civil society even if they may not be fluent in the official language. They also have the right to use their minority language at work. It therefore follows that if a government denies a minority language speaker an opportunity to work in the civil service and or prohibits the minority language speaker to use his language at work, this could be interpreted as discrimination on the basis of language.

Sixth, the right to use a minority language can be implied from the right to education provided for in article 17 (1) of the ACHPR. [\[97\]](#) General Comment 13 of the International Covenant on Economic, Social and Cultural Rights (CESCR) stipulates that the right to education entails that education should be available, accessible, acceptable and adaptable. Education is accessible if it is 'relevant, culturally appropriate and of good quality to students and, in appropriate cases, parents.' [\[98\]](#) The intersection between language and culture has already been established above. It would appear that education can be said to be accessible to minority language speakers if it is either taught in a minority language or if the curriculum has an element of use of minority languages. Such an interpretation is envisaged by article 17(1) of the Pretoria Declaration on Economic, Social and Cultural Rights in Africa (2004) that interprets the scope of the right of education enshrined in article 17 (1) of the ACHPR to include the development of curricula that address diverse social, economic and cultural settings. The right to use a minority language can therefore be implied from the right to



on. With, it is possible to imply the right to use a minority language from the right to the protection of the family.^[99] It would appear that if the government proscribes the use of minority languages in the family or puts impediments to the use of a minority language in the family that could be interpreted as discrimination on the basis of language.

Eighth, the right to use a minority language can also be implied from the right of every child to a name.^[100] Names and surnames constitute a means of identifying persons within their families and the community in Africa. Put differently, names are an inseparable part of the family, culture and the community. The right to a name can thus be interpreted to include the right to a name in a language of one's choice (including a minority language). It therefore follows that a government that prevents an individual from having a name or surname which is not in an official language but in a minority language violates the right to a name.

Finally, the right to use of a minority language can be implied from the right to a fair trial. The most important aspect of the right to a fair trial in this regard is the right of an accused person to be informed of the alleged crime in a language he understands and the right to an interpreter.^[101] A minority language speaker can use his language in court proceedings using these provisions.

One weakness of the implied rights theory is that implied rights do not precisely stipulate the exact scope of protection afforded to minority languages. For instance, what does discrimination on the basis of language mean in practical terms? The protection of minority languages through implied rights therefore depends heavily on the interpretation of the African Commission.

Four conclusions can be drawn from this section. Firstly, minority languages are expressly protected by articles 17 to 19 of the Cultural Charter for Africa and 2 and 20 of the African Youth Charter. Secondly, the protection of minority languages can be implied in the rights to freedom from discrimination on the basis of language, freedom of expression, right to culture, right to education, right to work, right to a name, right to equality, right to a fair trial and right to the protection of the family. Thirdly, the implied rights are subject to the interpretation of the African Commission. Finally, there is a normative deficiency regarding the exact scope of protection of minority languages in the implied right mentioned above.

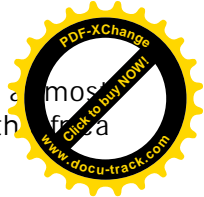
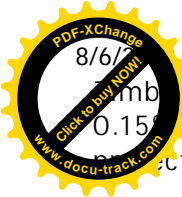
3.3 Language policy and practice in Africa.^[102]

This section analyses the language policies and practices of Africa to assess the extent to which African states are implementing human rights provisions that relate to protection of minority languages in Africa.

There is no agreement on how many languages are spoken in Africa. Ethnologists claims that more than 2011 languages are spoken in Africa^[103] and Abdulaziz Lodhi states that 2583 languages and 1382 dialects are spoken in Africa.^[104] A conservative number of languages spoken in Africa is at least 2000 languages and this paper will proceed on that basis.

At the African Union (AU) level, article 25 of the Constitutive Act of the AU states that 'The working languages of the Union and all its institutions shall be, if possible, African languages, Arabic, English, French and Portuguese.' Rule 34 of the Rules of Procedure of the ACHPR affirms this provision by stating that 'The working languages of the Commission and of all its institutions shall be those of the Organization of African Unity.' These provisions empower the AU and its organs to use minority languages in principle. However, in practice the African Union uses English, French, Portuguese, Arabic and Kiswahili. This reveals serious discrimination of not only minority languages but also official African languages.

At the national level, 29 out of the 2000 African languages are official languages. These are Setswana in Botswana, Kirundi in Burundi,^[105] Sango in the Central African Republic,^[106] Comorien in Comoros,^[107] Kikongo, Lingala, and Tshiluba in the Democratic Republic of Congo (DRC),^[108] Amharic in Ethiopia, Kiswahili in Kenya,^[109] DRC and Tanzania, Sesotho in Lesotho, Malgache in Madagascar,^[110] Chichewa in Malawi, Kinyarwanda in Rwanda,^[111] Hausa, Ibo and Yoruba in Nigeria,^[112] Seselwa (Creole and kreol) in Seychelles, Somali in Somalia,^[113] Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, Afrikaans, Isindebele, Isixhosa and Isizulu in South Africa,^[114] Siswati in Swaziland and Shona and Ndebele in



we. The rest are minority languages without official status in African states. This shows that almost 0.15% of languages in Africa are protected via the official language status route. Further, only South Africa lists sign language as a language.^[115] The other African minority languages are marginalized.

Benin, Burkina Faso, Cape Verde, Congo-Brazzaville, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea-Bissau, Guinea-Conakry, Cote d'Ivoire, Liberia, Mali, Mozambique, Namibia, Niger, Sao Tome and Principe, Senegal, Sierra Leone, Togo, Uganda and Zambia do not even recognize any African language as an official language.

It is interesting to note that the Ethiopian and Eritrean constitutions provide for equality of all languages.^[116] This by implication means that minority and majority languages in Ethiopia^[117] and Eritrea^[118] enjoy equal status. Minority language speakers can potentially claim protection using these provisions. In reality however, these provisions have not been implemented to afford protection to minority languages thereby exposing minority language speakers to marginalization. For example, Amharic and Tigrinya in Ethiopia and Eritrea respectively have special status than other languages even though the constitution provides for equality of languages.^[119]

As regards language use in legislation, most African countries use official languages in their legislation.^[120] This obviously excludes minority languages. However, very few countries have used minority languages in legislation. For instance, Cape Verde and Guinea-Bissau have used Crioulo and Chad has restrictively used of Sara in legislation. Angola has translated its constitution into Kikongo, Cokwe, Oshiwambo, Kimbundu and Umbundu. Mauritius has used Creole. Senegal has used Wolof and Namibia has used Oshiwambo, Otjiherero, Rukwangali, Afrikaans and Silozi in legislation.^[121] Kinyarwanda and Shona are used in Parliamentary debates in Rwanda and Zimbabwe respectively.

In the judicial systems, official languages are ordinarily used as authorized languages in court proceedings and in the writing of judgments. However, some minority language speakers are usually entitled to be informed of an alleged crime in a language they understand and to an interpreter in court proceedings in Benin,^[122] Botswana,^[123] Eritrea,^[124] Ethiopia,^[125] Kenya,^[126] Malawi,^[127] Mauritius,^[128] Namibia,^[129] Nigeria,^[130] Seychelles,^[131] South Africa,^[132] Uganda,^[133] Zambia^[134] and Zimbabwe.^[135] In practice, some minority languages have indeed been used in the judicial system. For instance, Adja, Baatonum, Dendi, Fongbe, Yoruba and Waama have been used in Benin. Moore, Jula and Fulfulde have been used in Burkina Faso, Crioulo in Cape Verde, Sara, Kanembou, Maba, Gorane and Toupouri in Chad, Lingala and Munukutuba in Congo-Brazzaville, Afar and Somali in Djibouti, Fang in Equatorial Guinea and Wolof, Pulaar, Serrer, Joola, Mandinka and Soninke in Senegal.^[136]

In administration, minority languages have been used in Cameroon, Botswana, Burkina Faso, Benin, Cape Verde, Chad, Congo-Brazzaville, Djibouti, Democratic Republic of Congo, Gabon, Ghana, Guinea-Bissau, Guinea-Conakry, Kenya, Malawi, Mauritius, Namibia, Nigeria, Niger, Senegal, Sierra Leone, Somalia, Togo and Zimbabwe.^[137]

In education, a number of minority languages have been used.^[138] Minority languages are used as languages of instruction in adult literacy programs in Angola, Botswana, Burkina Faso, Chad, Congo-Brazzaville, Democratic Republic of Congo, Eritrea, Ethiopia, Gabon, Ghana, Guinea-Bissau, Guinea-Conakry, Kenya, Cote d'Ivoire, Malawi, Mali, Mauritius, Namibia, Nigeria, Senegal, Sierra Leone, Togo, Uganda and Zimbabwe.^[139] In preschool or kindergarten, some minority languages are used in Benin, Botswana, Central Africa Republic, Democratic Republic of Congo, Eritrea, Ethiopia, Ghana, Kenya, Namibia, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Togo, Uganda and Zimbabwe.^[140] In primary schools, some minority languages are used in Zimbabwe, Uganda, South Africa, Sierra Leone, Nigeria, Niger, Namibia, Mali, Kenya, Ghana, Ethiopia, Eritrea, Democratic Republic of Congo and Central Africa Republic.^[141] In secondary schools, some minority languages are used as languages of instruction in Central Africa Republic and Ghana.^[142] In tertiary institutions minority languages are not used as a medium of instruction in any African country. What emerges is that minority languages are usually used in the earlier stages of education and adult literacy programs but never used at tertiary institutions. African countries prefer using foreign languages in their tertiary education.

In business, only Benin, Burkina Faso, Congo-Brazzaville, Democratic Republic of Congo, Eritrea, Ethiopia,

Guinea-Conakry, Namibia, Nigeria and Togo use some minority languages.^[143] In the media, some minority languages are used both on radio and television. Minority languages are used on radio in Africa, Burkina Faso, Chad, Congo-Brazzaville, Cote d'Ivoire, DRC, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Ghana, Kenya, Mali, Mozambique, Namibia, Niger, Nigeria, Senegal, Sierra Leone, Togo, Uganda and Zimbabwe.^[144] On television, minority languages are used in Uganda, Togo, Sierra Leone, Senegal, Nigeria, Niger, Namibia, Mauritius, Mali, Cote d'Ivoire, Guinea-Conakry, Ghana, Ethiopia, Eritrea, DRC, Burkina Faso and Benin.^[145]

A few conclusions can be drawn from this section. Firstly, colonialism and the post-colonial nation state marginalized minority languages. This gave rise to problems associated with issues like language and culture, language and access to information, language and development, language and work and language and the internet. Secondly, minority languages are expressly protected by articles 17 to 19 of the Cultural Charter for Africa and article 2 and 20 of the African Youth Charter and their protection can be implied in the right to freedom from discrimination on the basis of language, freedom of expression, right to culture, right to education, right to work, right to a name, right to equality, right to a fair trial and right to the protection of the family. However, the implied rights are subject to the interpretation of the African Commission. Thirdly, there is a normative deficiency regarding the exact scope of protection of minority languages in the implied right mentioned above and the use of minority languages on the internet. Finally, the implementation of human rights norms relating to protection of minority languages is deficient. This is demonstrated in three respects. Firstly, only Kiswahili is used at the African Union level. Secondly, 29 out of 2000 languages spoken in Africa are accorded official language status. Thirdly, there is limited use of minority languages in legislation, administration, education, the judicial system, media and business.

SECTION D - CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

A few conclusions can be drawn from this discourse. Firstly, colonialism and the post-colonial nation state have seen the marginalization of minority languages in Africa. This has given rise to problems relating to language and culture, language and access to information, language and development, language and work and language and the internet. Secondly, marginalized minority languages can be protected through international human rights law. Thirdly, there exist language rights norms at the global and African levels that protect minority languages. Fourthly, in the African human rights system, minority languages are expressly protected by articles 17 to 19 of the Cultural Charter for Africa and article 2 and 20 of the African Youth Charter. Minority language rights can also be implied in the right to freedom from discrimination on the basis of language, freedom of expression, right to culture, right to education, right to work, right to a name, right to equality, right to a fair trial and right to the protection of the family. Fifth, there is a normative deficiency (both at global and African levels) regarding the exact content and scope minority language rights. Sixth, there is limited implementation of human rights norms that protect minority languages. For instance, only Kiswahili is used at the African Union level, 29 out of 2000 languages spoken in Africa are accorded official language status and there is limited use of minority languages in legislation, administration, education, the judicial system, media and business.

These deficiencies beckon a dire need for clarity of the normative content of minority language rights and improvement on implementation of human rights treaties relating to protection of minority languages. The paper suggests the following possible solutions to such deficiencies:

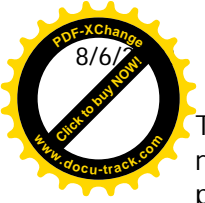
4.2 Recommendations

4.2.1 Norms

There are two possible approaches to resolving the normative deficiencies in the African human rights system regarding the protection of minority languages. These can be called the liberal and conservative approaches.

4.2.1.1 The liberal approach

This approach (which can also be called the 'articles 60 and 61 approach') entails the protection of minority languages through articles 60 and 61 of the ACHPR. Article 60 of the ACHPR says



The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of, human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

Article 60 empowers the African Commission to draw inspiration from international human rights law in the execution of its functions. It has been argued that

This may help the Commission in carrying out its tasks in that it is not only restricted to the African Charter, but is open to a wide range of human rights principles to enable it adopt the best possible interpretation of the provisions of the African Charter. These human rights principles from which inspiration can be drawn include all African instruments on human and peoples' rights, human rights instruments adopted by African countries and those adopted by the United Nations. [\[146\]](#)

Article 61 of the ACHPR states that

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member States of the Organization of African Unity, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognized by African States as well as legal precedents and doctrine.

It has been argued that:

This article does not lay down any different principle from article 60. However, it may be suggested that the present article tries to accommodate the provisions of the human rights instruments under the European human rights system and the Inter-American human rights system. This can be deduced from the phrase 'general principles of law recognised by African States'. In this light therefore, the Commission will draw inspiration from both the provisions of these instruments and the workings of the European Commission on Human Rights, the European Court of Human Rights, the American Convention on Human Rights, and the Inter-American Court of Human Rights. [\[147\]](#)

In the context of this discourse, article 60 and 61 therefore empowers the African Commission to protect minority languages using all African instruments on human and peoples' rights, human rights treaties adopted by African countries and those adopted by the United Nations, the European Union, Council of Europe and Organization of American States. The African Commission can also draw inspiration from the workings of the United Nations treaty bodies, as well as regional treaty bodies like the European Commission on Human Rights, the European Court of Human Rights and the Inter-American Court of Human Rights.

It is interesting to note that the African Commission can, pursuant to the liberal approach, set up a working group on minority languages along the same lines as the Working Group on Indigenous Peoples' Rights which can come up with the African Commission's position and interpretation of the normative content of minority language rights. The norms can be used by the Commission as interpretative tools in examining state reports and dealing with either individual or interstate complaints.

The liberal approach is a robust way of dealing with Africa's linguistic situation and will reasonably accommodate the view that the solution to Africa's failure to realize human rights does not lie in making new treaties but implementing the ones that already exist. The liberal approach affirms the averment that all treaties are living documents that need to be (re)interpreted continuously in the light of changing and contemporaneous circumstances. [\[148\]](#)

The desirability of the liberal approach is further exacerbated by two factors. Firstly, the ACHPR is ratified by all African states (except Morocco) and has been used to interpret rights in most domestic jurisdictions.^[150] Secondly, courts are likely going to declare the ACHPR a self-executing treaty.^[150] For instance, in the Zimbabwean case of *Kachingwe v Minister of Home Affairs (NO)*,^[151] the Supreme Court conceded that the ACHPR is part of the domestic law because it did not impose fiscal obligations on Zimbabwe. Courts in dualist common law jurisdictions are likely going to use the Bangalore principles to declare the ACHPR a self-executing treaty. Principle 7 of the Bangalore Principles on the Domestic Application of International Human Rights Norms states that:

It is within the proper nature of the judicial process and well established functions for national courts to have regard to international obligations which a country undertakes—whether or not they have been incorporated into domestic law – for the purpose of removing ambiguity or uncertainty from national constitutions, legislation of or the common law.

This approach was used in the Nigerian Federal High Court case of *Punch Nigeria Limited & Anor v AG and Ors*^[152] where the court relied on the Bangalore Principles to secure the rights of journalists during national states of emergency. Declaring the ACHPR self-executing enables minority language speakers to secure their rights through national courts and demand (through advocacy and litigation) the setting up of national structures that ensure the protection of minority languages. The liberal approach therefore potentially provides protection of minority languages.

The question yet to be answered is: “Which language rights are protected and which state obligations are imposed by the liberal approach?” The answer lies in the discourse in Chapters 2 and 3. At the African regional level, the African Commission can draw inspiration from Part V of the Cultural Charter for Africa which enjoins state parties to formulate national policies aimed at developing African languages with a view of ensuring cultural advancement and accelerating economic and social development. The African Youth Charter also recognises the right of young people from linguistic marginalized groups to private use of minority languages in their communities.^[153] The African Commission can imply the right to use a minority language in the rights not to be discriminated on the basis of language,^[154] equality,^[155] freedom of expression,^[156] right to culture,^[157] right to work,^[158] right to education,^[159] right to the protection of the family,^[160] the right of every child to a name^[161] and the right to a fair trial.^[162]

At the United Nations level, the African Commission can draw inspiration from article 27 of the ICCPR which obliges member states to afford individuals belonging to linguistic minorities (whether citizens or non-citizens) in a state the individual and collective right to use their language among themselves, in private or in public. Other explicit rights granted to linguistic minorities include the rights of children of migrant workers and indigenous peoples to be taught in their mother tongue.^[163] The Commission can also draw inspiration from the CRC and CMW to afford members of national minorities a qualified right to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, teaching of their own language.^[164] The right to use a minority language can be implied in the right to private and family life, as well as the right to freedom of expression,^[165] and non-discrimination.^[166] The Commission can also adopt the interpretation that under international law, freedom of expression includes the right to linguistic expression.^[167] The African Commission can also embrace the Human Rights Committee's view in the *Diergaardt* case that minority language speakers are entitled by articles 26 and 27 of the ICCPR to the use of their mother tongue in administration, justice, education and public life.^[168]

As regards the Inter-American system, the African Commission can infer minority language rights from the rights like freedom of expression^[169] and freedom from discrimination on the ground of language.^[170] The African Commission can also protect minority languages using the European Framework Convention for the Protection of National Minorities. For instance article 11(1) recognizes the right of every person belonging to a national minority to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system. Article 14 provides for the right to learn in a minority language.

The African Commission can even draw inspiration from the European Language Charter to establish state

obligations relating to protection of minority languages. For instance, article 8 of the European Language Charter obliges states to make available pre-school, primary, secondary, technical, vocational, university education or a substantial part of it in the relevant regional or minority languages. The curriculum should also include the history and the culture that is reflected by the regional or minority language. Article 9 obliges states to ensure that, if the interests of justice are not hampered, minority languages are used in criminal and civil proceedings and proceedings before the courts that involve administrative matters in both procedural and substantive issues. Article 10 provides for the use of minority languages by administrative authorities and in public service. This includes use of minority languages in family names, documents used, deliberation, and recruitment. Article 11 obliges states to guarantee protection the use of minority languages in the media. States should ensure that there is at least one radio station and television channel in a minority language and must encourage the training of journalists in minority languages. Article 12 enjoins states to facilitate the use of minority languages in all cultural activities and even create a board to regulate this aspect. Article 13 obliges states to guarantee the use of minority languages in economic and social life that includes public and private companies and hospitals. It even encourages state parties to enter into bilateral agreements that benefit regional language speakers who speak a similar language.

The liberal approach, though robust and progressive, is susceptible to weaknesses. Firstly, it makes the protection of minority languages dependent on the philosophical outlook and epistemology of knowledge of the commissioners in the African Commission. Progressive commissioners can use it to protect minority languages and conservative commissioners can use it to promote language assimilation. Secondly, the liberal approach presupposes the existence of a clear normative content of language right at the global level. Yet Chapter 2 has clearly demonstrated a lack of clarity of the exact meaning and scope of application of such norms. This limits the effect of the liberal approach in protecting minority languages.

4.2.1.2 The conservative approach

This entails the drafting of a specific treaty dealing with minority language rights along the lines of the European Charter on Minority or Regional Languages. The norms should include both individual and collective rights as well as state duties. By establishing clear minority language rights norms, the conservative approach ensures clarity on the exact content and scope of minority language rights in Africa.

A preliminary point to consider is whether the term minority language should be defined in the proposed treaty. This issue can be approached in two ways. Firstly, the term 'minority language' can be defined as proposed in Chapter 2. This will ensure clarity on which languages are protected as minority languages. The danger though is that this definition might be either too wide or too narrow. Secondly, a more liberal approach would be to avoid defining minority language and list characteristics of minority languages. Any language that falls into the category of the characteristics would be eligible for protection as a minority language. This approach is consistent with current trends that see the protection of minorities and indigenous peoples even though no acceptable definition of these terms exists in international law.

Two critical questions are worth exploring. Firstly, should all minority languages be protected? Yes. The plausible approach to language rights in Africa should be to promote the preservation of all minority languages concurrently with the attainment of fluency in the official or national language. This balances the competing interests of linguistic diversity and national integration as well as social cohesion.

Secondly, what should be the normative content of language rights in Africa? In addition to existing international law rights and duties highlighted in section 4.1.1 above, the paper recommends the incorporation of the following rights to the normative content of minority language rights in Africa: an unqualified right to language, the right to use a minority language in work, administration, business, public service, education and politics.^[171] The right to retain one's own language, culture and tradition,^[172] the right to use their language in private, in all social, economic and similar relations, and in public,^[173] the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons,^[174] the right to equal access to all forms of non-indigenous media and the right to access to digital resources and services.^[175]

The other rights include everyone's right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; the right to quality education and

g that fully respects their cultural identity; and the right to participate in the cultural life of one's community and conduct one's own cultural practices, subject to respect for human rights and fundamental freedoms of others.^[176] In order to clarify the meaning of 'discrimination on the basis of language' this should be defined as any distinction, exclusion, limitation or preference which, being based on language, has the purpose or effect of nullifying or impairing equality. These rights and obligations should be perceived as international minimum standards. States can provide better standards than these in national constitutions and legislation.

Because of the history of discrimination of minority languages in Africa, the proposed norms should provide for affirmative action as a means for trying to promote and actively implement minority language rights. This may even include obliging states to mainstream minority languages in legislation and policy and devote resources, either individually or through international assistance and co-operation, towards realising these rights. States should also be obliged to create conditions and enabling institutions which are representative of members of linguistic minorities to participate, in a meaningful way, in the development and implementation of policies and programmes related to minority languages.^[177]

However, the usual challenges of ratification and implementation are likely going to befall the proposed treaty. The solution to such challenges lies in combining the liberal and conservative approaches. The African Commission can use articles 60 and 61 of the ACHPR to draw inspiration from the proposed treaty on minority languages in Africa. This can go along way in resolving the normative deficiency problem.

4.2.2 Implementation

The problem of implementation of human rights instruments is not unique to minority language rights but to all human rights instruments world wide. States seldom discharge their obligations under the treaties that they ratify. They often cite problems of financial resources to discharge their obligations. Yet lack of resources can never justify the gross violation of human rights. It is important to note that human rights instruments are bereft of much of their usefulness without implementation in national law.^[178] This section will highlight some things that African countries can do to improve the implementation of human rights instruments that protect minority languages.

At the regional level, implementation can be improved through international co-operation and the activities of the African Commission. International co-operation is necessary to curb the problem of lack of resources. International co-operation can either be in the form of supporting a country to improve conditions and institutions that facilitate compliance with human rights treaties or a reaction to human rights violations. Sepúlveda *et al* argues that states can react to human rights violations through confidential representations with the government concerned, using visits of political officials to a country to raise the issue confidentially and in serious cases, publicly, parliamentary questions and debates on a specific treaty, public statements or declarations, using the international for a to draw attention to human rights violations, civil society support, withdrawing diplomatic personnel, changing trade relationships and sanctions in various forms.^[179]

The African Commission can also protect minority languages through its protective and promotional mandates. For instance, the African Commission can use the normative content of minority language rights to examine state reports and make recommendations for implementation thereto. It can use article 45 of the ACHPR to commission research, undertake fact finding missions, minority language rights education, organize seminars, symposia and conferences as well as disseminate information on minority language rights. The African Commission can also adjudicate (or submit to the African Court) individual and inter-state complaints relating to violations of minority language rights. The African Court can then make binding decisions on minority language rights.^[180] Both the African Court and the African Commission can also give advisory opinions, upon request, to state parties on issues relating to protection of minority languages. The African Commission can use the results of such activities to formulate and lay down principles and rules aimed at solving legal problems relating to minority languages upon which African governments can base their legislation.

At the national level, the implementation of human rights law depends to a large extent on the political will of African states to comply with international standards. This is because international treaties do not stipulate how states should implement human rights standards. This gives each state a margin of appreciation to decide

Human rights obligations can be implemented at the national level. Political will as well as joint and coordinated efforts of the executive, legislature and judiciary therefore become vital.

African countries can implement human rights treaties through adapting national laws and administrative practices to comply with human rights standards, strengthening the independence of the judiciary, establishment of human rights institutions, minority language rights education, providing effective means of redress when minority language rights are violated and mainstreaming minority language rights in legislation, national policy and the work of national human rights institutions. To ensure access to information by minority language speakers, African states should provide resources for human rights education in minority languages. National human rights institutions can play a vital role in advising states on minority language rights issues, drawing government's attention on human rights violations, monitoring the compliance of national legislation to international human rights standards, formulating human rights education programs and promoting affirmative action to remedy the history of linguistic discrimination of minority language speakers.

This paper is not intended to be and cannot be the final word on the protection of minority languages in Africa. On the contrary, it is couched in cautious pragmatism that provokes scholarship on minority language rights. It is hoped that this discourse will engender a visibility of minority language rights issues in Africa and will accentuate research and campaigns on law and policy reforms.

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- [1] Quoted in JA Fishman *Readings in the sociology of language* (1969) 589.
- [2] Three points are worth noting here. Firstly, although there is debate among linguists on the precise definition of 'language', I Mumpande (note 13 below) convincingly argues that it is generally agreed that language is a major vehicle for communication of ideas and culture. Secondly, there is no universally accepted definition of minority languages. However, a working definition of minority languages will be provided in Chapter 2. Thirdly, minority languages do not need a precise definition to be protected by human rights instruments. They are currently protected in the absence of a precise definition.
- [3] S May 'Uncommon Languages: The Challenges and Possibilities of Minority Language Rights' (2000) 21(5) *Journal of Multilingual and Multicultural Development* 366.
- [4] D Nettle & S Romaine *Vanishing Voices: The Extinction of the world's languages* (2000) 5; D Crystal *Language Death* (2000).
- [5] J Crace 'Silence Falls', *Mail & Guardian* of 22-28 November 2002 3.
- [6] M Krauss 'The world's languages in crisis' (1992) *Language* 68, 4-10.
- [7] J Blommaert 'Language policy and national identity' in T Ricento (ed) *An introduction to language policy: Theory and method* (2006) 10.
- [8] N Dorian 'Western language ideologies and small-language prospects' in L Grenoble & L Whaley (eds) *Endangered Languages: Language Loss and Community Response* (1998) 3-21.
- [9] A Bamgbose *Language and the nation: The language question in Sub Saharan Africa* (1991).
- [10] S May (n 4 above) 369.
- [11] N wa Thiongo *Decolonizing the mind, the politics of language in African literature* (1986).
- [12] I Mumpande *Silent Voices: Indigenous languages in Zimbabwe* (2006) 1.
- [13] S Makoni & B Trudell 'Complementary and conflicting discourses of linguistic diversity: Implications for Language Planning' (2006) 22(2): 14-28 *Per Linguam* 21.
- [14] V Webb & Kembo-Sure (Eds) *African voices* (2000) 5.
- [15] R Serpell *The significance of schooling* (1993).
- [16] S Makoni & B Trudell (n 14 above) 21.
- [17] F Grin & F Daftary *Nation Building, Ethnicity and Language Politics in Transition Countries* (2003).
- [18] *Malawi African Association and Others v Mauritania* (2000) AHRLR 149 (ACHPR 2000) Para 136.
- [19] <http://portal.unesco.org/education/en/ev.php> (accessed 18 May 2007).
- [20] JD Williams and GC Snipper *Literacy and Bilingualism*, (1990).
- [21] S Makoni & B Trudell (n 14 above) 23.
- [22] S May (n 4 above) 368.
- [23] D Keebe, 'Language policy and linguistic theory' in J Marais & M Morris (eds) *Languages in a globalising world* (2003) 47-58.

D Nettle & S Romaine (n 5 above).

D Crystal *Language death* (2000).

S Makoni & B Trudell (n 13 above) 23.

[27] http://www.sil.org/sil/linguistic_creed.htm (accessed 10 April 2007).

[28] M Kontra et al 'Conceptualising and implementing Linguistic Human Right' in M Kontra *et al* (eds) *Language: A Right and a Resource: Approaching Linguistic Human Rights*, Edited by, (1999).

[29] http://en.wikipedia.org/wiki/Minority_language (accessed 22 August 2007); sec 23 of the Canadian Charter of Rights and Freedoms.

[30] The definition was proposed by the United Nations Special Rapporteur Francesco Capotorti in the context of Article 27 of the International Covenant on Civil and Political Rights. In the same light Jules Deschênes modified this definition to read that a minority is 'A group of citizens of a State, constituting a numerical minority and in a non dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.'

[31] A Anvita 'Forgotten Indian Heritage: Languages of Minority Communities of India' in ON Koul & L. Devaki (eds) in *Linguistic Heritage of India and Asia* (2000) 13 similarly argues that "The very notion of 'minority' brings in the picture of underprivileged, dominated, subservient people who somehow miss the boat of progress and development. The notion of 'minority' also brings home the idea of smallness.'

[32] J Pejic 'Minority Rights in International Law' (1997) 19.3 *Human Rights Quarterly* 666-685.

[33] For a further discussion of this issue see JA Sigler *Minority Rights: A Comparative analysis* (1983) 5. Sigler defines minority as 'In its simplest form we can regard as a minority group any category of people who can be identified by a sizable segment of the population as objects for prejudice or discrimination or who, for reasons of deprivation, require the positive assistance of the state. A persistent non-dominant position of the group in political, social, and cultural matters is the common feature of the minority'.

[34] Paras 5.1 and 5.2.

[35] *IL Chamus v The Attorney General and Others* MISC Civil Application NO. 305/ 2004.

[36] Publication Series A-B No 64 17 .

[37] These will be discussed in Chapter 4.

[38] Sec 38(1) of the International Court of Justice Statute.

[39] JP Grant & JC Barker (Eds) *Parry and Grant Encyclopaedic Dictionary of International Law*, 2nd edition 109.

[40] M Sepúlveda *et al Human Rights Reference Handbook* (2004) 23.

[41] My emphasis.

[42] M Sepúlveda *et al* (n 41 above) 16.

[43] F de Varennes 'The existing Rights of Minorities in International Law' in M Kontra *et al* (eds) (n 29 above) 117 .

[44] Art 27 of the CCPR is incorporated verbatim by art 30 of the CRC.

[45] J Pejic (n 33 above) 669-670.

[46] Paras 1, 5.1, 5.2 and 6.1.

[47] Para 5.3 of General Comment 23.

[48] Clause 6.2.

[49] This right is provided for in arts 14 of the CCPR, 40 of the CRC and 16 and 18 of the CMW.

[50] Art 5(1) of the UNESCO Convention Against Discrimination in Education.

[51] Art 45(3) and (4) of the International Convention on the Rights of Migrant Workers and Members of their Families (CMW) and arts 23 and 28(1) of the International Labour Organisation Conventions 107 and 169 respectively.

[52] Art 23(2).

[53] Arts 19 of the Universal Declaration of Human Rights, 19 of the CCPR, 13 of the CRC and 13 of the CMW.

[54] Arts 2.1 of the Universal Declaration of Human Rights, 2, 24 and 26 of the ICCPR, article 2 of the International CESCR and 1 and 7 of the CMW.

[55] F de Varennes (n 44 above) 117 .

[56] F de Varennes (n 44 above) 120.

[57] F de Varennes (n 44 above) 121.

[58] Communication 359/ 1989 & 385/1989 *Ballantyne, Davidson and McIntyre v Canada* UNHR Committee (31 March 1993), UN Doc CCPR/C/47 /D/359/ (1989).

F de Varennes (n 44 above) 126.

For this discussion see F de Varennes *Language, Minorities and Human Rights* (1996).
Communication 7 60/1997, J.G.A. *Diergaardt (late Captain of the Rehoboth Baster Communit*

al. v. Namibia, UNHR Committee (6 September 2000) U.N. Doc. CCPR/C/69/D/7 60/1997 (2000).

[62] Art 13 of the American Convention on Human Rights.

[63] Arts 2 of the American Declaration of the Rights and Duties of Man, 1 & 8 of the American Convention on Human Rights and 3 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

[64] Arts 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) and 9 of the Framework Convention for the Protection of National Minorities.

[65] Arts 14 of the European Convention, 2 of the European Convention on the Legal Status of Migrant Workers and 21 of the Charter of Fundamental Rights of the European Union.

[66] Art 7.

[67] See Section A that demonstrates that the relationship between culture, identity and language is still engrained in Africa today.

[68] F Migeod *Through British Cameroons* (1925) 21.

[69] For further discussion see Vernon-Jackson *Language, schools and government in Cameroon* (1967).

[70] PT Zeleza 'The Inventions of African Identities and languages: The Discursive and Developmental Implications' <http://www.lingref.com/cpp/acal/36/paper1402.pdf> (accessed 1 September 2007).

[71] For further discussion see K King *Pan-Africanism and education: A study of race, philanthropy and education in the Southern States of America and East Africa* (1971).

[72] SJ Ball 'Imperialism, social control and the colonial curriculum in Africa' (1983) 15(3) *Journal of Curriculum Studies* 237-263.

[73] KK Prah 'Language, Neo-Colonialism and the African Development Challenge' (2002) 150 *Tricontinental* http://www.casas.co.za/papers_language.htm. (accessed 27 August 2007).

[74] J Blommaert (n 8 above).

[75] A Bamgbose (n 10 above).

[76] KK Prah (n 7 4 above).

[77] A Adegbija *Multilingualism: A Nigerian case study* (1994) 33-4.

[78] A Lodhi 'The Language Situation in Africa Today' (1993) 2 (1): 79-86 *Nordic Journal of African Studies* 81.

[79] DZ Osborn 'African Languages and Information and Communication Technologies: Literacy, Access, and the Future' <http://www.lingref.com/cpp/acal/35/paper1299.pdf> (accessed 1 September 2007).

[80] Other languages represented include "Kiswahili" <http://groups.yahoo.com/group/Kiswahili/>;

'Hausa': http://groups.yahoo.com/group/Finafinan_Hausa/, "HausaDaHausawa"

<http://groups.yahoo.com/group/hausadahausawa/>, "Marubuta"

<http://groups.yahoo.com/group/Marubuta/>, "Matasa" <http://groups.yahoo.com/group/Matasa/>.

[81] n 80 above.

[82] Adopted on 5 July 1976 and entered into force on 19 September 1990.

[83] Adopted on 2 July 2006 and not yet entered into force.

[84] F Viljoen, *International Human Rights Law in Africa* (2007). He further argues that this doctrine has its roots in the landmark case of *Griswold v Connecticut* 381 (US) 479 (1965), in which the USA Supreme Court held that the unmentioned right to privacy was part of the 'penumbra' of the Ninth Amendment due process 'liberty' clause.

[85] (2001) AHRLR 60 (ACHPR 2001) at paragraph 60.

[86] My emphasis.

[87] This approach was adopted by the European Court of Human Rights in the cases of *Selmouni v France* (2000) 29 EHRR 403, para 101; and *Stafford v UK* (2002) 35 EHRR 32.

[88] SERAC case (n 86 above) para 68.

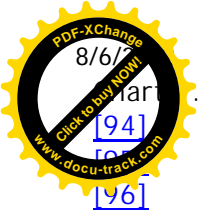
[89] F Viljoen (n 85 above).

[90] Arts 2 of the ACHPR, 3 of the African Charter on the Rights and Welfare of the Child (ACRWC) and 2 of the African Youth Charter.

[91] Arts 25 of the ACHPR, 7 of the ACRWC and 4 of the African Youth Charter.

[92] F de Varennes (n 44 above) 121.

[93] Arts 17 (2) and (3) and 22 of the ACHPR, 12(1) of the ACRWC and 10 and 20 of the African Youth



(2000) AHRLR 149 (ACHPR 2000) Para 136.

Article 15 of the ACHPR.

Article 13(2) of the ACHPR.

Article 11 of the ACRWC.

Para 6 of General Comment 13.

Arts 18(1) and (2) of the ACHPR, 18(1) of the ACRWC and 8 of the African Youth Charter.

Art 6(1) of the ACRWC.

Article 17 of the ACRWC.

I have relied heavily on a UNESCO Commissioned report compiled by KE Gardelii entitled 'Annotated Statistics on Linguistic Policies and Practices in Africa (revised 2004)

<http://www.african.gu.se/downloads/gadeliireport.pdf> (accessed 1 September 2007) in the formulation of this section.

[103] BF Grimes (Ed) *Ethnologue. Languages of the World*, Thirteenth Edition (1996).

[104] A Lodhi (n 79 above) 81.

[105] Article 8 of the Burundi Constitution.

[106] Article 17 of the Central African Republic Constitution.

[107] Article 2 of the Comoros Constitution.

[108] Article 6 of the DRC Constitution.

[109] Article 53 of the Constitution of Kenya.

[110] Article 4(5) of the Constitution of Madagascar.

[111] Article 4 of the Constitution of Rwanda.

[112] Article 53 of the Constitution of Nigeria.

[113] Article 3 of the Constitution of Somalia.

[114] Section 6 of the Constitution of South Africa.

[115] Section 6(5) of the South African Constitution.

[116] Article 26 of the Malawi Constitution and section 30 of the South African Constitution provide for the right to use the language.

[117] Article 5(1) of the Constitution.

[118] Article 4(3) of the Constitution.

[119] KE Gardelii (n 103 above) 10.

[120] That is language used in parliamentary debate, drafting and promulgating laws.

[121] KE Gardelii (n 103 above) 14.

[122] Article 40 of the Benin Constitution.

[123] Article 10 of the Botswana Constitution.

[124] Article 17 of the Eritrean Constitution.

[125] Article 19 and 20 of the Ethiopian Constitution.

[126] Article 72 and 82 of the Kenyan Constitution.

[127] Article 42 of the Malawi Constitution.

[128] Articles 5 and 10 of the Mauritius Constitution.

[129] Articles 11 and 19 of the Namibian Constitution.

[130] Articles 5 and 6 of the Nigerian Constitution.

[131] Article 18 of the Constitution of Seychelles.

[132] Section 35 of the Constitution of South Africa.

[133] Articles 23 and 28 of the Ugandan Constitution.

[134] Articles 13, 18 and 26 of the Zambian Constitution.

[135] Articles 13 and 18 of the Zimbabwean Constitution.

[136] KE Gardelii (n 103 above) 16.

[137] KE Gardelii (n 103 above) 18.

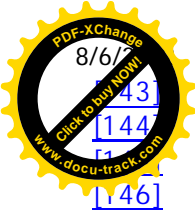
[138] Section 29(2) of the South African Constitution elaborately states that 'Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable.' See also article 6(2) of the Ugandan Constitution and section 40 of the Zimbabwean Education Act.

[139] KE Gardelii (n 103 above) 19 to 28.

[140] KE Gardelii (n 103 above).

[141] KE Gardelii (n 103 above).

[142] KE Gardelii (n 103 above).



KE Gardellii (n 103 above) 31 & 32.

KE Gardellii (n 103 above) 33 to 37.

KE Gardellii (n 105 above).

[146] Centre for Human Rights *The African human rights system*
http://www.chr.up.ac.za/centre_publications/ahrs/african_charter.html (accessed 20 September 2007).

[147] n 147 above.

[148] This approach was adopted by the European Court of Human Rights in the cases of *Selmouni v France* (2000) 29 EHRR 403, para 101; and *Stafford v UK* (2002) 35 EHRR 32.

[149] The ACHPR was used to interpret rights in *Opeyemi Bamidele v Williams and another* Unreported, Suit No. 13/ 6m/ 89, (Benin Division), *Rono v Rono* (2005) LLR 4242 (CAK) pg 6-7, *Longwe v International Hotels* [1993] 4 LRC 221, *NPP v Inspector-General of Police Ghana and Others* No. 4/ 93 delivered on (30/11/93) *AG Botswana v. Dow* (1998) HRLRA I.

[150] *Sale V Haitian Centers Council Inc* (1993) 509 U.S. 155 defined a self-executing treaty as 'an international agreement...that directly accords enforceable rights to persons without the benefit of Congressional implementation.' It is one which of its own force furnishes a rule of municipal law for the guidance of domestic Courts in deciding cases involving the rights of individuals. Such a treaty operates directly and immediately within the domestic legal system and should be enforceable through judicial remedies.

[151] SC - 145/04.

[152] Nigeria F.H.C. July 29, 1994.

[153] Article 2.

[154] Articles 2 of the ACHPR, 3 of the ACRWC and 2 of the African Youth Charter.

[155] Articles 3 and 19 of the ACHPR.

[156] Articles 9 & 25 of the ACHPR, 7 of the ACRWC and 4 of the African Youth Charter.

[157] Articles 17 (2) and (3) and 22 of the ACHPR, 12(1) of the ACRWC and 10 and 20 of the African Youth Charter.

[158] Articles 13 and 15 of the ACHPR.

[159] Articles 17 (1) of the ACHPR and 11 of the ACRWC.

[160] Articles 18 of the ACHPR, 18(1) of the ACRWC and 8 of the African Youth Charter.

[161] Article 6 of the ACRWC.

[162] Article 17 of the ACRWC.

[163] Articles 45(3) and (4) of the CMW and articles 23 and 28(1) of the ILO Conventions 107 and 169 respectively.

[164] Article 5(1) of the UNESCO Convention against Discrimination in Education.

[165] Articles 19 of the Universal Declaration, 19 of the CCPR, 13 of the CRC and 13 of the CMW.

[166] Articles 2.1 of the Universal Declaration, 2, 24 and 26 of the CCPR, 2 CESC and 1 & 7 of the CMW.

[167] F de Varennes (n 44 above) 121.

[168] *Diergaardt* case (n 36 above) .

[169] Article 13 of the American Convention on Human Rights.

[170] Articles 2 of the American Declaration of the Rights and Duties of Man, 1 & 8 of the American Convention on Human Rights and 3 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

[171] See the Universal Declaration of Linguistic Rights for a detailed discussion of these rights.

[172] Article 5(1)(f) of the Declaration on the Human Rights of Individuals who are not Nationals of the Country in Which They Live.

[173] Article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities & Article 19 of the Vienna Declaration and Programme of Action.

[174] Article 14 of the Draft Declaration on the Rights of Indigenous Peoples. See also Declaration on the Rights of Asian Indigenous Tribal Peoples.

[175] See the Draft Recommendation on the Promotion and Use of Multilingualism and Universal Access to Cyberspace.

[176] Article 5 of the Universal Declaration on Cultural Diversity.

[177] See the Hague Recommendations Regarding the Education Rights of National Minorities.

[178] E Dankwa 'Implementation of international human rights instrument: Ghana as an Illustration' (1991) *The African society of international law and comparative law* '3.

[179] M Sepúlveda *et al* (n 41 above) 70 & 71.

[180] Article 27 of the Protocol to the ACHPR establishing the African Court on Human and Peoples'

